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OFFICIAL TRANSLATION

SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES

BETWEEN:

THE INNU OF UASHAT MAK
MANI-UTENAM

Claimant

– and –

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA
As represented by the Minister of
Crown-Indigenous Relations

Respondent

Jameela Jeeroburkhan and
Charlotte Chicoine-Wilson, for the Claimant

Stéphanie Dépeault and Josianne Philippe,
for the Respondent

HEARD: May 8–11, 2017, April 9–12,
2018, February 12, 2019, April 8–11, 2019,
and April 15–18, 2019

REASONS FOR DECISION

Honourable Paul Mayer

NOTE: A Corrigendum was released by the Tribunal on April 28, 2020. The corrections have been incorporated into this document.

Cases Cited:

St Catharines Milling and Lumber Co v R (1887), 13 SCR 577; *Wewaykum Indian Band v Canada*, 2002 SCC 79, [2002] 4 SCR 245; *St Catherine's Milling and Lumber Co v R* (1888), 14 App Cas 46 (JCPC); *Calder et al v Attorney-General of British Columbia*, [1973] SCR 313; *Guerin v R*, [1984] 2 SCR 335; *R v Sparrow*, [1990] 1 SCR 1075; *Innu First Nation of Essipit v Her Majesty the Queen in Right of Canada*, 2017 SCTC 1; *Canada v Kitselas First Nation*, 2014 FCA 150; *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 SCR 83; *Blueberry River Indian Band v Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344; *Fairford First Nation v Canada (AG)*, [1999] 2 FC 48, [1998] FCJ No 1632; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511; *Manitoba Metis Federation Inc v Canada (AG)*, 2013 SCC 14, [2013] 1 SCR 623; *Quebec (AG) v Canada (National Energy Board)*, [1994] 1 SCR 159; *Semiahmoo Indian Band v Canada*, [1998] 1 FC 3, [1998] 1 CNLR 250 (CA).

Statutes and Regulations Cited:

Specific Claims Tribunal Rules of Practice and Procedure, SOR/2011-119, rr 10, 41, 42.

Specific Claims Tribunal Act, SC 2008, c 22, s 14 and ss 20, 22.

An Act respecting Indians and Indian Lands, CSLC 1860, c 14.

Constitution Act, 1982, c 11, s 35.

Indian Act, SC 1906, c 81, ss 20, 49.

An Act to amend the Indian Act, SC 1911, c 14, s 37.

An Act to amend the Indian Act, SC 1918, c 26, s 2.

Authors Cited:

José Maillot, “La marginalisation des Montagnais” in Pierre Frenette, ed, *Histoire de la Côte-Nord*, Québec, QC: Institut québécois de recherche sur la culture and Presses de l’Université Laval, 1996.

Henry Youle Hind. *Explorations in the Interior of the Labrador Peninsula: The Country of the Montagnais and Nasquapee Indians*, Vols 1 and 2, London: Longman, Green et al, 1863.

Frank G. Speck, “Montagnais-Naskapi Bands and Early Eskimo Distribution in the Labrador Peninsula”, *American Anthropologist*, 1931.

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Mgr René Bélanger, *Sept-Iles et son passé: notes historiques*, Sept-Îles, QC: Éditions Le Musée des Sept-Iles Inc, 1981.

Daniel Vachon, *L’Histoire montagnaise de Sept-Îles*, [Quebec (Province)]: Éditions Innu, 1985.

Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013.

John J. Borrows and Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials & Commentary*, 5th ed, Markham, ON: LexisNexis Canada, 2008.

J. Timothy S. McCabe, *The Honour of the Crown and Its Fiduciary Duties to Aboriginal Peoples*, Markham, ON: LexisNexis Canada, 2008.

Headnote:

This claim concerns the scope of the federal Crown’s fiduciary duties in administering and overseeing the lands of the Uashat Reserve from the time of creation of the reserve in 1906 until the time of surrender of almost all the reserve lots in 1925, as well as the losses and hardship suffered by the Innu of Uashat.

The claimant alleges that the federal Crown breached its fiduciary duty by failing to take the necessary measures to ensure that the reserve was surveyed and clearly marked, and by failing to use the remedies at its disposal to prevent encroachments when reserve lots were sold by the Province.

The claimant also alleges that the respondent breached its legal obligations with respect to the 1925 surrender by failing to validly obtain the consent of the Innu of Uashat and to ensure that the rules governing the conditions of validity of the surrender were respected. The claimant believes that the federal Crown's breaches resulted in compensable losses for the Innu of Uashat.

The respondent disputes and denies the validity of the claim. It states that it acted with due diligence within the means at its disposal to protect the reserve lands, taking all the necessary measures to allow the Innu and third parties to situate the reserve and its boundaries. The respondent submits that the sale of the reserve lots resulted not from its failure to fulfill obligations but rather from the province's failure to keep accurate records. To prevent encroachments, the federal Crown had wide latitude as to how it could meet its legal obligations, and it chose in this case to obtain land near the reserve in exchange for the lots sold. These sales were the trigger for the 1925 surrender and exchange. The Innu of Uashat gave their valid consent to the surrender, and the respondent respected their wishes and autonomy. The respondent therefore submits that it acted in accordance with its fiduciary duties during the 1925 surrender and exchange.

The respondent submits that, even if the Tribunal finds that it breached its legal obligations or fiduciary duties, the claim should be dismissed on the grounds that the Innu of Uashat did not suffer any compensable loss because the sale of the reserve lands was adequately compensated by the granting of lands larger in area than the lands surrendered.

Facts:

Towards the end of the 19th century, the Innu of Uashat lived mainly in the interior, where they hunted game and trapped fur-bearing animals. From June to August, they returned to the Bay of Seven Islands to participate in the Catholic mission and to trade their furs at the trading post.

The arrival of a growing number of settlers in the region prompted the Innu of Uashat to request the creation of a reserve to protect the land they occupied around the chapel and trading post, where their houses were located. However, their request was refused by the Executive Council of the Province of Quebec in 1881 because mining concessions had been granted on the requested land. The Innu of Uashat renewed their request for a reserve in 1901, but the Department

of Indian Affairs (DIA) refused to consider it because it involved land on which buildings or improvements belonging to the Hudson's Bay Company or third parties were located.

In 1903, facing pressure from Euro-Canadian settlers on the lands they occupied, the Innu of Uashat reiterated their desire to obtain a reserve. Having already sold some of the lots being claimed, the Province opposed creating a reserve from the land on which the Innu houses were located and instead had a reserve surveyed on the seashore, outside the Innu village. The Innu objected to the proposed location, and the proposed reserve was abandoned. Talks were initiated between the two levels of government, and a tripartite agreement was finally reached between the DIA, the Province and Father Boyer of the Seven Islands Mission. Under the agreement, the Seven Islands Reserve, consisting of the chapel lot and the lots immediately to the northwest of the chapel, was officially created in 1906.

However, the steps to fully implement the tripartite agreement were slow to be carried out, in particular, surveying and marking the reserve lands to prevent encroachments, and moving the Innu houses that were off the reserve to lots on the reserve at the DIA's expense. The failure to mark the boundaries of the new reserve, as well as an error in the Province's records as to the reserve's location, created confusion within the Innu and Euro-Canadian populations in the years that followed. Beginning in 1917, a number of reserve lots were sold by the Province.

In 1924, when the vast majority of the Innu of Uashat were on their hunting grounds, the DIA moved the Innu houses that were located off the reserve to lots within the boundaries of the reserve. It was not until the Innu of Uashat returned to the coast the following summer that they discovered, to their surprise, that their homes had been moved and, in some cases, damaged.

The following year, to resolve the issue of the reserve lots having been sold by Quebec, the DIA and the Province agreed to surrender the reserve lands and designate the proposed reserve surveyed in 1903 as a replacement reserve. In accordance with the DIA's instructions, a meeting was held with the Innu of Uashat to obtain their consent to the surrender and thereby formalize the land exchange.

In 1925, the Province issued an Order-in-Council to approve the creation of the new reserve. As of that date, the original 1906 reserve, excluding the chapel lot, was formally surrendered and replaced by the Pointe-au-Sable Reserve.

Judgment: The Innu of Uashat held a specific and cognizable Aboriginal interest in the lands of the reserve when it was created. Among other things, the creation of the reserve committed Canada to the basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the Indigenous beneficiaries (*Wewaykum Indian Band v Canada*, 2002 SCC 79 at para 74, [2002] 4 SCR 245). The fiduciary duty of the federal Crown also required it to act diligently to protect the quasi-proprietary interest of the Innu in the lands of the Uashat Reserve.

In failing to survey and demarcate the reserve to protect the interest of the Innu in their lands, the federal Crown breached its fiduciary duty. When the reserve was created and in the years that followed, Canada had a duty to exercise its powers under section 20 of the *Indian Act*, RSC 1906, c 81, to survey and clearly mark the boundaries of the reserve to prevent encroachment by settlers. However, despite numerous requests and a desperate need for clearly defined boundaries, and despite funds being allocated year after year by Parliament to meet this need, the DIA never surveyed or demarcated the reserve, resulting in almost total confusion about the reserve's location, its size and sometimes its very existence. A reasonably prudent landowner would have recognized the importance of an accurate plan from the outset and would have demarcated the reserve with a series of visible physical markers to secure title and ensure that the reserve lands set apart for the Innu of Uashat were identifiable to all.

The federal Crown also breached its legal obligations and fiduciary duties in administering and overseeing the reserve lands by failing to take all the steps required to prevent encroachments on the reserve lands and by failing to respond diligently to the sale of reserve lots by the Province.

As a fiduciary, the federal Crown had a duty to be reasonably vigilant at all times in the face of threats to the quasi-proprietary interest of the Innu of Uashat in the reserve and to respond in a timely manner to any encroachment. Although it had various powers and remedies at its disposal to prevent encroachments, Canada was not particularly concerned that Quebec was illegally selling reserve lots, and it responded only under the eventual pressure from third parties.

Canada's failure to act and its lack of diligence demonstrate that the federal Crown did not act with the same care that it would have taken in managing its own affairs.

The federal Crown's fiduciary duty also required that it obtain the informed consent of the Innu of Uashat before surrendering their reserve lands and that it meet the requirements of the *Indian Act* in force at the time with regard to surrenders. Consequently, the federal Crown was required to act in good faith and to provide the Innu of Uashat with full disclosure appropriate to the subject matter. The DIA's lack of transparency prevented the Innu of Uashat from making an enlightened and informed decision on the advisability of the transfer.

The evidence shows that, in the period prior to the 1925 surrender, the Innu of Uashat faced significant socio-economic pressures and the biased attitude of some DIA employees. Not only had they lost part of what they considered to be their reserve with the relocation of their homes, but a shortage of game, the collapse of the fur market and a decrease in financial support for hunters were affecting their ability to generate income. The Innu of Uashat were also suffering from numerous health problems and a lack of medical care; therefore, they were particularly vulnerable when they were asked for their consent.

In this case, there is nothing to suggest that the DIA Agent stationed in Seven Islands at the time followed the instructions of the DIA or complied with the laws then in effect with respect to the consent of the Innu of Uashat. Given the lack of information and minutes regarding the meeting held on July 5, 1925, it cannot be concluded that the Innu of Uashat were able to give their free and informed consent to the surrender. Moreover, when they were asked to consent to the surrender in 1925, the Innu of Uashat were faced with a *fait accompli*, since one of the most significant components of the 1924 agreement, the relocation of their homes, had already been completed by the DIA in their absence and without their valid consent. It was not until after the houses had been moved that the Crown pointed out that a surrender would be required to complete the proposed exchange.

The federal Crown's breaches of its fiduciary duties have resulted in compensable losses to the Innu of Uashat. The surrender denied them centrally located lots that they had sought repeatedly since 1880. Replacing these lands with the old proposed reserve of 1903 does not remedy the Crown's fiduciary breach.

The Government of Quebec was negligent in entering the proposed reserve of 1903 instead of the 1906 reserve into its records. This incorrect entry resulted in the illegal sale of lots on the 1906 reserve. However, the losses incurred by the Innu of Uashat are not solely attributable to wrongful conduct by the Government of Quebec. Canada's repeated breaches of its duty to ensure that the best interests of the Innu of Uashat were being served and Quebec's wrongful conduct are too intertwined and complementary to be disentangled.

The existence of the exchange lands is irrelevant at this stage of the proceeding, since the details of the losses and the compensation for losses deemed eligible will be dealt with in the second stage.

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I. CLAIM

[1] This case involves the community of Uashat mak Mani-Utenam (the “Innu of Uashat”), in Sept-Îles [referred to as Seven Islands in English-language historical records], and the scope of the fiduciary duties of the federal Crown (“Canada”) from 1906, when the reserve was created, to 1925, when most of the lots on the reserve were surrendered.

[2] Specifically, the Specific Claims Tribunal (the “Tribunal”) must deal with allegations by the Innu of Uashat that Canada neglected its legal obligations and fiduciary duties in relation to administering and overseeing the Uashat Reserve from its creation in 1906 to its surrender in 1925, in terms of encroachments and the sale of reserve lots by the Province of Quebec (“Quebec”).

[3] To that end, the Tribunal must pay special attention to two moments in the reserve’s history.

[4] First, the Tribunal must examine Canada’s actions before Quebec sold the lots, to determine whether Canada took all the steps required in its role as a fiduciary to prevent encroachments on the reserved lands.

[5] The Tribunal must then consider Canada’s reaction upon learning that Quebec had sold the lots on the Uashat Reserve and Canada’s actions to resolve the issue.

[6] Lastly, if the Tribunal finds that Canada breached its fiduciary duties, it must determine whether the breaches resulted in losses for the Innu of Uashat for which the Tribunal may order compensation. However, since the proceeding has been bifurcated, there is no need at this stage to assess the losses incurred, if any.

II. PROCEEDING

A. Claim admissibility

[7] This claim was initially filed with the Minister of Indian Affairs and Northern Development on November 12, 2009.

[8] In a letter dated October 29, 2012, Senior Assistant Deputy Minister Jean-François Tremblay informed the Innu of Uashat that the Minister of Indian Affairs and Northern Development would not negotiate the specific claim named “Cession de 1925” [1925 surrender]

(Exhibit P-71, Tab 465, Department of Indian Affairs and Northern Development, Status Report on Specific Claims for Innu Takuaiakan Uashat mak Mani-Utenam, May 3, 2016).

[9] The Innu of Uashat therefore filed a declaration of claim with the Tribunal on February 14, 2014, under Rule 41 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.

[10] The Tribunal received Canada's response to the declaration of claim on July 14, 2014, pursuant to Rule 42 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119.

[11] On September 26, 2014, Justice Johanne Mainville issued a notice under section 22 of the *Specific Claims Tribunal Act*, SC 2008, c 22 [*SCTA*]. In the notice, she wrote that the Tribunal's decision of an issue in relation to this specific claim might, in its opinion, significantly affect the interests of Quebec. The notice was sent to the Attorney General of Quebec on the same day.

[12] On December 1, 2014, the Attorney General of Quebec sent a letter to the Tribunal stating that it did not intend to apply to intervene or to participate in the proceeding.

B. Bifurcation

[13] On October 30, 2014, the Tribunal ordered that the proceeding be bifurcated under rule 10 of the *Specific Claims Tribunal Rules of Practice and Procedure*, SOR/2011-119. Accordingly, this proceeding is being conducted in two stages.

[14] In the first stage, the Tribunal must decide on the validity of the claim. This includes determining whether there were breaches by Canada that may have caused losses to the Innu of Uashat, as set out in section 14 of the *SCTA*.

[15] The second stage will begin if, after the determination of the validity, which is the purpose here, the Tribunal finds that there were breaches by Canada that may have caused losses to the Innu of Uashat. If so, the Tribunal must then determine the amount of compensation to be awarded to the Innu of Uashat with respect to this claim.

C. Procedural history

[16] On September 1, 2016, the Tribunal held a hearing on an objection to evidence regarding historical documents on the illegal occupation of another reserve, Doncaster. On September 22, 2016, a decision was rendered allowing the Doncaster documents to be admitted into evidence (*The Innu of Uashat Mak Mani-Utenam v Her Majesty the Queen in Right of Canada*, 2016 SCTC 13).

[17] The proceedings continued with a site visit and the hearing of testimony from elders, from May 8 to 11, 2017, at the Shaputuan Museum in Uashat.

[18] Expert testimony before the Tribunal took place in Uashat the following year, from April 9 to 12, 2018.

[19] A hearing to deal with objections to the evidence was held on July 6, 2018.

[20] The Memorandum of Fact and Law of the Innu of Uashat (the “Memorandum of the Innu of Uashat”) was filed with the Tribunal on October 29, 2018, and that of Canada (“Canada’s Memorandum”) was received on January 28, 2019.

[21] The hearing of oral arguments to present evidence regarding the Doncaster Reserve was held on February 12, 2019, in Montréal.

[22] The Tribunal returned to Sept-Îles in spring 2019 to hear arguments on the entire claim. The Innu of Uashat were heard by the Tribunal on April 8, 9 and 10, and their response was heard on April 18. Canada was heard on April 10, 11, 15, 16 and 17.

[23] A few additional exhibits were admitted into evidence in January and February 2020 (Exhibit P-80, letter from Chief Régis to the Department of Indian Affairs (the “DIA”), April 5, 1922; Exhibit P-81, letter from A. F. MacKenzie to Agent MacDougal, April 18, 1922; Exhibit P-82, letter from A. F. MacKenzie to Chief Régis, April 18, 1922; Exhibit P-83, letter from Agent MacDougal to J. D. McLean, June 14, 1922; Exhibit P-84, letter from J. D. McLean to Agent MacDougal, June 29, 1922; Exhibit P-85, Chief’s statement by S. McKenzie, July 31, 1922; Exhibit P-86, Councillor’s statement by T. Vollant, July 31, 1922; Exhibit P-87, letter from Chief Régis to the DIA, July 31, 1922; and Exhibit P-88, letter from Fabien to Parker, October 12,

1922). The parties submitted memoranda on the new exhibits on February 3 and 14, 2020 (claimant's additional written submissions, February 3, 2020; and respondent's written submissions regarding the filing of additional documents in evidence, February 14, 2020).

III. EVIDENCE

[24] This section sets out the facts relevant to the dispute based on the evidence filed by the parties.

[25] The historical framework presented has been reconstructed largely from a wealth of archival documents, photographs, maps and plans of inestimable heritage value, most of which are from government sources.

[26] Consequently, the voice of the Innu of Uashat is seldom heard directly. Rather, it is reported, primarily through religious figures, merchants and DIA officials.

[27] Comprehensive as they are, the government archives therefore present only a limited outside perspective.

[28] The Tribunal is grateful to the expert witnesses, Sylvie Vincent and Jean-Pierre Garneau, and to the elders of Uashat, Marie-Clara Jourdain, the late Anne-Marie Labbé, Grégoire Jourdain and Blandine Jourdain, and to Gloria Vollant for their invaluable contributions to the record, which enriched the facts by providing these witnesses' perspectives on the events reported in the documentary evidence (Blandine Jourdain did not testify directly in this case, as she passed away a few years ago; however, her testimony in an earlier proceeding also dealing with the Uashat Reserve was important to understanding the factual framework at the heart of this dispute).

[29] In addition, the elders' oral historical testimony provided a more nuanced understanding.

[30] The Tribunal has already expressed, both at the hearing and in this judgment, its appreciation of the work of counsel for the parties. It was largely thanks to the support staff in their respective firms that they had a work environment that enabled them to perform flawlessly. The Tribunal also thanks Michel Deshaies and Nathalie Emard for their invaluable work, and Natalie Lowe and Dragisa Adzic, the Tribunal's senior registry officers. In addition, the Tribunal acknowledges the valuable contribution of Éloïse Ouellet-Décoste, Guylaine Grenier, Rose Adams

and Henri Barbeau, as well as the work of court reporter Karine Laperrière, interpreters Arthur Robertson, Raoul Vollant and Simon Pilot, and Shaputuan Museum research team members Philomène Jourdain, Suzanne Tshernish and Alexandre Pinette.

A. Introduction

[31] Although the parties have described in detail the work leading to the creation of the Uashat Reserve, it should be noted from the outset that this dispute does not deal with that process specifically.

[32] The parties' submissions in that regard serve only to situate the central issues of the claim. However, the Innu of Uashat have stated that they wish to reserve their right to file further claims relating to events that took place before the creation of the Uashat Reserve in 1906 (Memorandum of the Innu of Uashat at paras 41–43).

[33] Nevertheless, it is useful to trace the chain of events that led to the creation of the Uashat Reserve in order to understand the parties' claims. As the following factual framework shows, the process that led to the reserve's creation spanned more than 25 years, from 1880 to 1906, when the reserve was officially established.

[34] Historian José Mailhot describes the process as [TRANSLATION] "laborious and chaotic, testing the patience of the [Innu of Uashat]" (Exhibit P-32, Tab 7, José Mailhot, "La marginalisation des Montagnais", in Pierre Frenette, ed, *Histoire de la Côte-Nord*, Québec, QC: Institut québécois de recherche sur la culture and Presses de l'Université Laval, 1996, at p 355).

[35] However, almost all the reserve lands were surrendered 19 years later. In other words, the lifespan of the former Uashat Reserve was ultimately shorter than the process to create it.

[36] Thus, the following is an account of the creation of the original Uashat Reserve based on the evidence presented by the parties, followed by a description of relevant events that led to its surrender in 1925 and a brief overview of significant events that followed the surrender.

[37] The history of the Innu people's presence in the Bay of Seven Islands, which the Innu used to call Chishedec or Tshisheshtik (Exhibit P-62, Tab 3, at p 29; Exhibit P-15, expert opinion by

Sylvie Vincent at p 4), is fascinating and deserves to be told in detail. However, for the purposes of this claim, it will be sufficient to examine the second half of the 19th century.

[38] At the time, the Innu presence in the Bay of Seven Islands was influenced by the seasons, as well as by the new realities of trade and religion (Exhibit P-15, expert opinion of Sylvie Vincent at p 18). The Innu were on the coast from May or June to August each year (Exhibit P-15, expert opinion of Sylvie Vincent at pp 12–14). They would spend a large part of the year hunting in the interior. In the summer, they would return to the coast to fish, hunt seals and waterfowl, and collect eggs (Exhibit P-15, expert opinion of Sylvie Vincent at p 5).

[39] The return to the coast was also an opportunity to participate in the fur trade (Exhibit P-15, expert opinion of Sylvie Vincent at p 6). The Seven Islands post attracted Innu from various hunting grounds. Accordingly, the band that would become the Seven Islands Band at the turn of the 20th century was described by a number of observers at the time as being mixed, since it was in fact an aggregation of local bands (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 9–13; Exhibit P-32, Tab 5, Henry Youle Hind, *Explorations in the Interior of the Labrador Peninsula: The Country of the Montagnais and Nasquapee Indians*, Vol 1, London: Longman, Green et al, 1863; Exhibit P-32, Tab 9, Frank G. Speck, “Montagnais-Naskapi Bands and Early Eskimo Distribution in the Labrador Peninsula”, *American Anthropologist*, 1931; Exhibit P-32, Tab 10, Frank G. Speck and Loren C. Eiseley, “Montagnais-Naskapi Bands and Family Hunting Districts of the Central and Southeastern Labrador Peninsula”, *Proceedings of the American Philosophical Society*, 1942).

[40] During their months on the coast, the Innu preferred to camp at three main locations: Mishta-shipu, at the mouth of the Moisie River, Paushtikut, at the mouth of the Ste. Marguerite River, and the Bay of Seven Islands (Exhibit P-15, expert opinion of Sylvie Vincent at pp 8–10; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 43–53).

[41] Below is a map (Fig. 1.1) prepared by anthropologist Frank G. Speck of the various hunting grounds of the local Innu bands of Shelter Bay, Ste. Marguerite, Moisie, Caniapiscau, Petitsikapau and Michikamau that frequented the Bay of Seven Islands at the time (Exhibit P-32, Tab 10, Chart (1922–25), Frank G. Speck and Loren C. Eiseley, “Montagnais-Naskapi Bands and

Family Hunting Districts of the Central and Southeastern Labrador Peninsula”, *Proceedings of the American Philosophical Society*, 1942):

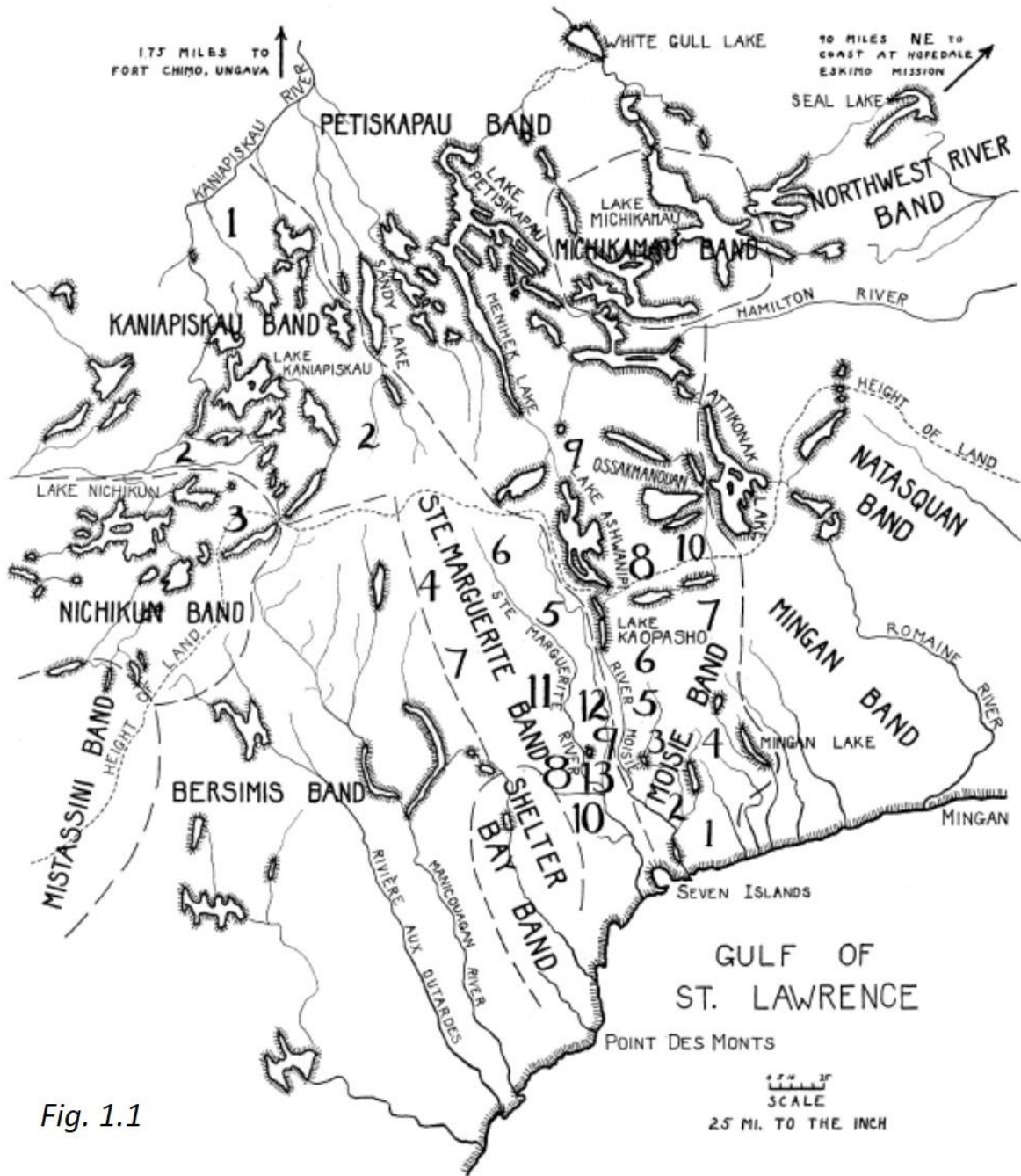


Fig. 1.1

[42] Around the mid-19th century, the Bay of Seven Islands became the main summer gathering place for the Innu, in particular because of two events that influenced their way of life at that time.

[43] First of all, in 1842, the Hudson's Bay Company moved its trading post from the site now called Vieux-Poste to the southeastern shore of the Bay of Seven Islands (Exhibit P-62, Tab 1, *Report on the Post of Seven Islands by Alexander Robertson 1844*, Hudson's Bay Company Archives at p 3: the author writes that there were 27 Innu families in Seven Islands that year). A few years later, Father Durocher, then an Oblate missionary on the North Shore, had a chapel and cemetery built for the Innu near the new trading post (Exhibit P-64, Tab 130, letter from Charles Arnaud to the Secretary of the DIA, September 27, 1904; Exhibit P-14, Tab A, Sylvie Vincent's reply to the opposing expert opinion of Jean-Pierre Garneau at p 8; Mgr René Bélanger, *Sept-Iles et son passé: notes historiques*, Sept-Îles, QC: Éditions Le Musée des Sept-Iles Inc, 1981, at pp 43–44).

[44] The Bay of Seven Islands became the site of the annual Catholic mission, held in July, and a central location for the fur trade on the North Shore (Exhibit P-15, expert opinion of Sylvie Vincent at pp 12–14; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 65; Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at p 98).

[45] In 1863, Professor Henry Youle Hind wrote that, when he visited the Bay of Seven Islands, there were approximately 150 Innu encamped around the chapel (Exhibit P-62, Tab 3, excerpts, Henry Youle Hind, *Explorations of the Labrador Peninsula: The Country of the Montagnais and Nasquapee Indians*, Vol 2, London: Longman, Green et al, 1863, at p 320).

[46] On the coast, the Innu lived mostly in camps. However, towards the end of the 19th century, some families starting living in wooden houses built through the financial contribution of merchants who wanted to gain customers. In the Bay of Seven Islands, the families settled around the chapel and near the trading post (Exhibit P-64, Tab 130, letter from Charles Arnaud to the Secretary of the DIA, September 27, 1904; Exhibit P-15, expert opinion of Sylvie Vincent at p 20; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 44, 66–67; Exhibit P-14, Tab A, Sylvie Vincent's reply to the opposing expert opinion of Jean-Pierre Garneau at pp 14, 20; Exhibit P-66, Tab 259, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1913*).

[47] At the same time, the region saw the arrival of the first Euro-Canadian settlers, mainly cod fishers (Exhibit P-75, Tab 1, testimony of Sylvie Vincent, transcript of hearing, April 9, 2018, at pp 123–26). Relations between the newcomers and the Innu were initially cordial and collaborative but gradually deteriorated with the arrival of increasing numbers of settlers in response to the opening up of public lands for settlement and natural resource development (Exhibit P-15, expert opinion of Sylvie Vincent at pp 31–32; Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at pp 31–32).

[48] This demographic change in the Bay of Seven Islands prompted the Innu to request that a reserve be created to protect the lands that they occupied (Exhibit P-15, expert opinion of Sylvie Vincent at p 32).

B. 1880 to 1900: Creation of reserve initiated

[49] The plan to create a reserve at Seven Islands appears in official documents around 1880. At that time, the federal government was beginning the process of creating reserves in Quebec.

[50] The DIA was organized into two units, the Outside Service and the Headquarters or Inside Service. The Outside Service was composed of Indian agents, teachers and medical staff who were posted to Indian agencies and reserves across Canada. Headquarters, based in Ottawa, coordinated the DIA's work nationwide (Exhibit P-51, Tabs 1885–89, Indian Affairs annual reports for 1885–89).

[51] Louis Félix Boucher, based in Betsiamits, 280 km from Seven Islands, was the superintendent of the Indians of the shores of the Lower St. Lawrence region, northeast of the Saguenay River (Exhibit P-62, Tab 10, letter from L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to L. F. Boucher, September 27, 1879; Exhibit P-18, Tab 25, report by L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to John A. MacDonald, Superintendent General of Indian Affairs, December 31, 1879). He was the first Indian agent on the North Shore.

[52] When L. F. Boucher took office in 1879, L. Vankoughnet, Deputy Superintendent General of Indian Affairs, asked him to prepare a report on lands that could be reserved for the Innu (Exhibit P-62, Tab 11, letter from L. Vankoughnet to L. F. Boucher, October 25, 1879).

[53] After a visit to Seven Islands in 1880, Boucher stated in a report to the DIA that he had met 52 families totalling 250 Innu. He raised the possibility of creating a reserve but provided little detail as to the location being considered:

[TRANSLATION]

I visited the land where a reserve could be created; it should be to the east, from Jean-François Poitras' house, to the west, near a creek in the Bay of Seven Islands, and then a distance of about three miles along the river. That way they could have wood for a long time. [Exhibit P-62, Tab 13, report by L. F. Boucher to the DIA, September 20, 1880, at pp 37–38; all quotations in this judgment are reproduced in full.]

[54] Nevertheless, it appears from subsequent discussions that the lands included the Innu chapel (Exhibit P-62, Tab 19, report by L. F. Boucher to the DIA, August 22, 1881, at p 11; Exhibit P-62, Tab 20, excerpt from *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* at p 22).

[55] An 1880 photograph (Fig. 1.2) shows the chapel in an open field with two long wooden fences and only three other buildings, one of them being the Hudson's Bay Company trading post, a few silhouettes and an Innu bark-covered tent (Exhibit P-62, Tab 12, "Seven Islands Church, Sept-Iles, QC, about 1880", McCord Museum, Notman Photographic Archives):



[56] From this photo, it is clear that this would have been the ideal time to create a reserve. The land requested by the Innu is largely unoccupied.

[57] Deputy Superintendent General Vankoughnet therefore forwarded the excerpt from Agent Boucher's report to the Under Secretary of State in Ottawa so that the latter might petition the Lieutenant Governor of Quebec for the creation of a reserve at Seven Islands (Exhibit P-62, Tab 14, letter from L. Vankoughnet to E. J. Langevin, Under Secretary of State, November 4, 1880).

[58] However, the request was denied a few months later by the Executive Council of the Province of Quebec because the requested site had been granted for mineral rights (Exhibit P-62, Tab 15, report by a committee of the Executive Council of the Province of Quebec, January 29, 1881; Exhibit P-62, Tab 18, letter from L. Vankoughnet to L. F. Boucher, February 25, 1881; Exhibit P-18, Tab 34, annual report by Agent Boucher to the DIA, August 22, 1881; Exhibit P-62, Tab 20, excerpt from *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881* at p 22).

[59] In his 1881 report, Boucher stated that he had counted 272 Innu, and that he had informed them of the following:

... that the Government could not give them the land they wished to have for a reserve; that it was granted for mineral right; they regretted it very much as it was their earliest settlement, and as their chapel is built there. [Exhibit P-62, Tab 20, excerpt from *Annual Report of the Department of Indian Affairs for the Year Ended 31st December 1881*]

[60] A decade later, a letter from DIA Agent Adolphe Gagnon, appointed on November 9, 1898, suggests that the Innu continued, in the late 19th century, to request that a reserve be created at Seven Islands (Exhibit P-62, Tab 24, letter from Agent Gagnon to the DIA, March 15, 1892). (Canada argues in its memorandum that the date recorded on the letter is erroneous because Gagnon was not appointed until November 9, 1898, and the date of receipt stamped on the letter is March 27, 1902 (Canada's Memorandum at para 125). The Tribunal takes due note of this information, but nevertheless considers it to be possible, for the purposes of this dispute, to conclude that the Innu's desire for a reserve at Seven Islands was known to the government authorities in the late 19th century).

[61] At the same time, Quebec began surveying Seven Islands (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 57–66; Exhibit P-45, Tab M-3, plan of the shore lands around

[65] Jean-Pierre Garneau writes that the Innu are notably absent from Gagnon's plan and extensive notebook of observations. Garneau finds this absence surprising because the Surveyor was in Seven Islands at the time of year when the largest number of Innu people were there (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 64–65).

[66] Garneau notes that the oldest testimony available on the dwellings of the Innu in Seven Islands is that of Father Charles Arnaud, who described the location in 1850:

[TRANSLATION]

In 1850, when I succeeded the Rev. Fr. Durocher in this mission, there was not a single White man residing in the Bay of Seven Islands. . . . As soon as the chapel was erected, the Indians began to build very primitive huts covered with spruce or birch bark. Some of them, leaving for the hunt, left their huts intact and needed only to cover them with some bark to have shelter when they returned. [Exhibit P-20, Tab 149, letter from Charles Arnaud, OMI, to J. D. McLean (Secretary, DIA), September 27, 1904].

[67] Garneau also notes that, at the time of Gagnon's visit in 1896, the process of the Innu making houses their homes [TRANSLATION] "had already begun," on lots 3 to 7. Garneau believes that the process gained speed in the years that followed (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 66).

[68] On April 30, 1900, C. E. Delorme, General Manager of the Seven Islands Company, wrote to the Quebec Commissioner of Lands, Forests and Fisheries. He summarized the recent history of the houses built for the Innu by various merchants:

[TRANSLATION]

If I may, Mr. Commissioner, I would like to point out that Virgil Bérubé has been occupying Lot 15 for many years and that he has never occupied Lot 3.

Two houses were originally built at the same time on this lot for Indians, one by the Hudson's Bay Company and the other by Virgil Bérubé.

Since then, the Hudson's Bay Company and Mr. Bérubé have both built other houses that they have sold to Indians.

In 1898 there were six houses belonging to Indians on Lot 3, last year there were eight, and this year there will be ten, as I hear that Mr. Bérubé is building two more.

Peter McKenzie, the governor of the Hudson's Bay Company, and S. P. Ross, the company's officer in Seven Islands, initially claimed that this lot should belong to the company, but since then they have been saying that it should belong to the Indian for whom they built the first house. [Exhibit P-19, Tab 41]

[69] However, Gagnon did not indicate any buildings in which Innu families were said to have resided.

[70] At the time, the village of Seven Islands was part of the township of Letellier, in the district of Saguenay. The land office for this district was based in Tadoussac.

[71] The Lands Agent for Quebec, Eugène Caron, was in charge of selling lots in Seven Islands, which he did by mail (Exhibit P-18, Tab 38, index of sales of Crown lands, Letellier Township, 1899–1904). He would be a key figure in the years to come.

[72] The province's index of public lands shows that the first land titles for the lots in Seven Islands were granted by the Quebec Department of Crown Lands in 1899 (Exhibit P-63, Tab 100, index of sales of Crown lands, Letellier Township, 1899–1904; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 65).

[73] The lots in Range 1 bordering the Bay of Seven Islands, including Lot 3, where at least 10 Innu houses were located, were quickly sold by Quebec to the merchant Virgil Bérubé in 1901. Jean-Pierre Garneau states that Bérubé was the first private individual to open a general store in competition with the Hudson's Bay Company before the 1900s (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 195).

C. 1901 to 1902: Request of Innu denied

[74] On September 20, 1901, Agent Adolphe Gagnon wrote to the Secretary of the DIA in Ottawa, J. D. McLean, to inform him of the request for a reserve by the Innu of Seven Islands. He stated their desire to have a 2.5 km² reserve comprising lots 1 to 5, Range 1, clearly marked by a fence to protect them from the growing number of Euro-Canadian settlers:

The band is also very anxious to have a Reserve for themselves and they pray the Dept. to accord them one.

They say that a mile long and a mile wide would be all they need.

They also say that if the Dept. gives them a Reserve as they ask they will fence this Reserve all around with regular fence where the land is clear and with a brush fence in the bush. [Exhibit P-62, Tab 33]

[75] The letter also stated that the houses of the Innu were mainly clustered around the chapel and the Hudson's Bay Company trading post and that it was, therefore, these lands that the Innu wished to obtain for the reserve.

[76] The Assistant Secretary of the DIA, S. Stewart, replied to Gagnon, stating that the DIA could not grant the request of the Innu because it included land on which buildings or improvements of the Hudson's Bay Company or third parties had been built. Stewart stated that the DIA would consider the request of the Innu once it had been amended to exclude the lands that the DIA deemed ineligible (Exhibit P-62, Tab 34, letter from S. Stewart, Assistant Secretary, DIA, to Adolphe Gagnon, Agent, October 9, 1901).

[77] Gagnon replied to the DIA, stating that the lands sought by the Innu were those on which 37 of their houses were located (Exhibit P-62, Tab 35, letter from Agent Gagnon to J. D. McLean, Secretary, DIA, October 21, 1901; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 68).

[78] Gagnon emphasized that it was important that the Innu remain close to the chapel and the trading post and that it would be difficult for them to move their houses, since large sums had already been spent to build them, and the Innu did not have the financial means to move them. He added that the Innu feared a mass influx of Euro-Canadian settlers because of the upcoming opening of a pulp mill in the village and that they were prepared to purchase the two houses belonging to third parties on the land being sought for the reserve.

[79] Also in fall 1901, J. D. McLean wrote to the Quebec Secretary of Cadastres to request a copy of the cadastral plan of the village of Seven Islands (Exhibit P-62, Tab 36, letter from J. D. McLean to Charles Chartre, Secretary of Cadastres, November 2, 1901). E. E. Taché, Deputy Minister of Lands, Mines and Fisheries of Quebec, replied that no cadastral plan had yet been drawn for Seven Islands but that a copy would be sent to him as soon as it was available (Exhibit P-62, Tab 37, letter from E. E. Taché, Deputy Minister of Lands, Mines and Fisheries, Quebec, to J. D. McLean, Secretary, DIA, November 7, 1901). McLean reiterated his request a few months later, in April 1902 (Exhibit P-63, Tab 43, letter from J. D. McLean to E. E. Taché, Deputy Minister of Lands, Mines and Fisheries, Quebec, April 7, 1902). This time, the province sent him Gédéon Gagnon's 1897 survey plan (Exhibit P-63, Tab 44, letter from E. E. Taché,

Deputy Minister of Lands, Mines and Fisheries, Quebec, to J. D. McLean, Secretary, DIA, April 17, 1902; Exhibit P-62, Tab 39, letters patent No. 14659, November 16, 1901; Exhibit P-63, Tab 41, memorandum from Samuel Bray, Chief Surveyor, DIA, April 3, 1902). The DIA then forwarded it to Agent Gagnon and asked him to mark on the plan the lands sought by the Innu (Exhibit P-63, Tab 45, letter from J. D. McLean to Agent Adolphe Gagnon, May 5, 1902).

[80] On receiving the survey plan, Agent Gagnon, who was stationed in Betsiamits, replied to McLean that he would have to travel to Seven Islands to fulfill the request to mark the lands sought by the Innu, since he did not know the village well enough to be able to respond to the DIA's request without first returning to the location. He further stated that, by visiting the village, he would be able to see whether any Euro-Canadian houses were located on the land requested by the Innu and, if so, to follow up with the Innu on their proposal to purchase those houses (Exhibit P-63, Tab 46, letter from Agent Adolphe Gagnon to J. D. McLean, Secretary, DIA, May 24, 1902).

[81] McLean replied to Gagnon that the issue of creating a reserve was not urgent enough to justify travelling to Seven Islands. He also reiterated the DIA's position regarding its refusal to consider the request for land made by the Innu in 1901, which included houses or improvements belonging to third parties (Exhibit P-63, Tab 48, letter from J. D. McLean to Agent Adolphe Gagnon, June 5, 1902).

[82] A year later, in September 1902, Gagnon wrote again to McLean with regard to creating a reserve at Seven Islands. He also sent the DIA a plan marked in red by a certain Jean-Baptiste Picard, a man of Huron origin related to the Innu by marriage, who had come to Betsiamits to seek his assistance. The plan showed the location of the houses of the Innu and the land being sought for the reserve (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 70–71).

[83] In his letter, Gagnon told the DIA that the land sought included all the houses of the Innu. He further stated that the Innu were prepared to purchase, at their own expense, the lot belonging to Bérubé. As for the chapel lot, he stated that the Reverend Father Arnaud had agreed to give it to the Innu at no cost.

[84] Lastly, Gagnon was of the view that the Hudson's Bay Company would not object to its buildings being located on the reserve, given the interdependent relationship between the Innu and

the company. In short, it appears that Gagnon considered the request of the Innu to be acceptable in all respects and that he believed it should be approved by the DIA (Exhibit P-63, Tab 50, letter from Agent Adolphe Gagnon to J. D. McLean, September 1902).

[85] On October 14, 1902, McLean, following the recommendations of the DIA's Chief Surveyor (Exhibit P-63, Tab 52, letter from S. Bray, Chief Surveyor, DIA, to J. D. McLean, Secretary, DIA, October 11, 1902), wrote to the Deputy Minister of Lands, Mines and Fisheries of Quebec requesting the creation of a reserve in Seven Islands of approximately 336.93 acres, comprising lots 2 and 5, Range 1, and lots G, F and I of the village of Seven Islands, as well as a woodlot. He nonetheless pointed out that the Innu would have liked to have lots 1 to 5, Range 1, but that the DIA preferred not to request lots belonging to third parties to avoid [TRANSLATION] "complications" (Exhibit P-63, Tab 53, letter from Secretary McLean to Deputy Minister Taché).

[86] On November 10, 1902, the Quebec Department of Lands, Forests and Fisheries replied to the DIA that the lots requested by the Innu could not be reserved because they were no longer available. According to the Province, letters patent had already been issued for lots 3 and 4, while lots 1 and 2 were claimed by a company operating in the eelgrass industry (Exhibit P-62, Tab 38, letter from Rouillard to the Assistant Secretary of the DIA). Lots 1 and 2 were sold to the company in question, the Seven Islands Company, the following summer (Exhibit P-63, Tab 100, index of sales of Crown lands, Letellier Township, 1899–1904; Exhibit P-63, Tab 101, plan of the village of Seven Islands in 1904; Exhibit P-19, Tab 93, letters patent No. 15649 (lots 1 and 2, Range 1, village of Seven Islands, township of Letellier) from the Province of Quebec to the Seven Islands Company).

[87] From its response, Quebec appears to have considered only the initial request of the Innu for lots 1 to 5, Range 1, without addressing the DIA's request, which was instead for lots 2 and 5, Range 1, and lots G, F and I of the village (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 72–73).

[88] Secretary McLean then contacted Deputy Minister Taché to reiterate the DIA's request, focusing on Lot 5, Range 1, where most of the Innu houses and the chapel were located (Exhibit P-63, Tab 58, letter from Secretary McLean to Deputy Minister Taché, November 17, 1902). Apparently having received no response from Quebec, McLean wrote to Taché again in

late 1902 (Exhibit P-63, Tab 59, letter from Secretary McLean to Deputy Minister Taché, December 30, 1902).

D. 1903 to 1904: Proposed reserve surveyed, then abandoned

[89] In early 1903, Jean-Baptiste Picard wrote to Agent Gagnon to reiterate the Innu's desire to have a reserve at Seven Islands, stating that the request was urgent because there was pressure from Euro-Canadian settlers with regard to the village lands (Exhibit P-63, Tab 61, letter from Jean-Baptiste Picard to Agent Adolphe Gagnon, January 20, 1903). Gagnon forwarded Picard's letter to the DIA a few days later (Exhibit P-63, Tab 62, letter from Agent Gagnon to the DIA, January 31, 1903).

[90] Visibly discouraged by the government's failure to act, Picard also contacted Dr. George Ross, the Hudson's Bay Company's officer in Seven Islands, to ask for his help in approaching the authorities regarding the creation of a reserve in Seven Islands (Exhibit P-63, Tab 63, letter from Jean-Baptiste Picard to George Ross, Officer, Hudson's Bay Company, February 14, 1903). Dr. Ross forwarded Picard's letter to Gagnon, in Betsiamits, expressing his support for the creation of a reserve in Seven Islands (Exhibit P-63, Tab 64, letter from George Ross to Agent Adolphe Gagnon, February 17, 1903). Gagnon in turn forwarded Picard's and Ross's letters to the DIA (Exhibit P-63, Tab 65, letter from Agent Gagnon to the DIA, February 28, 1903).

[91] On March 4, the Deputy Superintendent General of the DIA, F. Pedley, wrote to Deputy Minister Taché to reiterate the request for a reserve in Seven Islands, stating that "considerable anxiety is shown by the Indians of the settlement in connection with the land occupied by them" (Exhibit P-63, Tab 66).

[92] Pedley contacted Taché again 10 days later, after receiving Dr. Ross's letter, and again asked Quebec to respond to the DIA's request for the creation of a reserve in Seven Islands (Exhibit P-63, Tab 67, letter from Deputy Superintendent General Pedley to Deputy Minister Taché, March 14, 1903). On the same day, Secretary McLean replied to Agent Gagnon, informing him that the DIA still had not received a response from Quebec (Exhibit P-63, Tab 68).

[93] In April, Dr. Ross sent two letters to Gagnon, who then forwarded them to the DIA (Exhibit P-63, Tab 69, letter from G. Ross to Agent Gagnon, April 1, 1903; Exhibit P-63, Tab 70, letter from G. Ross to Agent Gagnon, April 11, 1903; Exhibit P-63, Tab 71, letter from Agent Gagnon to the DIA, April 25, 1903). Dr. Ross also wrote directly to the DIA requesting that Gagnon visit Seven Islands to settle the reserve creation issue once and for all (Exhibit P-63, Tab 72, letter from George Ross to the DIA, April 28, 1903).

[94] On May 7, the DIA finally received a response from Deputy Minister Taché. He expressed Quebec's desire to create a 336.93 acre reserve for the Innu in Seven Islands, but specified that he wanted to avoid any encroachment on lots already sold or occupied in good faith by third parties. He nevertheless indicated that Quebec was willing to grant the Innu vacant lots with an area equivalent to that of the lands claimed by the Innu, on condition that the DIA pay the costs of surveying and inspecting the lands that would make up the future reserve (Exhibit P-63, Tab 73, letter from Deputy Minister Taché to the DIA).

[95] In a memorandum dated May 12, the DIA's Chief Surveyor, Samuel Bray, described the land situation in Seven Islands. He stated that tensions had arisen because two settlers had built huts on land claimed by an Innu. He further stated that a large portion of the land on which the houses of the Innu were located had been granted to settlers (Exhibit P-63, Tab 74).

[96] He therefore recommended to the DIA that Agent Gagnon be informed of all communications with the Province so that he could advise any interested parties of the upcoming visit of a surveyor mandated by the Government of Quebec to demarcate the reserve lands. In Bray's opinion, these measures were necessary to maintain peace in Seven Islands.

[97] In a second memorandum, Bray recommended that the DIA assume the surveying and inspection costs associated with creating the Seven Islands Reserve (Exhibit P-63, Tab 75, memorandum from S Bray, Chief Surveyor, DIA, May 12, 1903).

[98] In response to the surveyor's recommendations, Secretary McLean wrote to Agent Gagnon to inform him of the DIA's efforts with the Province for the creation of a reserve at Seven Islands, including the upcoming arrival of a surveyor mandated by Quebec to demarcate the future reserve (Exhibit P-63, Tab 76, letter from Secretary McLean to Agent Gagnon, May 14, 1903).

[99] On May 22, Deputy Superintendent General Pedley responded to Deputy Minister Taché to confirm that the DIA was willing to pay for the surveying and inspection of the reserve. However, he asked the Province to allocate one square mile (640 acres) instead of 336.93 acres for the Seven Islands Reserve (Exhibit P-63, Tab 77). Pedley also wrote to Gagnon to inform him that the Province had already sold some of the lots sought by the Innu but that it was willing to create a reserve in Seven Islands and that a surveyor would soon be dispatched to demarcate the lands to be reserved (Exhibit P-63, Tab 78, letter from Deputy Superintendent General Pedley to Agent Gagnon, May 22, 1903).

[100] In his report to the DIA in summer 1903, Gagnon stated the following regarding the Seven Islands Band (Exhibit P-63, Tab 79, report by Agent Gagnon to the DIA, July 16, 1903): “This band has no reserve yet, but it is expected that one will be laid out for them this summer; it will be a good thing for the Indians.”

[101] In fact, the Innu would have to wait another three years to obtain a reserve in Seven Islands. The notes of a meeting held there in summer 1903 confirm that the Innu were anxious to finally have a reserve created in Seven Islands and to be able to form a band council (Exhibit P-63, Tab 80, letter from G. Ross to the DIA and minutes of a meeting held on July 19, 1903, July 22, 1903).

[102] On July 27, 1903, Deputy Superintendent General Pedley wrote again to Deputy Minister Taché, reiterating the request for a reserve in Seven Islands and requesting that the Province send a surveyor as soon as possible to demarcate the reserve lands (Exhibit P-63, Tab 81). In addition, Pedley replied to Dr. Ross that the survey of the lands proposed for the Seven Islands Reserve would be carried out by the Province (Exhibit P-63, Tab 82, letter from Deputy Superintendent General Pedley to George Ross, July 27, 1903).

[103] In early August, Quebec confirmed to the DIA that it intended to send a surveyor to Seven Islands soon (Exhibit P-63, Tab 83, letter from Deputy Minister Taché to Assistant Superintendent General Pedley, August 7, 1903). Dr. Ross, for his part, continued to press the DIA on behalf of the Innu of Seven Islands for the creation of a reserve. He also informed the DIA of his discussions with Agent Caron of the Quebec Department of Crown Lands regarding the possible locations for the reserve (Exhibit P-63, Tab 84, letter from G. Ross to the DIA with plan, August 14, 1903; Exhibit P-63, Tab 85, letter from G. Ross to the DIA, August 25, 1903).

[104] On August 25, Dr. Ross wrote to the DIA to inform it that he intended to purchase a parcel of land for the Innu if it was available for sale and if the Innu did not obtain it first:

For this reason, I have today made application to the Minister of Lands of Quebec for to purchase in my name the plot of Land comprised by Lots 9, and 15, and the land between them making a plot of 400 to 450 acres of Land. This land, if it is not to be set apart for the Indian Reserve, will I presume be for sale, in whole or part, to the first applicant.

It is my purpose, if such be the case, and if the Department will sell it at a reasonable figure, to buy the plot above described, and I can afterwards transfer it to the Indians should they prefer to pay for the location rather than lose it. [Exhibit P-19, Tab 96, letter from Geo. M. Ross to the Secretary of the DIA]

[105] In late August, Agent Gagnon sent the DIA a telegram from Agent Caron of the Quebec Department of Crown Lands, requesting that Gagnon travel to Seven Islands to settle the reserve issue (Exhibit P-63, Tab 86, telegram from Agent Gagnon to the DIA, August 25, 1903). The DIA replied to Gagnon that his presence in Seven Islands was not necessary and that Caron could manage on his own (Exhibit P-63, Tab 87, telegram from DIA to Agent Gagnon, August 26, 1903).

[106] Upon arriving in Seven Islands, Caron considered a number of alternative locations for the reserve, none of which included the lots on which the houses of the Innu were built.

[107] In a letter written later, he recalled that Dr. Ross, acting on behalf of the Innu, had accepted one of his suggestions:

[TRANSLATION]

In August 1903, I received instructions from the department, with a plan, to select a reserve for the Indians and to have it chained, that is, surveyed, by Mr. Lefrançois, according to a letter from Ottawa dated July 27, 1903—George M. Ross, an officer of Hudson B. & Co., was acting for and on behalf of the Indians.

The reserves marked in green on the attached plan were rejected, and I immediately notified the department, along with the reasons for rejection.

The department made further changes to the reserve marked in yellow on the attached plan, and Mr. Ross rejected the reserve again because it was not accessible by water, neither by the Bay of Seven Islands nor by the river, stating that the Indians needed a reserve where they could disembark and travel by water.

Mr. Ross had wanted the reserve marked in yellow to include Lots 1, 2, 3, 4, 6, 7 and 8, Range 1, which had been sold and granted since 1899, except for the first two, which were granted in August 1903, to the Seven Islands Company, but this was not possible; all of this happened in August, and nothing could satisfy Mr. Ross, who was acting for the Indians and the Department of Indian Affairs in Ottawa.

On August 30 or 31, 1903, I submitted to Mr. Ross the reserve marked in red on the attached plan; after looking at it carefully, he told me that it was acceptable and that he concurred with my suggestion.

It remained for me to see whether the department would accept my suggestion; on September 2, 1903, No. 16631-1903, I sent the department a plan of the land that I had offered Mr. Ross and that he had accepted, provided that my request was approved. [Exhibit P-64, Tab 136, letter from Eugène Caron, Lands Agent, to the Quebec Minister of Lands, Mines and Fisheries, October 29, 1904]

[108] On September 21, 1903, Deputy Minister Taché informed the DIA that Agent Caron was suggesting a piece of land by the sea for the reserve. The Deputy Minister attached a plan to his letter. The lands that were suggested, namely lots G, H and I and half of lot F, Range 1, were outside the village, at the mouth of the Vieux-Poste River. Quebec stated that it would await the DIA's confirmation before it finalized the creation of a reserve from these lands (Exhibit P-63, Tab 89, letter (with plans) from Deputy Minister Taché to the DIA).

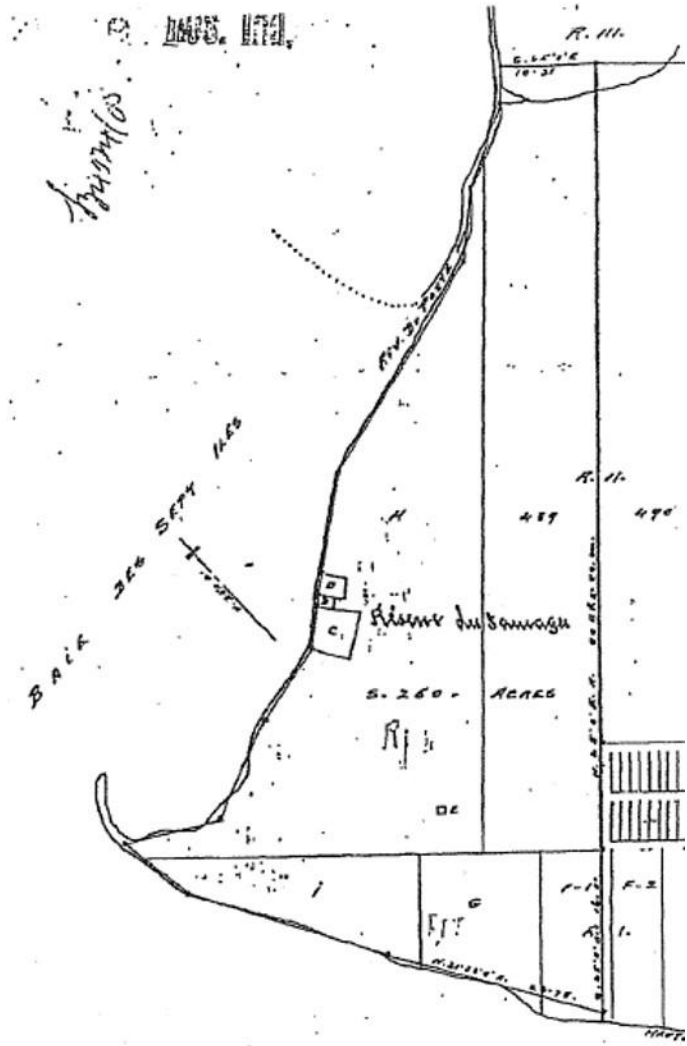
[109] A few days later, Deputy Superintendent General Pedley responded to Quebec, pointing out that most of the houses of the Innu were located on lots 1, 2, 3, 4 and 5, Range 1, and that Quebec's proposal would likely be unacceptable as a result (Exhibit P-63, Tab 91, letter from Deputy Superintendent General Pedley to Deputy Minister Taché, September 24, 1903).

[110] The subdivision of the reserve proposed by Agent Caron and the subdivision of the entire village of Seven Islands was carried out in fall 1903 by Émile Lefrançois, a Quebec surveyor. His notes state that the area of the lands for the proposed reserve was approximately 250 acres. It was composed of lots B, C, D, E, F-1, G, H, I and 489. He marked the proposed reserve with a series of physical markers that were visible from a distance:

[TRANSLATION]

The markers for this survey are placed so that each corner is centred on the marker, under which are piled pieces of white ceramic; near each marker is a sturdy, squared wooden post with the lot number on the corresponding side; where possible on the side facing the Bay, I have written "RESERVE" in black paint, which can be read from a fairly long distance. [Exhibit P-63, Tab 92, plan and survey notes of Surveyor Lefrançois, October 5, 1903]

[111] The following is the plan of the proposed reserve (Fig. 1.4) as surveyed by Lefrançois:



Plan annexé au Procès Verbal
 du levé de la Réserve des Sauvages
 sur sept îles, dans le premier et deuxième
 rang du Canton Littleton.
 Echelle de 10 Chaines au pouce
 Sept îles, 5 Octobre, 1903.
 (dépôt) J. J. Louis Lefrançois
 J. J.
 Vrai Copie
 J. J. Louis Lefrançois

Fig. 1.4

[112] On November 15, 1903, Jean-Baptiste Picard wrote to Agent Gagnon to inform him that the Innu were unhappy with the proposed reserve. He stated that Dr. Ross had agreed to the location with Agent Caron without consulting the Innu, and he pointed out that their houses were located near the chapel. He further stated that, of the sixty lots surveyed by Lefrançois in the fall,

only six were occupied by Euro-Canadian settlers. Lastly, he reiterated the desire of the Innu to obtain a reserve on the lands that they had already been occupying for numerous years:

[TRANSLATION]

Mr. Roos informed us that we owed him a debt of gratitude for our reserve. He had done this as he had done everything else, without telling us or asking for our opinion.

I immediately knew that the Indians would be unhappy with this reserve, especially those who winter here. This reserve is located near the Old Fort River, far from everything we need.

Mr. Roos arranged for this reserve in co-operation with Mr. Caron, without consulting us, and he did what was in his best interests, without considering ours. Some 30 Innu houses are currently located near the church, on the piece of land that we have always occupied.

The land was divided into some 60 lots by Mr. Lefrançois, the surveyor, in October. None of these lots, except for six, were requested by the Whites. I think it would have been wiser and especially easier for us . . . if we had been granted the land that we have always occupied. [Exhibit P-63, Tab 93]

[113] At the same time, a new figure appeared, namely Agent W. D. B. Scott, a former employee of the Hudson's Bay Company, who had been in charge of the DIA's agency in Mingan since 1901. He was approached by Dr. Ross [Exhibit P-63, Tab 94, letter from Dr. Ross to Agent Scott, November 21, 1903].

[114] On December 3, Scott contacted the DIA in Ottawa regarding the Seven Islands Band (Exhibit P-63, Tab 96, letter from Agent Scott to Secretary McLean). The DIA suddenly seemed to prefer that he take charge of the reserve file, even though Seven Islands was under the jurisdiction of Agent Gagnon, in Betsiamits (Exhibit P-63, Tab 97, letter from Secretary McLean to Agent Scott, December 15, 1903; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 91).

[115] However, at the time neither Scott nor Ross seemed very popular with the Innu or the Catholic clergy, who clearly preferred Gagnon (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 91–92). For example, in a letter addressed to the DIA in January 1904, a number of Innu criticized the actions of Scott and Ross. They asked that Gagnon be their only contact with the DIA:

[TRANSLATION]

We all witnessed the injustices committed by Mr. Scott last summer, the disregard and indifference he showed us, being instead in collusion with Mr. G. Roos, officer of the Hudson's Bay Co., to our detriment.

For that reason, we submit this request today to your government to make Adolphe Gagnon the sole judge for us Indians, as we have always been satisfied with his judgments, with the interest he has always shown us and with his impartiality in all our affairs. [Exhibit P-63, Tab 102, letter from the Innu of Seven Islands, January 23, 1904; Exhibit P-64, Tab 117, letter from federal Member of Parliament Girard to Deputy Superintendent General Pedley, July 8, 1904].

[116] Once again, Gagnon asked the DIA for authorization to visit Seven Islands, stating that the trip was necessary because of the Innu opposition to the proposed reserve (Exhibit P-63, Tab 106, letter from Agent Gagnon to the DIA, May 2, 1904). Once again, his request was denied (Exhibit P-20, Tab 128, letter from Secretary McLean to Agent Gagnon, June 15, 1904).

[117] On December 24, Surveyor Lefrançois sent his final report. In it, he stated that the land selected for the reserve was sandy and moss-covered and that the section bordering the river and bay consisted of clayey shoals and clayey land (Exhibit P-63, Tab 98).

[118] As part of his work, Lefrançois also resurveyed the village of Seven Islands as instructed by Agent Caron. He divided the lots in Range 2 and subdivided certain lots in Range 1, including Lot 5, the chapel lot (Exhibit P-63, Tab 104, minutes of Surveyor Lefrançois, March 28, 1904; Exhibit P-63, Tab 105, plan by Surveyor Lefrançois, March 28, 1904; Exhibit P-45, Tab M-11, plan of a portion of the village of Seven Islands, county of Saguenay, done in accordance with instructions from the Department of Mines and Fisheries in Québec dated August 8, 1903, N. J. Émile Lefrançois, Surveyor, March 28, 1904; Exhibit P-20, Tab 164, survey book, report, minutes and telegram, N. J. Émile Lefrançois, December 15, 1904).

[119] In fact, Lot 5-1, next to the chapel, where some Innu houses were located, was purchased by Dr. Ross on October 14, 1903 (the "Ross Lot"), either for speculation or for the benefit of the Innu, as he had announced to the DIA in August. The letters patent were not issued until December 1904 (Exhibit P-63, Tab 100, index of sales of Crown lands, Letellier Township, 1899–1904; Exhibit P-64, Tab 146, letters patent No. 15803 (one third of the northwestern part of Lot 5, Range 1, of the village of Seven Islands, township of Letellier) of the Province of Quebec to George M. Ross, December 28, 1904; Exhibit P-27, Tab 587, land terrier of the township of Letellier, North Shore Agency, Range 1, Seven Islands, at p 46).

[120] In 1904, the township municipality of Letellier, which included the village of Seven Islands, was created. This made it necessary to survey and register the land and increased the pressure of Euro-Canadian settlement on the land occupied by the Innu in Seven Islands (Exhibit P-15, expert opinion of Sylvie Vincent at pp 32, 34).

[121] On May 10, Deputy Minister Taché wrote to Secretary McLean, informing him that a reserve had been surveyed for the Innu in Seven Islands and providing him with Lefrançois's minutes and plan (Exhibit P-63, Tab 108; Exhibit P-63, Tab 104, minutes of Surveyor Lefrançois, March 28, 1904; Exhibit P-63, Tab 105, plan of Surveyor Lefrançois, March 28, 1904; Exhibit P-63, Tab 107, excerpt from the plan of the village of Seven Islands of Surveyor Lefrançois, May 7, 1904).

[122] The DIA's Chief Surveyor, S. Bray, approved the plan, considering it to be free of errors. He recommended that the DIA pay Quebec for the cost of the work (Exhibit P-64, Tab 111, memorandum from Chief Surveyor Bray and copy of invoice, May 26, 1904). A few days later, McLean sent Taché a cheque for the costs incurred and asked him to have a reserve created from the surveyed land through an Order-in-Council from the Government of Quebec (Exhibit P-64, Tab 112, letter from Secretary McLean to Deputy Minister Taché, May 30, 1904).

[123] In a memorandum dated June 11, Bray related a discussion he had had with Taché regarding the proposed reserve in Seven Islands. He mentioned the possibility of annulling the letters patent issued on the lots where the Innu houses were located. He also stated that an Innu had tried to obtain the letters patent for the lot where he was residing but was denied them on the grounds that he was not eligible to own private property because he was an Indian, which made him a minor in the eyes of the law. According to Bray, this interpretation of Indian status was incorrect in that, off reserve, status holders were to be considered equal to Euro-Canadian settlers (Exhibit P-64, Tab 114, memorandum from Chief Surveyor Bray).

[124] This observation appears to indicate that, at the time, Quebec was resisting the idea of the Innu becoming landowners.

[125] According to expert witness Jean-Pierre Garneau, Agent Caron of the Quebec Department of Crown Lands was the source of this resistance at that time (Exhibit P-75, Tab 3, testimony of Jean-Pierre Garneau, transcript of hearing at pp 145–46).

[126] Moreover, in a report to Deputy Minister Taché, Agent Caron wrote that he was following instructions from Québec not to sell land to the Innu:

[TRANSLATION]

I never sold or promised to sell any lots occupied by the Indians or any part of the waterfront for the good reason that they are not landowners or squatters on vacant lots – According to a letter dated August 29, 1903, L.16066-03, I was not to sell to the Indians except for the following two sales that were made – On March 27, 1899, I sold Lot 6/1 by mail to a man named George Vallée of Seven Islands – I could not tell whether he was White or Black – on June 14 of the same year, I sold Lot 7/1 to Malcolm Fontaine of the same place – all these sales having the high water mark as their boundary; later I learned that they were Indians, but they were really squatters and they had houses built on those lots – I never received a single complaint from the Indians that I had sold their lot to the Whites. [Exhibit P-41, Tab 211, translation of Exhibit P-65, Tab 154, letter from Agent Caron, Quebec Department of Crown Lands, to Deputy Minister Taché, January 24, 1905].

[127] On July 17, Agent Gagnon forwarded to the DIA a telegram from two Innu asking him to be in Seven Islands when Father Boyer was going to be there (Exhibit P-64, Tab 119, letter from Agent Gagnon to Secretary McLean; Exhibit P-64, Tab 118, telegram from Picard and Saint-Onge to Agent Gagnon, July 15, 1904). On July 21, the two Innu wrote directly to the DIA to request a visit by Gagnon (Exhibit P-64, Tab 121). Secretary McLean then asked Gagnon to state his reasons for wanting to go to Seven Islands (Exhibit P-64, Tab 122, letter from Secretary McLean to Agent Gagnon, July 21, 1904; Exhibit P-64, Tab 123, letter from Secretary McLean to federal Member of Parliament Girard, July 21, 1904; Exhibit P-64, Tab 124, letter from Secretary McLean to Picard and Saint-Onge, July 21, 1904). A few days later, Gagnon wrote to McLean, explaining that he had received a number of communications from the Innu of Seven Islands stating that they no longer wished to deal with Agent Scott (Exhibit P-64, Tab 125, letter from Agent Gagnon to Secretary McLean, July 28, 1904). Once again, the DIA replied to Gagnon that a trip would not be necessary (Exhibit P-64, Tab 128, letter from Secretary McLean to Agent Gagnon, August 11, 1904; Exhibit P-20, Tab 128, letter from Secretary McLean to Agent Gagnon, June 15, 1904).

[128] However, there appears to have been some confusion at the time. On July 28, the Mayor of Seven Islands, P. E. Vigneault, sent a letter to the Quebec Minister of Crown Lands. In that letter, it seems that the Mayor believed there was already a reserve in Seven Islands because he wrote that he was opposed to the creation of a second reserve in the village (Exhibit P-64, Tab 126, letter from Mayor Vigneault to Minister Parent).

[129] It was Agent Scott who went to Seven Islands in summer 1904, even though he stated in his report to the DIA dated August 27 that the band was outside his district. He nonetheless criticized the proposed location of the reserve:

The band are not satisfied with the position of the Reserve given them, and I think with reason, it is too far away from the site of their houses which they have been occupying for years, and they could not afford the expense of moving them on it, the site for the reserve has been selected with little judgement, so far as convenience for the Indians is concerned, it is situated quite a distance North of the present site of the Hudson's Bay post, and from the camping ground which they have been in the habit of occupying for years past, and around which they have all their houses built. [Exhibit P-64, Tab 129]

[130] On September 27, Father Arnaud wrote to the secretary of the DIA to explain the need to create a reserve in Seven Islands and to express his opposition to moving the houses of the Innu:

[TRANSLATION]

For 50 years our Indians have considered themselves the sole owners of the land they occupied, they have continued to gather around the church of which they were proud. They built lovely houses. They lived in peace and happiness! But now speculators are arriving with surveyors, sketching plans, drawing lines and putting everything up for sale; who sent them and what right do they have to seize land that is not theirs? [Exhibit P-64, Tab 130]

[131] Secretary McLean replied two months later, forwarding Agent Caron's report and informing him that Agent Scott had been assigned to try to resolve the situation amicably (Exhibit P-20, Tab 160, letter from Secretary McLean to Father Arnaud, November 29, 1904).

[132] On September 30, Deputy Superintendent General Pedley wrote to Deputy Minister Taché, forwarding Scott's report. Pedley asked Taché to find a solution to the issue of Innu opposition to the proposed reserve and the issue of the houses located outside the demarcated lands (Exhibit P-64, Tab 131). On the same day, he informed Scott of Quebec's intention to send a surveyor to Seven Islands again to investigate and report on the situation of the houses of the Innu

located outside the boundaries of the proposed reserve (Exhibit P-64, Tab 132). Also on September 30, 1904, Agent Gagnon forwarded a letter from Father Arnaud to the DIA (Exhibit P-64, Tab 133).

[133] On October 26, S. Stewart, the Assistant Secretary of the DIA, forwarded Arnaud's letter to Deputy Minister Taché and took the opportunity to reiterate the need to send a surveyor mandated by the Province to Seven Islands as soon as possible (Exhibit P-64, Tab 134).

[134] On the same day, Stewart responded to Arnaud, stating that the issue was within the purview of Quebec and that his department had made several submissions to the Province regarding the fact that the lots on which the houses of the Innu were located were not included in the proposed reserve. He stated that the Province had indicated that it would send a surveyor to Seven Islands to investigate and report on the situation (Exhibit P-64, Tab 135).

[135] On October 29, Agent Caron wrote to the Quebec Minister of Lands, Mines and Fisheries. His letter suggests that he had dealt primarily with Dr. Ross, whom he considered to be the DIA's representative on behalf of the Innu. He stated that the land on which the houses of the Innu were built could not be reserved because those lots had been sold to Euro-Canadian settlers (Exhibit P-64, Tab 136, letter from Eugène Caron, Lands Agent, to the Quebec Minister of Lands, Mines and Fisheries).

[136] A letter from Deputy Minister Taché to the Secretary of the DIA dated November 21, 1904, shows rising tension between the two levels of government. It appears that Quebec was exasperated by the DIA. The Deputy Minister reiterated that the lots where the Innu houses were located could not be part of the reserve because they had already been sold or granted (Exhibit P-64, Tab 137).

[137] Deputy Superintendent General Pedley responded a few days later. He stated that he regretted the situation and hoped for a quick resolution. However, he reiterated the problem of the proposed reserve not including the Innu houses and wondered whether the Innu had occupied those lots before they were sold (Exhibit P-64, Tab 138, letter from Deputy Superintendent General Pedley to Deputy Minister Taché, November 29, 1904).

[138] On December 6, Secretary McLean sent Agent Scott the report by Agent Caron of the Quebec Department of Crown Lands and asked him to try find an amicable solution to the situation regarding the Seven Islands Reserve (Exhibit P-64, Tab 141).

[139] On December 29, Scott wrote to McLean and enclosed the report for his trip in October that year.

[140] In the report, Scott again described the inadequacy of the proposed reserve lands, noted that the Innu had been occupying the lands on which their houses were located for years and stated that Quebec had acted unjustly in selling the lots without regard to the fact that the Innu had already been occupying them. Among other things, he referred to difficulties accessing the shoreline in that area and the fact that building a reserve far from the shore would make life very unpleasant in the summer because of mosquitoes (Exhibit P-64, Tab 147, report by Agent Scott to the DIA, December 29, 1904; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 98–104).

[141] This report appears to have sealed the fate of the proposed reserve of 1903, as it was ultimately abandoned.

E. 1905 to 1906: Reserve created

[142] In early 1905, a new proposed reserve began to take shape. This attempt was successful, resulting in the creation of the Uashat Reserve in 1906.

[143] In his October 1904 trip report, Agent Scott proposed a new solution to the DIA.

[144] He was in favour of maintaining the proposed reserve surveyed in 1903, but only as a woodlot. In addition, he proposed purchasing 20 acres of land at the back of Lot 5 so that the Innu could continue to live near the chapel. However, he did not suggest purchasing lots 3 and 4 of Range 1, even though a number of Innu houses were located there, since the lots were held by third parties (Exhibit P-64, Tab 147, Agent Scott's report to the DIA, December 29, 1904; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 98–104).

[145] In a memorandum dated January 4, Chief Surveyor Bray wrote to the DIA in support of Agent Scott's proposal. Bray considered the purchase of the 20 acres suggested by Scott for the

reserve to be fair and less onerous than requiring the Innu to move to the proposed reserve (Exhibit P-64, Tab 149).

[146] On January 9, Secretary McLean replied to Scott that the DIA was generally supportive of the new proposal. He also indicated that he wanted to investigate the possibility of purchasing, in whole or in part, one or more of the lots on which the Innu had built their houses (lots 1 to 5, Range 1) from the current landowners for a reasonable price. He also suggested acquiring part of the chapel lot or obtaining a right of way from the 20 acres at the back of lots 1 to 5, Range 1, up to the shoreline (Exhibit P-64, Tab 150).

[147] The next day, McLean wrote to Deputy Minister Taché, arguing that the Innu occupation of land in Seven Islands should be respected and pointing out that federal legislation in no way prohibited Indians from purchasing off-reserve land. McLean thus requested that the Province respect the wishes of the Innu, who wanted to purchase lots in Seven Islands (Exhibit P-65, Tab 151, letter from Secretary McLean to Deputy Minister Taché, January 10, 1905). He also wrote to inform Scott (Exhibit P-65, Tab 152, letter from Secretary McLean to Agent Scott, January 10, 1905).

[148] On January 19, Scott sent a letter to McLean along with a plan detailing his proposal to purchase 20 acres of land adjacent to the chapel (Exhibit P-65, Tab 153). He stated that, to his knowledge, the lots he was suggesting to purchase were still vacant and had not been granted. In addition, for the houses of the Innu on lots 1 to 5, Range 1, he suggested obtaining a right-of-way to the shore and purchasing a portion of the lots from their owners, a solution that he described as being much less onerous than moving the houses.

[149] On January 24, Agent Caron of the Quebec Department of Crown Lands wrote to Deputy Minister Taché, defending himself against Scott's accusations that he had not respected the Innu occupation of land in Seven Islands and that he had systematically favoured Euro-Canadian settlers to the detriment of the Innu. Caron denied Scott's accusations and attempted to justify his actions. Oddly, it seems that he believed a reserve had already been created in Seven Islands, since he wrote, "The Indians were never in a better position than they are to-day: they have a reserve, that is all they need" (Exhibit P-65, Tab 154). Deputy Minister Taché forwarded the report to McLean (Exhibit P-65, Tab 159, letter from Deputy Minister Taché to

Secretary McLean, February 8, 1905; Exhibit P-65, Tab 163, letter from Deputy Minister Taché to Secretary McLean and report by Agent Caron, February 22, 1905).

[150] On January 30, McLean approved Scott's proposal to purchase 20 acres behind the chapel as well as the back portions of the lots where the Innu houses were located, and to obtain a right of way for the Innu to the shore so that they could dock their boats. He asked him to report on the projected costs of this proposal (Exhibit P-65, Tab 156). He then contacted Taché to obtain the Province's support (Exhibit P-65, Tab 157, letter from Secretary McLean to Deputy Minister Taché, January 30, 1905).

[151] On February 7, Scott reported to McLean that the total estimated cost to carry out his proposal was \$2,000 (Exhibit P-65, Tab 158).

[152] A few days later, the Chief Surveyor of the DIA, S. Bray, sent a memorandum confirming his support for Scott's recommendations and stating that special attention ought to be paid to the Innu of Seven Islands. He explained that the lots occupied by the Innu had been sold without their knowledge to Euro-Canadian settlers, without compensation or any other form of remedy. Therefore, purchasing portions of the lots that the Innu were occupying would, in his opinion, be the best way to ensure justice in the matter. Bray therefore supported Scott's proposal as a whole and recommended that the total estimated amount for its completion be set aside (Exhibit P-65, Tab 160, memorandum from Chief Surveyor S. Bray to the Deputy Superintendent General, February 10, 1905).

[153] On February 10, Deputy Minister Taché acknowledged receipt of Secretary McLean's letter and sent him a plan of the village of Seven Islands showing the sold lots (Exhibit P-65, Tab 161).

[154] All of a sudden, a wrench was thrown in the works of this solution for Canada.

[155] On February 13, 1905, the DIA accountant sent a memorandum to Deputy Superintendent General Pedley stating that he did not recommend purchasing settlers' land for Indians and that he did not consider Agent Scott's proposal to be necessary:

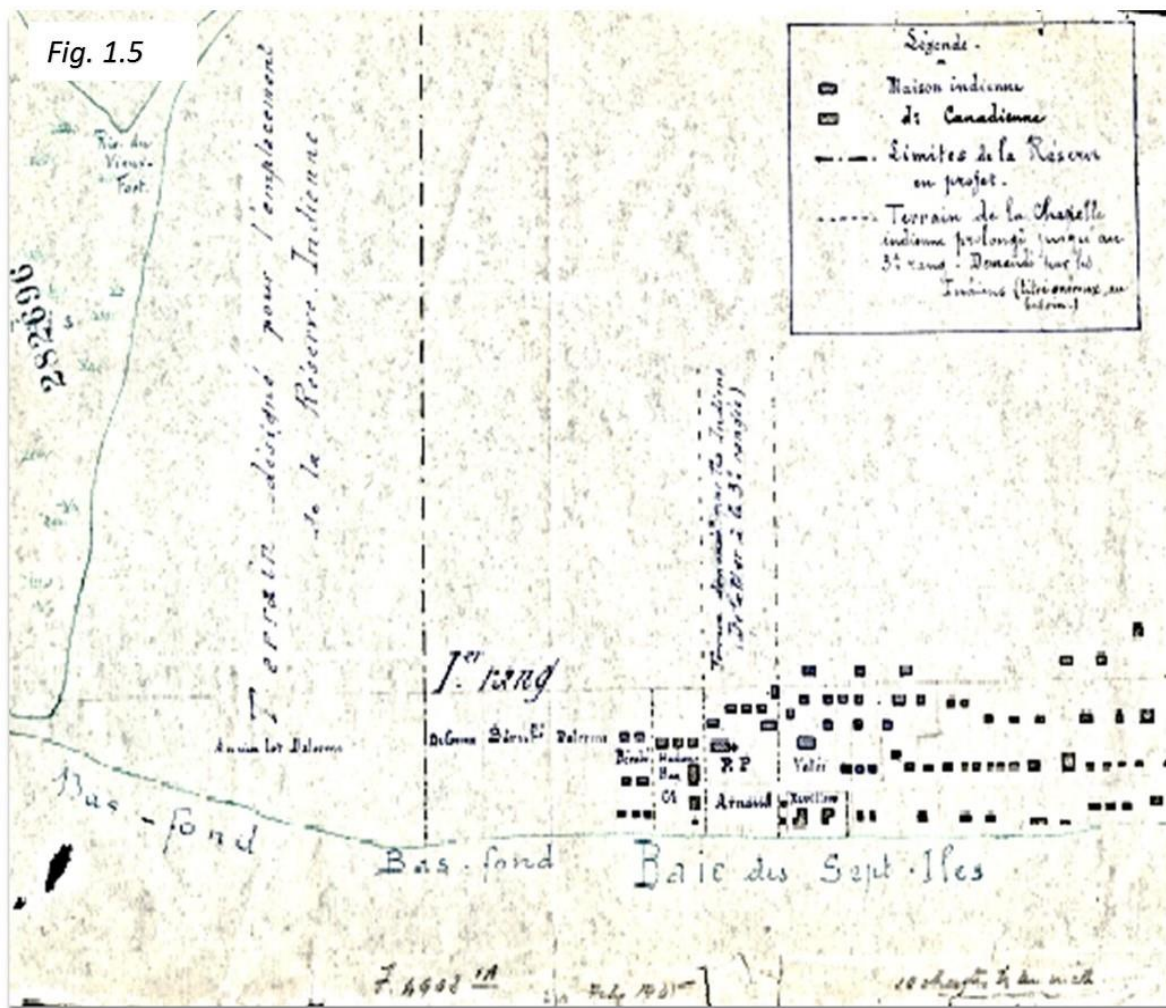
I observe that there is no real grievance or complaint either on the part of the Indians or white settlers, and there appears to me to be no call for us to rush in and

make a settlement when none is required. I think it poor policy to purchase land from white people for Indians. I would recommend that it might be allowed to rest for the present. [Exhibit P-65, Tab 162]

[156] That put an end to the proposal, even though it was reasonable and would have enabled the Innu to continue occupying the land on which many of their houses were located.

[157] On February 23, J. Salone, an employee of Revillon Frères, wrote to federal Member of Parliament Girard regarding the location of the reserve in Seven Islands and the opposition of the Innu to moving to the land surveyed in 1903, which he described as an inhospitable place (Exhibit P-65, Tab 165).

[158] He recommended that the will of the Innu with respect to the location of the reserve be respected, which, in his opinion, would benefit everyone, including the Euro-Canadian population and the merchants (Exhibit P-65, Tab 165). With his letter, Salone provided the following plan (Fig. 1.5) of the village showing the location of the houses of the Innu and Euro-Canadians (Exhibit P-46, Tab M-16, sketch of the Innu and Euro-Canadian houses on Range 1 of the village of Seven Islands, February 23, 1905):



[159] Federal Member of Parliament Girard forwarded Salone's letter and Father Arnaud's letter to Deputy Superintendent General Pedley. As well, he mentioned that he had received complaints about the proposed reserve during his visit to the North Shore in September 1904 (Exhibit P-65, Tab 166, letter dated February 24, 1905).

[160] On February 27, Pedley sent Salone's plan of the Innu houses to Deputy Minister Taché, asking him to annul the letters patent of the lots on which those houses were located.

[161] He also sent Taché a blueprint showing lots 5 to 10, 27 to 34, 53 to 60, 113 to 119, 140 to 146 and the southern portion of Lot 492, Range 2, as being the lots that the DIA intended to purchase to create a reserve in Seven Islands (Exhibit P-65, Tab 167, letter from Deputy Superintendent General Pedley to Deputy Minister Taché, February 27, 1905; Exhibit P-46,

Tab M-17, blueprint of Innu and Euro-Canadian houses in the village of Seven Islands, February 25, 1905).

[162] Taché forwarded this correspondence to Crown Lands Agent Caron. Caron replied that the Province could not annul the letters patent issued to Euro-Canadians for lots 5 to 10, Range 1, to create a reserve:

[TRANSLATION]

I doubt that the Whites would be inclined to allow their lots to be annulled and conceded [to Indians].

. . . The attached letter from the mayor of Seven Islands . . . will prove to you that not all Whites are in favour of [the reserve]. [They] are not willing to let the Indians live in their midst. [Exhibit P-65, Tab 170, report by Agent Caron, Quebec Department of Crown Lands, to the Quebec Minister of Lands, Mines and Fisheries, March 23, 1905]

[163] Caron added that the DIA could, however, purchase these lots from the private owners if desired, or move the houses of the Innu, which he described as being in better condition than federal Member of Parliament Girard claimed, onto reserve land. Taché forwarded this correspondence to Deputy Superintendent General Pedley on April 5, 1905 (Exhibit P-65, Tab 172).

[164] On April 12, Secretary McLean contacted federal Member of Parliament Girard (Exhibit P-65, Tab 173). McLean reported on his discussions with the Province, forwarded the report by Agent Caron of the Quebec Department of Crown Lands and stated that the best solution would be for the Innu to purchase directly from the provincial Crown the land on which their homes were located. He also mentioned Mayor Vigneault's opposition to the creation of a reserve in Seven Islands.

[165] Two letters in May between Chief Surveyor Bray, Deputy Superintendent General Pedley and federal Member of Parliament Girard seem to suggest that the DIA was sympathetic to the mayor's concerns regarding the presence of land that was reserved, and therefore non-taxable, in the heart of the village. The three men appeared to be leaning in favour of having the Innu purchase the lands they occupied rather than creating a reserve (Exhibit P-65, Tab 178, letter from Chief Surveyor Bray to Deputy Superintendent General Pedley, May 16, 1905; Exhibit P-65,

Tab 179, letter from Deputy Superintendent General Pedley to federal Member of Parliament Girard, May 23, 1905).

[166] However, a Seven Islands municipal council resolution passed in May (and forwarded to the DIA by federal Member of Parliament Girard; Exhibit P-65, Tab 180, letter from federal Member of Parliament Girard to Deputy Superintendent General Pedley, May 25, 1905) suggests a disagreement between the Mayor of the village and the municipal councillors, who [TRANSLATION] “welcome[d] the proposal to establish an Indian reserve on the land currently occupied by the Indians” (Exhibit P-65, Tab 177, letter from the Secretary-Treasurer of Seven Islands to federal Member of Parliament Girard, May 15, 1905).

[167] On June 1, Father Arnaud took drastic action and wrote directly to Prime Minister Wilfrid Laurier to plead on behalf of the Innu of Seven Islands (Exhibit P-65, Tab 181). He described the events of the previous few years, the sale by the Government of Quebec of the lots occupied by the Innu and the interference in the work of Agent Gagnon, whom he considered to be the true agent responsible for the Innu of Seven Islands, and whom he hoped would finally be authorized to travel to Seven Islands during the July mission.

[168] It was Secretary McLean who responded to Arnaud, stating that Gagnon’s initial plan was not possible because the lands sought by the Innu were occupied by Euro-Canadians (Exhibit P-65, Tab 184, letter dated June 16, 1905). He reiterated the DIA’s position that the best solution was for the Innu to buy the land themselves or obtain the letters patent, given the opposition to the creation of a reserve within the community of Seven Islands.

[169] On June 2, Deputy Superintendent General Pedley responded to federal Member of Parliament Girard (Exhibit P-65, Tab 182). He stated that, given the clear opposition between the Municipal Council, which was in favour of creating a reserve where the Innu were residing, and the Mayor and Agent Caron, who were against such a plan, the DIA was at an impasse. Consequently, Pedley deemed it necessary to send Agent Scott on site to report.

[170] On the same day, Pedley wrote to Scott (Exhibit P-65, Tab 183). In his letter, Pedley stated that the DIA considered the best option to be for the Innu to purchase the lots they were occupying directly from the private owners or to go through the usual process with the Province to obtain the

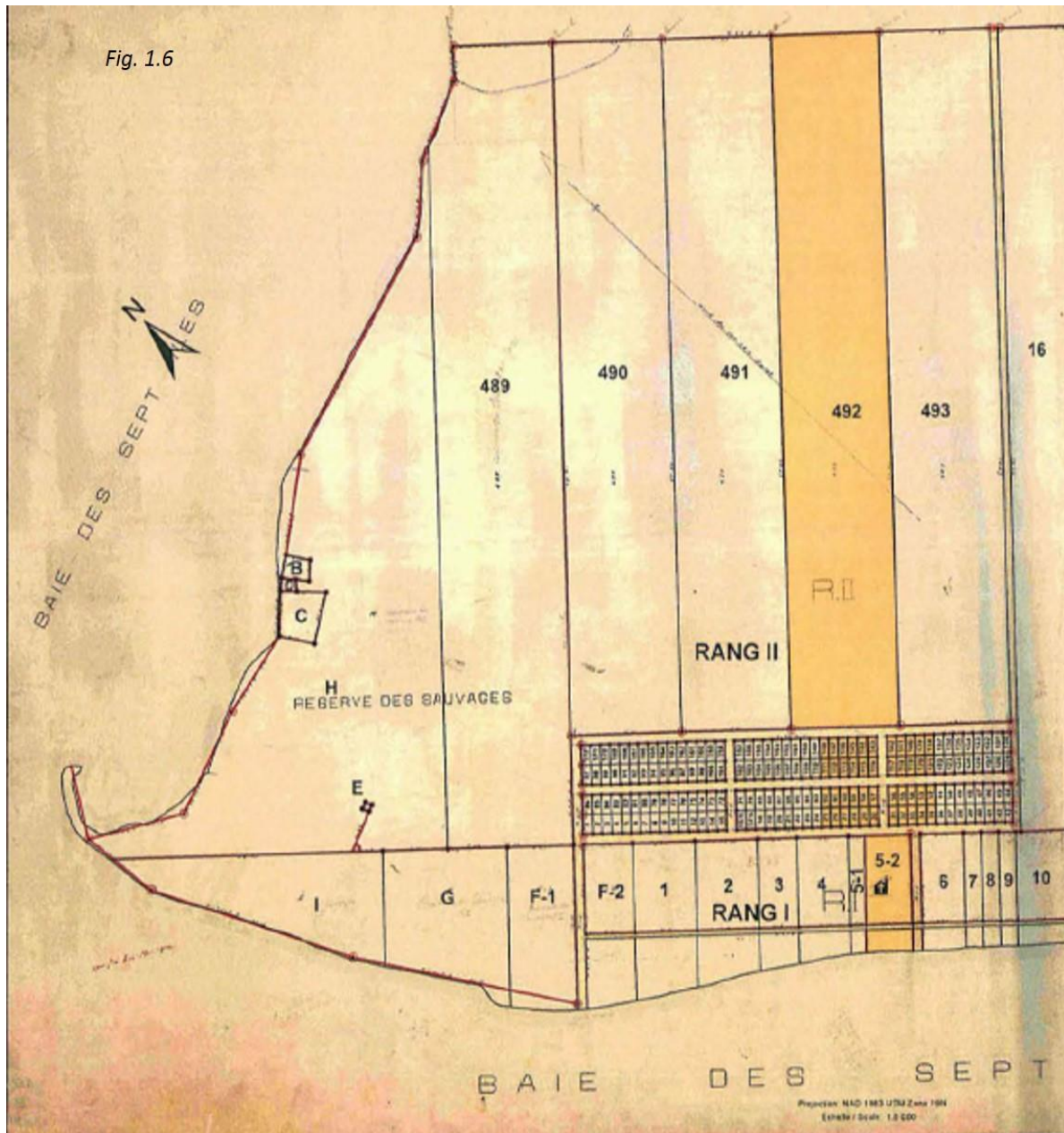
letters patent for the lots that were still unsold. In his opinion, it would be virtually impossible to annul the letters patent for the lots that had already been sold. Noting the disagreement between the Mayor, the Crown Lands Agent and the Seven Islands Municipal Council, Pedley asked Scott to report to the DIA on the matter and to suggest a plan of action.

[171] On July 29, Deputy Minister Taché informed the DIA that a final investigation would be conducted into the land situation in Seven Islands and suggested that the DIA send a representative to conduct a joint investigation (Exhibit P-65, Tab 187). On August 9, 1905, Secretary McLean expressed support for this course of action and confirmed that Scott was in Seven Islands (Exhibit P-65, Tab 189, letter from Secretary McLean to Deputy Minister Taché).

[172] On August 8, Scott wrote to the DIA, stating that he had found a possible solution for a reserve in Seven Islands that did not require purchasing lots held by third parties (Exhibit P-21, Tab 209, telegram from Agent Scott to Secretary McLean). Then, on August 11, 1905, Scott advised the DIA that he was awaiting the arrival in Seven Islands of Agent Caron, Quebec Department of Crown Lands, scheduled for August 17, 1905 (Exhibit P-65, Tab 190).

[173] On August 24, a tripartite agreement was finally reached between the DIA, represented by Scott, the Reverend Father Boyer of the Seven Islands Mission, and Agent Caron of the Quebec Department of Forests and Lands, along with Paul Blouin, a representative of the Quebec Minister of Lands (Exhibit P-65, Tab 193). This agreement designated Lot 5-2, Range 1, and lots 25 to 35, 52 to 62, 111 to 121, 138 to 148, and 492, Range 2, for the creation of the Seven Islands Reserve. Scott sent the agreement to the DIA on August 28, 1905 (Exhibit P-65, Tab 194). He indicated that the agreement met with the satisfaction of all the parties involved.

[174] The photograph below (Fig. 1.6) shows the 1906 reserve, including Lot 5-2, the 44 subdivided lots in Range 2 behind Lot 5-2, and Lot 492:



[175] On September 9, the plans and surveys division of the DIA had a painter, Henry Fabien, prepare a plan of part of the village of Seven Islands. The plan shows the land set aside for the reserve (Exhibit P-47, Tab M-19, plan of a portion of the village of Seven Islands).

[176] On September 11, Secretary McLean wrote to Agent Scott, acknowledging receipt of the proposed agreement and asking him to clarify what Lot 5-2, Range 1, consisted of by marking it on a plan (Exhibit P-65, Tab 199). Scott responded on September 25, explaining the subdivision of Lot 5, Range 1, following the sale of a portion of that lot to Dr. Ross by the Crown Lands Agent,

and marking its location on a plan (Exhibit P-65, Tab 201, letter from Agent Scott to Secretary McLean).

[177] On November 16, McLean asked Scott to identify the total budget for the transaction associated with the creation of the Seven Islands Reserve (Exhibit P-65, Tab 202).

[178] On December 10, Scott informed McLean that the creation of the reserve would require a budget of \$1,010 to cover, among other things, the cost of surveying and marking the boundaries of the proposed reserve, which he considered necessary to avoid land disputes (Exhibit P-65, Tab 203).

[179] He also stated that 14 houses belonging to Innu people but located on lots owned by Euro-Canadian settlers had to be moved to the reserve at the DIA's expense. In addition, he recommended that the DIA purchase the Ross Lot. He broke down the approximate costs associated with creating the reserve as follows:

Cost of the Mission property, on which (13) Indian houses are built:	390.00
Section of Land to be purchased from Mr. Ross:	100.00
Cost of removal of (14) Indian houses, built on land owned by white-settlers \$30.00 each :	420.00
Surveying and marking Indian Reserve:	100.00

[Exhibit P-65, Tab 203]

[180] The budget proposed by Scott was subsequently approved by the Chief Surveyor of the DIA, who recommended that \$1,500 be allocated for the transaction to allow for contingencies (Exhibit P-65, Tab 204, letter from Chief Surveyor Bray to the DIA, December 14, 1905).

[181] On December 19, Secretary McLean sent the tripartite agreement to Deputy Minister Taché along with a plan of Seven Islands on which the proposed reserve was marked in red (Exhibit P-65, Tab 205). He stated that the DIA intended to request from Parliament the funds required to implement the agreement.

[182] On January 3, 1906, Agent Scott followed up with McLean and requested that a custodian be appointed immediately to protect the land designated for the reserve from logging by Euro-Canadian settlers (Exhibit P-65, Tab 208).

[183] McLean replied that the DIA was taking the necessary steps to implement the agreement and asked for more details about the request for a custodian (Exhibit P-65, Tab 209, letter from Secretary McLean to Agent Scott, January 8, 1906).

[184] Agent Scott explained that he was suggesting the Hudson's Bay Company Officer as custodian of the lands designated for the reserve because the company had a great interest in keeping the Innu in the Bay of Seven Islands, which was why the Officer was willing to act as custodian free of charge. In Scott's opinion, the mere act of officially designating a custodian would discourage illegal logging (Exhibit P-65, Tab 210, letter from Agent Scott to Secretary McLean, January 12, 1906).

[185] On February 8, Deputy Minister Taché wrote to Secretary McLean to inform him that he had not received the copy of the tripartite agreement that was to have been attached to the letter of December 19, 1905 (Exhibit P-65, Tab 211). The Deputy Minister also stated that the plan that McLean had sent was inconsistent with the proposed agreement described in his letter, in part because the red markings included Lot 3, Range 1, and the western portion of Lot 5, Range 1. McLean then asked Taché to return the incorrect plan to the DIA (Exhibit P-65, Tab 212, letter from Secretary McLean to Deputy Minister Taché, February 13, 1906), which Taché did on February 16 (Exhibit P-65, Tab 213, letter from Deputy Minister Taché to Secretary McLean).

[186] On February 22, McLean sent Taché what he described as "a blue print showing correctly the lands at the Seven Islands Settlement referred to in the agreement" (Exhibit P-65, Tab 214).

[187] On March 27, the Lieutenant Governor of Quebec approved the Executive Council Committee report for the creation of a 91.30 acre reserve in Seven Islands, consisting of Lot 5-2, Range 1, and lots 25 to 35, 52 to 62, 111 to 121, 138 to 148, and 492, Range 2 (Exhibit P-65, Tab 215, Executive Council Committee report approved by the Lieutenant Governor). Taché forwarded the Order-in-Council to McLean on April 9, 1906 (Exhibit P-65, Tab 217, letter from Deputy Minister Taché to Secretary McLean, April 9, 1906). McLean acknowledged receipt of the document on April 26 (Exhibit P-65, Tab 218, letter from Secretary McLean to Deputy Minister Taché).

[188] The Seven Islands Reserve was officially created.

[189] On July 13, Secretary McLean informed Agent Scott of the creation of the reserve in Seven Islands under the tripartite agreement and asked him to travel to Seven Islands to complete the arrangements set out in the agreement (Exhibit P-66, Tab 222). Scott acknowledged receipt on July 15, 1906 (Exhibit P-66, Tab 223, letter from Agent Scott to Secretary McLean).

[190] The next day, McLean wrote to Scott again, this time to confirm that Parliament had approved a budget of \$1,500 for the implementation of the agreement and to provide Scott with instructions on how to proceed (Exhibit P-66, Tab 224). McLean asked Scott to finalize the details of the financial arrangement with the Oblate missionaries and Dr. Ross. He wrote:

It is not considered reasonable to ask the Indians to contribute towards the cost of moving their houses. They should be consulted as to the removal and it is presumed there will be no trouble on this account.

[191] Lastly, McLean asked Scott to clearly mark the new reserve on a plan.

[192] On September 1, Scott filed a report with the DIA but incorrectly described the approved reserve as including all of Lot 5, Range 1 (not distinguishing between lots 5-1 and 5-2) and [TRANSLATION] “Lot 492, Range 12 [sic]” (Exhibit P-66, Tab 225, report by Agent Scott to Deputy Superintendent General Pedley). He failed to include the 44 lots of Range 2 of the village. Scott requested that the arrangement be implemented and that the land be surveyed and markers, placed, as this would prevent the public from entering. He also stated that 14 houses belonging to Innu people were located off the reserve and had to be moved onto the reserve.

[193] Secretary McLean apparently failed to notice Scott’s error, as he made no mention of it in a letter dated September 24 (Exhibit P-22, Tab 246, letter from Secretary McLean to Agent Scott).

[194] So it was that the Uashat Reserve was finally created in 1906. However, the steps to implement the entire tripartite agreement of August 24, 1905, were slow to be carried out.

F. 1907 to 1910: Department’s course altered

[195] On April 23, 1907, Dr. J. E. Tremblay was appointed agent for the North Shore, replacing Agent Scott (Exhibit P-66, Tab 227, Order-in-Council of the Privy Council 1907-1657 (“OCPC 1907-1657”)).

[196] Scott sent his final report to Secretary McLean on June 24, 1907. According to the report, his last visit to Seven Islands was in 1906. He attached a plan of the village and described the situation with respect to the Ross Lot, the houses of the Innu located off the reserve and the presence of a settler, Mr. Rochette, on the church lot (Exhibit P-66, Tab 228, report by Agent Scott to Secretary McLean).

[197] Scott stated that 18 houses had to be moved onto the reserve, provided that the Innu gave their consent, which he believed might be difficult to obtain:

To the North of the reserve a short distance from the line there are eighteen (18) other Indian houses build on land owned by the inhabitants of Seven Islands, and one south of the Southern boundary line, all of these can be removed to the reserve at small cost about \$30.00 each, providing the Indians are willing to have it done, many of them last season made serious objections to any proposals of removal later and there may be trouble in securing their consent to the change. [Emphasis added; Exhibit P-66, Tab 228]

[198] Scott also stated that it would not be necessary to offer compensation to the missionaries for the Innu occupation of Lot 5-2 because the missionaries did not hold any title to that lot and because Dr. Ross no longer wanted to transfer his lot to the Innu but would be willing to sell it at a very reasonable price:

. . . Dr. Ross had changed his decision re-selling this strip of land deciding to retain it.

I met Mr. E. E. Tache Deputy Minister of Department Lands Quebec last fall, he informed me that Dr. Ross had consented to accept a piece of land in the vicinity of that he now holds, in exchange, and had promised to return his title to the Department to enable them to make the necessary change, as the whole lot on which the Indian Mission had been located had been granted as a reserve, later towards spring I again met Mr. Tache he informed me that they had not yet received the title as promised from Ross or had any communication from him, and had decided to make the change cancelling his title, it having been granted by error and mis-information.

I am now aware that Dr. Ross would sell this section to your Department on very reasonable terms, but do not, under the present circumstances consider it advisable that it should be purchased, as the title under which he holds will be cancelled and it will be included in the reserve under Lot No 5 with the balance of land running back, the houses he has on it can be sold by him to some of the Indians of the Band for their full value, or he can remove them, he should have sold earlier when a fair offer was made, and given less trouble. [Exhibit P-66, Tab 228]

[199] He ended his report by recommending that the reserve lands be surveyed and marked to prevent encroachment by Euro-Canadian settlers, especially for logging.

[200] On July 2, the Chief Surveyor of the DIA, S. Bray, wrote to the deputy minister of the DIA to inform him that the sums earmarked for the creation of the Seven Islands Reserve had not been spent by the end of the fiscal year and recommended that the sum of \$1,500 be voted again by Parliament, despite the new information in Agent Scott's report that it would no longer be necessary to compensate the missionaries or to purchase the Ross Lot (Exhibit P-66, Tab 229).

[201] On July 12, Secretary McLean wrote to the new Agent Tremblay to provide him with information on the Seven Islands Reserve and a plan of the reserve (Exhibit P-66, Tab 230). McLean told Tremblay that Quebec had recently completed a land survey. He asked Tremblay to report back to the DIA if Tremblay deemed it necessary to conduct a new survey and, if necessary, to plant new posts, as recommended by former agent Scott.

[202] McLean ended his letter to Tremblay by reiterating the DIA's intention to move the Innu houses that were located off the reserve onto the reserve, at a cost of up to \$30 per house, an amount he described as not yet available. He also stated very clearly that an engagement would have to be obtained from each Innu owner as to the relocation of his house:

There are a number of Indian houses built on land now owned by whitemen of Seven Islands; there are said to be nineteen in all. You should explain very fully to the Indians the necessity of their removing their houses to their own reserve, and obtain as soon as you can an engagement from each Indian that he will remove accordingly. It is the intention of the Department to pay for this work provided it does not exceed say \$30.00 per house. The money is not yet available and you should not incur any expenses until you are informed that they money may be used. [Emphasis added; Exhibit P-66, Tab 230]

[203] In the same letter, further instructions were given to Tremblay for the Ross Lot:

You will note that the Northern part of lot 4, Range 1, is cut off by a dotted line. It is the intention of the Department to acquire possession of the portion cut off. It appears that it is now in the possession of Dr. Ross. As the patent for this strip was given, it appears, to Dr. Ross before the Quebec Government was placed in possession of all the facts in connection with the rights of the Indians who have houses thereon, it is the intention of the Quebec Government to give Dr. Ross another piece of land in exchange for this strip in order that the strip maybe added to the Indian Reserve. You will note that there are two houses on the said strip as indicated with crosses; those belong to Dr. Ross. The three houses indicated with

circles belong to the Indians. It will be necessary for Dr. Ross to sell to Indians or remove his houses. Please do not loose sight of this matter, and have it attended to as soon as you reasonably can. [Emphasis added; Exhibit P-66, Tab 230]

[204] Tremblay acknowledged receipt of McLean's memorandum on July 31 (Exhibit P-22, Tab 253). Despite the request for expediency, Tremblay failed to act on the matter in the three years he spent as agent for the Innu of Seven Islands.

[205] A year later, on July 24, 1908, McLean informed Tremblay that funds had become available to settle the matters relating to the houses of the Innu and the Seven Islands Reserve. McLean's tone was urgent. He asked Tremblay to do his best to settle all the cases as quickly as possible:

It is desirable that this matter should be closed. I shall be obliged if you will make a special effort to deal with each case and settle it. [Exhibit P-66, Tab 234]

[206] Despite the urgent tone of this letter, Tremblay replied to McLean on July 31 that the Innu were preparing to return to the interior to hunt and that, consequently, they did not wish to see their houses moved for the time being (Exhibit P-66, Tab 235, letter from Agent Tremblay to Secretary McLean, July 31, 1908).

[207] Inspector J. Ansdell MacRae of the DIA travelled to Seven Islands in 1908. He sent his trip report to the DIA in September. According to expert witness Garneau, MacRae was an experienced officer nearing the end of his career with the DIA (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 126). MacRae had worked in a wide range of settings.

[208] MacRae wrote that the Innu were satisfied with the reserve (Exhibit P-66, Tab 237, and Exhibit P-42, Tab 267A, report by Inspector MacRae, September 9, 1908; Exhibit P-66, Tab 236, excerpts from Inspector MacRae's report): "The reserve land . . . at this point seems to give much satisfaction, the Indians now feeling that they have a home of their own with defined boundaries and a secure right of access to the water." He wondered, however, whether it was possible to move the houses that were located off the reserve, since payment had not yet been made to the creditors, who might object to the move for fear that the houses would become exempt from seizure once they were on the reserve. He also asked the DIA to send a plan of the reserve to Chief McKenzie and a few extra copies to Agent Tremblay.

[209] On October 30, Secretary McLean wrote to Deputy Minister Taché to follow up on the Ross Lot, mentioning the possibility of cancelling the title, as suggested by Agent Scott in his report of June 24, 1907 (Exhibit P-66, Tab 238).

[210] On November 5, Taché replied that Scott had told him that Dr. Ross's rights to the lot had been purchased for the benefit of the chapel. Taché's letter did not, however, mention the possibility of cancelling Ross's title to Lot 5-1 (Exhibit P-66, Tab 239). After this letter, there was no follow-up on the Ross Lot until 1924, about a quarter of a century later.

[211] On November 12, Secretary McLean wrote to Agent Tremblay, urging him to resolve all outstanding property issues as quickly as possible but informing him that, in Inspector MacRae's opinion, it might be unfeasible to move some of the Innu houses (Exhibit P-66, Tab 240).

[212] On November 25, Tremblay replied to McLean that the Innu were in the interior, and nothing could be done about the property issues until they returned to the coast in early summer 1909 (Exhibit P-66, Tab 241).

[213] On December 4, Chief Surveyor Bray recommended that the sum of \$1,500 be voted again by Parliament (no evidence was filed in this regard) because the land issues in Seven Islands had not yet been resolved (Exhibit P-66, Tab 242).

G. 1910 to 1917: Confusion created, taxes demanded, action halted

[214] A few years later, on October 1, 1910, Agent Tremblay informed the DIA that the Hudson's Bay Company was requesting that the four houses belonging to Innu people on Lot 4, Range 1, be moved (Exhibit P-66, Tab 253, letter from Agent Tremblay to Secretary McLean).

[215] Deputy Superintendent General Duncan Campbell Scott responded curtly that no funds were available for that purpose and that the Innu would have to "get to work" and take care of the move themselves:

Ottawa, 21st October, 1910.

Sir,

With reference to your letter of the 1st instant, in which you report that you have been notified by the Hudson's Bay Company to remove from certain land

owned by the Company four Indian houses erected thereon by Indians and that the cost of removal will be \$30.00 each, I beg to say that on the 21st instant you were wired as follows: Indians “should remove houses. Department has no funds”.

It is thought that if the Indians get to work, they should be able to remove their dwellings. The Department, as above indicated, has no funds which could be used for the purpose. You will be expected to report further in this matter.

Your obedient servant,

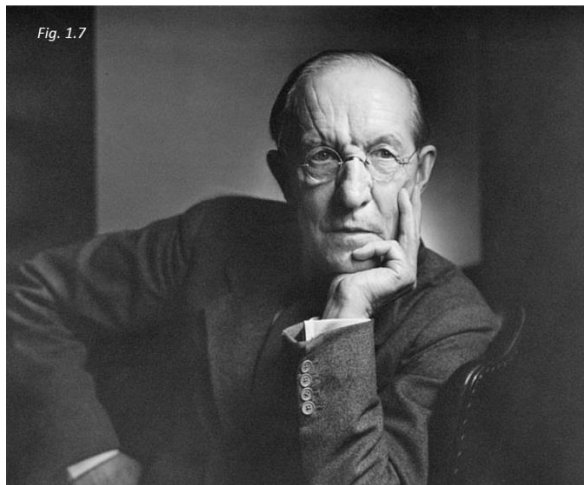
(signed)

Act’g Deputy Supt. of Indian Affairs

[Exhibit P-66, Tab 254, letter from D. C. Scott, Acting Deputy Superintendent General, DIA, to Agent Tremblay; Exhibit P-66, Tab 255, telegram from D. C. Scott to Agent Tremblay, October 21, 1910]

[216] According to expert witness Garneau, D. C. Scott was hired by the DIA in 1880. He rose through the ranks, including head clerk of the accounting department. He became the department head in October 1913. He held the title of Senior Deputy Minister for more than 20 years, until 1932.

[217] Below is a picture of this key figure—and part-time poet—Duncan Campbell Scott (Fig. 1.7):



[218] D. C. Scott’s response reveals an important shift in Canada’s position. It is a step backwards, since earlier discussions about the creation of the Uashat Reserve in 1906 clearly indicated that the DIA planned to defray the costs of moving the houses of the Innu located off the reserve onto the reserve.

[219] As will be seen below, this would be Canada's firm position for more than 10 years, until 1923.

[220] The fact is that, four years after the Uashat Reserve was created, a number of key issues remained unresolved, such as the purchase of the Ross Lot, the issue of moving the Innu houses located off the reserve onto the reserve, and the work to survey and mark the boundaries of the new reserve. None of the \$1,500 budget had been spent.

[221] In 1911, an agency of the DIA was established in Seven Islands. The Innu of Uashat were therefore no longer under the responsibility of an agent residing elsewhere on the North Shore. When the new agency opened, Dr. Charles A. MacDougal was the agent, a position he held until 1922.

[222] On July 27, 1912, Agent MacDougal held elections in Seven Islands. The Innu elected Joseph Vachon, as chief, and three councillors (Exhibit P-22, Tab 276, Agent MacDougal's report on the election of the Chief and council, July 27, 1912; Exhibit P-22, Tab 277, letter from Agent MacDougal to Secretary McLean, July 30, 1912; Exhibit P-22, Tab 278, letter from Secretary McLean to Agent MacDougal, August 9, 1912).

[223] Over time, some confusion appears to have arisen as to the size and location of the reserve.

[224] For example, in his annual reports to the DIA from 1913 to 1925, Agent MacDougal incorrectly stated that the reserve was 6 acres, whereas, under the Order-in-Council of March 27, 1906, it was 91.30 acres in total (Exhibit P-66, tabs 259, 262 and 268, DIA annual reports for 1912-13, 1913-14 and 1914-15); Exhibit P-67, tabs 286, 289, 293, 297, 309, 317, 327 and 333, DIA annual reports for 1915-16, 1916-17, 1917-18, 1918-19, 1919-20, 1920-21, 1921-22 and 1922-23; Exhibit P-68, tabs 338 and 388, DIA annual reports for 1923-24 and 1924-25).

[225] Moreover, according to the DIA's calculations at the time the reserve was created, the reserve actually had a total area of 94.57 acres (Exhibit P-65, Tab 216, DIA memorandum, April 5, 1906). That said, regardless of which one is correct, it is clear that the size of the Uashat Reserve created in 1906 was considerably larger than the 6 acres reported by Agent MacDougal.

[226] In addition, apart from the chapel lot, Lot 5-2, where Innu houses were already located before the reserve was created, the Innu did not build any houses on the 44 lots of Range 2 of the village that were reserved in 1906 until the reserve was surrendered in 1925 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 163).

[227] In fact, according to the experts heard by the Tribunal, there appears to have been confusion among the Innu and the Euro-Canadians as to the location and boundaries of the reserve created in 1906 (Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at p 41; Exhibit P-75, Tab 3, testimony of Jean-Pierre Garneau, transcript of hearing, April 11, 2018, at pp 184–85).

[228] A photo from that time (Fig. 1.8) shows the chapel and a number of Innu houses (Exhibit P-66, Tab 258, photo of the Chapel of the Sacred Heart of Jesus and part of the Indian [Innu] village, Seven Islands, 1913, C034-PN-005, 03-083, regional history collection, Société historique de la Côte-Nord):



Fig. 1.8

[229] Against this backdrop, the municipal council of Seven Islands wrote to Agent MacDougal on December 4, 1914, demanding that the Innu pay taxes for houses located off the reserve. Until then, the municipality had never imposed property taxes on the Innu (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 152).

[230] Based on the municipal assessment roll, the community deemed that the tax levy order applied to 38 houses. Strangely, the letter closes with a request from the municipal council for the creation of a reserve in Seven Islands, suggesting that the council was unaware of the very existence of the Uashat Reserve, created eight years earlier:

[TRANSLATION]

Please contact your Department and inform us of its intentions in this regard. Would it not be possible to grant them a Reserve as has been done in several other places, or would your Department not agree to cover annually the taxes owed by this tribe of Montagnais under its control? [Exhibit P-66, Tab 264, letter from F. H. Vignault, Secretary-Treasurer, to Agent MacDougal, December 4, 1914; Exhibit P-66, Tab 263, 1914 Assessment Rolls for Seven Islands]

[231] On receiving the municipal council's letter, Agent MacDougal forwarded it to the DIA and asked the Department about its intentions regarding the payment of the municipal taxes being sought (Exhibit P-66, Tab 265, letter from Agent MacDougal to Secretary McLean, December 4, 1914).

[232] Secretary McLean responded to MacDougal, sending him a plan of the village of Seven Islands on which the Uashat Reserve was marked in brown. He stated that houses on the reserve could not be taxed, whereas houses off the reserve were taxable, but the DIA was not in a position to pay such taxes (Exhibit P-66, Tab 266, letter from Secretary McLean to Agent MacDougal, December 18, 1914).

[233] In spring 1915, the DIA sent Inspector C. C. Parker to the North Shore (Exhibit P-22, Tab 280, letter from the DIA to Inspector Parker, April 23, 1913). Parker was a [TRANSLATION] "floating" resource, meaning that the Department could send him anywhere it wished to investigate. He was also the one who initiated the highly controversial hunter assistance policy in the 1910s and 1920s.

[234] Parker was sent to Seven Islands to report on the situation and suggest solutions to existing problems, such as taxes on Innu houses located off the reserve. He wrote three important annual reports in Seven Islands, for 1915 to 1917 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 198).

[235] However, it will be seen below that Parker failed to fulfill his primary mission because his reports did not propose any solutions other than to reduce social assistance to the Innu.

[236] Parker began his visit to Seven Islands and filed a report on July 23 regarding the municipality's tax demands. He believed that it would be difficult to move the houses onto the reserve because of their poor condition and the fact that many had not yet been paid off, so that the creditors would object to the move. Contrary to the letter from the municipal council, which counted 38 Innu houses, Parker's report counted 25 houses on lots 2, 3, 4, 5-1, 7 and 16, Range 1, and 15 houses on Lot 49 in Moisie (Exhibit P-66, Tab 272, report by Inspector Parker to the Deputy Superintendent General of the DIA, July 23, 1915).

[237] Parker's report also reported difficult socio-economic conditions in Seven Islands, particularly because of falling fur prices and dwindling wildlife. His report noted, among other things, that advances had been made to the Innu, who were having difficulty repaying them.

[238] A few days later, in a letter dated July 28, Secretary McLean informed Agent MacDougal that the DIA would not be providing the Innu with advances equal to those of the previous year because too few Innu had been able to repay their debts (Exhibit P-66, Tab 274). McLean told MacDougal to inform the Innu that these advances would be the last unless they were repaid in the spring.

[239] On October 9, MacDougal wrote again to the DIA to request instructions with respect to the municipality's demands for taxes on houses belonging to the Innu (Exhibit P-66, Tab 276).

[240] McLean replied on November 25 that the DIA had no obligation to pay taxes on off-reserve houses and that it was up to the Innu to either pay the taxes or move their houses onto the reserve (Exhibit P-66, Tab 277).

[241] On November 30, the Secretary-Treasurer of the Seven Islands municipal council wrote again to MacDougal to inform him that the municipality would begin collecting taxes on December 15. According to the municipal council's letter, the Innu had been refusing to pay for a number of years on the grounds that they were on a reserve and that their property was therefore protected by the DIA. The purpose of the municipal council's letter was to inform the DIA that the municipal tax laws, including penalties for non-payment, applied to the Innu (Exhibit P-66, Tab 278, letter from Secretary-Treasurer Vignault to Agent MacDougal).

[242] MacDougal forwarded the letter to McLean on December 6 (Exhibit P-66, Tab 279) and wrote to him again on December 18, referring him to Inspector Parker for more information on the situation (Exhibit P-66, Tab 280).

[243] In early January 1916, McLean replied to MacDougal, informing him that the DIA's position remained unchanged and forwarding the relevant portions of Parker's report (Exhibit P-67, Tab 281, letter dated January 10, 1916; Exhibit P-67, Tab 282, letter dated January 13, 1916).

[244] On January 31, Chief George Régis wrote directly to the DIA to plead on behalf of the Innu, urging the authorities to be understanding with band members who were struggling to repay the advances because of poor hunting conditions (Exhibit P-67, Tab 283). He offered his full cooperation. The Chief ended his letter by requesting that the DIA communicate with him in French because he did not understand English.

[245] On August 1, MacDougal wrote to the DIA, criticizing Régis' actions, which he considered to be dishonourable (Exhibit P-22, Tab 312). He accused Régis of failing to provide any support to ensure that the Innu repaid their debts. He advised the DIA to contact Parker for more information on Régis.

[246] Parker made a second trip to the North Shore in 1916, for which he submitted a report to the DIA on August 10. In that report, he stated, among other things, that the hunt of the Innu of Seven Islands was virtually a total failure that year. However, Parker accused the Innu of being the architects of their own fate, suggesting that they had become lazy and dependent on government assistance. He also alleged deception on the part of the Innu, accusing them of failing to bring all

the collected furs back to Seven Islands. As in his first report, Parker's view of the Innu of Seven Islands was hardly kind, but instead biased and disparaging (Exhibit P-67, Tab 288, report by Inspector Parker at p 7): "Their indolence is almost beyond belief. They are noted for their dishonesty."

[247] In short, he recommended that no more advances be made to the Innu unless the DIA was prepared never to see its money again (Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 6): "As a matter of fact I am now quite satisfied that so long as the Department gives advances to these Indians, no adequate returns may be looked for."

[248] The following year, Parker filed another report. He stated that the hunt was better that year but refused to attribute the improvement to an increase in fur-bearing animals, insinuating instead that the poor results of previous years were caused by the Innu's dependence on government assistance, a dependence he accused Euro-Canadian merchants of perpetuating. Thus, according to Parker, the economic pressures exerted on the Innu in accordance with his recommendation over the previous three years were beginning to bear fruit. He recommended that the DIA maintain this pressure until the Innu became self-sufficient and could fully support themselves (Exhibit P-67, Tab 291, report by Inspector Parker, October 4, 1917).

* * *

[249] It is appropriate here to pause in the narrative and examine more closely Parker's particularly striking racist comments about Indigenous people and his paternalistic, if not condescending, actions towards them.

[250] Parker's reports demonstrate his biased attitude towards Indigenous people, which was in conflict with his fiduciary duty towards them as a senior official of the DIA. There is a certain contempt for the humanity of the Innu people.

[251] His prejudices affected the circumstances of the Innu of Uashat, since his position in the Department ensured that his recommendations were followed. It is clear from the reports that Parker's opinion on how the DIA should act towards the Innu was influenced by his racist beliefs.

[252] To begin with, one need only read the first few pages of his very first report (1915) to see that he was not neutral in assessing the needs of the Innu. He described their language as follows

(Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915, at p 2): “In point of grammatical construction their dialect is poor and the sing song accent in which it is spoken is not at all euphonious, giving one the impression of a whining child.” The passage is not only racist, but also demonstrates Parker’s paternalistic attitude, likening the Innu to children, which pervades his reports.

[253] Moreover, he was already biased on the issue of the houses of the Innu, suggesting that the Innu should not have houses and should instead live in tents:

There is no necessity for Indians having houses at these places and it is regrettable that they ever started the custom. . . . They all have tents which they use going to and coming from the interior and they would be much better off physically if they remained in their tents during their short stay on the coast which is during warm weather. [Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915, at p 3]

[254] He then complained that non-Indigenous people had told the Innu that the DIA had to take care of them and pay for everything; he blamed Indigenous people, suggesting that they hated paying their debts and naturally wished to take advantage of the DIA:

To aggravate conditions the whites on the coast, (mostly merchants), have told the Indians that the Government is obliged to keep them and that it is not necessary for them to pay for anything they get from the Indian Department. Naturally the Indian, who always hates to pay a debt, has grasped at this pleasant bit of knowledge and taken full advantage of it. [Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915, at p 5]

[255] Later, addressing the poverty of the Innu, he submitted the following:

I am quite satisfied that these Indians are not making as large hunts as they might. The former high price of furs, rather than acting as an incentive to large hunts, acted as an excuse for laziness. So long as an Indian had a certain number of marten he was quite satisfied. . . . They have no one to advise them properly and are prone to follow the road of laziness under any excuse that presents itself. [Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915, at p 7]

[256] Again, Parker expressed a sense of superiority over the Innu, whom he considered to be unable to manage without outside help. As well, it appears that his deep racist convictions led him to interpret the traditional responsible hunting practices of the Innu as laziness. Moreover, in addition to accusing the Innu of laziness—which he did repeatedly in his report (Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915, at pp 14, 30)—Parker accused the Innu of seeking to abuse drugs provided by the DIA (Exhibit P-22, Tab 295, report by Inspector Parker,

July 23, 1915, at p 10): “Indians are fond of taking medicine and ask for it under the least pretext . . .”

[257] Parker began his second report (1916) with inflammatory, unjustified comments about the Innu in order to explain his new recommendation to reduce the financial assistance provided:

. . . I found a most indolent and pauperized lot of Indians, relying almost entirely on Government support, which they had been led to believe was part of their birth-right and rendered undue effort on their part quite unnecessary. [Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 2]

[258] These were not the only unjustified comments made by Parker; two pages later, he referred to the lack of game and admitted that he did not know the conditions in the interior. After this admission, however, he stated the following:

It is not, however, beyond my rights to draw certain conclusions both from personal knowledge of these Indians and from other information picked up from time to time. My first conclusion would be that a large number of the Gulf Indians are rapidly becoming indolent and are relying on Government support. I am convinced that better hunts are possible in most instances. [Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 4]

[259] This passage reflects Inspector Parker’s overwhelming sense of superiority over Indigenous people. On the next page, he reiterated that they were, in his opinion, lazy and dishonest (Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 5). Accordingly, he then made the following remarks:

We have five bands of Indians who are rapidly becoming, in some cases are, pauperized. Their indolence is almost beyond belief. They are noted for their dishonesty. The greater part of them are in a state bordering on destitution, trusting on what they have been told as regards the obligation of the Government to support them. [Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 7]

[260] The same year, in an internal memorandum to the DIA, Parker argued, with the same paternalistic attitude, that the only way to ensure that the Innu repaid their advances was to teach them the following lesson (Exhibit P-67, Tab 285): “It would seem that the only way to combat this would be to teach the Indians a real lesson, once, and make them realize that when we say they must pay we mean it.”

[261] In his third report (1917), Parker repeated essentially the same racist views: “I am inclined to attribute the small hunts to the Indians’ dependance on Government assistance . . . Starting with as lazy and indolent a class of Indians as it would be possible to find . . .” (Exhibit P-67, Tab 291, report by Inspector Parker, October 4, 1917, at pp 1–2).

[262] In fact, his analysis was only superficial—he erred in blaming the Innu for their own poverty because he deliberately understated a number of factors.

[263] First of all, he failed to take sufficient account of the numerous health problems faced by the Innu of Uashat. As well, game was becoming increasingly scarce and furs were declining yearly. A report by the Hudson’s Bay Company in 1908 noted a general decline in furs on the North Shore between 1905 and 1907 (Exhibit P-66, Tab 243, Hudson’s Bay Company, *Report on Fur Trade, for the Year Ending 31st May, 1908*). In 1909, the Innu began to contract tuberculosis (Exhibit P-66, Tab 245, report dated April 1, 1909, in *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1909*). The following year, an epidemic of varioloid visited Seven Islands and Moisie (Exhibit P-66, Tab 252, report dated May 10, 1910, in *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1910*). In his report dated April 15, 1912, Agent MacDougal described the situation in Seven Islands as follows:

The health of the Indians as a whole is very bad. Many are afflicted with tuberculosis and phthisis. An epidemic of measles prevailed in the band last fall. This caused only three deaths, tuberculosis claimed seven, and infantile diseases six, making a total death list of sixteen.

. . .

The Indians are generally industrious and good hunters. They are also law-abiding. As the hunt is decreasing yearly, they are not becoming richer. [Exhibit P-66, Tab 257, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1912*]

[264] MacDougal made the same observations in his reports for the next three years, 1913, 1914 and 1915, noting that phthisis, grippe and influenza were also present in Seven Islands (Exhibit P-66, Tab 259, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1913*; Exhibit P-66, Tab 261, *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1913*; Exhibit P-66, Tab 269, “Report of C. A. MacDougal, Indian Agent for the Montagnais of Seven Islands and Moisie, Quebec” in *Annual Report of the Department of*

Indian Affairs for the Year Ended March 31, 1915). In 1916, he described the health of the Innu as follows:

All the Indians are in a very poor state of health. Respiratory troubles and tuberculosis prevail constantly. While living in the woods they enjoy better health than when at the sea shore. An epidemic of grippe broke out in December 1915. All the Indians on the reserve are more or less affected thereby. Those coming in from the hunt catch the disease as soon as they arrive on the reserve. [Exhibit P-67, Tab 287, “Report of C. A. MacDougal, M.D., Indian Agent for the Montagnais of Seven Islands and Moisie, Quebec” in *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1916*]

[265] In 1917, he emphasized the lack of fur-bearing animals:

[TRANSLATION]

The healthy Indians are industrious as a general rule, being good hunters, law-abiding, and of good morals; but, owing to the gradual decrease in fur-bearing animals, and a poor market for pelts, especially so this season, they are making no progress whatever, but are poorer this year than at any previous time. [Exhibit P-67, Tab 290, “Report of C. A. MacDougal, Indian Agent for the Montagnais of Seven Islands and Moisie, Quebec” in *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1917*, at p 30]

[266] Such conditions clearly affected the Innu’s ability to secure income. Nevertheless, even though Parker was aware that the Innu were sick, he considered their poor health and their claims of a lack of furs and food in the woods to simply be an excuse for their laziness (Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at pp 3–4).

[267] More importantly, Inspector Parker completely failed to grasp the immense hardship of life in the woods. Daniel Vachon, an Innu, describes it as follows (Exhibit P-32, Tab 11, Daniel Vachon, *L’Histoire montagnaise de Sept-Îles*, Éditions Innu, 1985, at p 3): [TRANSLATION] “. . . life was difficult there; it was cold; we ate our misery . . .” Louisa Jourdain, an Innu nun, makes similar comments (Exhibit P-32, Tab 11, Daniel Vachon, *L’Histoire montagnaise de Sept-Îles*, Éditions Innu, 1985, at p 14): [TRANSLATION] “In the spring, food was scarce; we lived on partridgeberries alone.”

[268] Parker was also blind to the consequences of not providing credit to the hunters. According to Vachon, [TRANSLATION] “The Montagnais who was granted little credit was forced to take only the bare essentials. Often, in the woods, he would not have things that he needed” (Exhibit P-32,

Tab 11, Daniel Vachon, *L'Histoire montagnaise de Sept-Îles*, Éditions Innu, 1985, at p 21). In conditions where access to food was already precarious, it is easy to imagine the dire consequences of having no hunting equipment and running out of food.

[269] Lastly, Inspector Parker's overt racism in his reports had repercussions. His bias not only influenced his recommendations to the DIA, but also created a work culture at the DIA where that bias was accepted.

[270] All of this indicates that Parker's attitude towards Indigenous people interfered with the DIA's fiduciary duty to the Innu of Uashat. Indeed, Agent MacDougal, who reported to Parker, made the following comments in a letter to the DIA dated August 1, 1916:

I regret of inform the Department that the Chief George Régis gave us no assistance whatever in this matter and his actions seemed to side with the peace disturbers. I may remark that the Chief seems to support the Indians in acting dishonourably, and schemes with them in trying to bluff the Department . . . Mr. Inspector Parker could give you further information as to Chief Régis. [Exhibit P-22, Tab 312, letter from Agent MacDougal to the DIA, August 1, 1916]

[271] MacDougal's contempt for Chief Régis and the Innu, whose honesty he questioned, seems in effect to have been endorsed by Inspector Parker, to whom MacDougal referred the Department.

[272] Between July 1919 and August 15, 1921, and possibly for a longer time, MacDougal and Régis were in conflict and did not speak to each other (Exhibit P-43, Tab 347, letter from MacDougal to MacKenzie, August 15, 1921). This was obviously problematic because MacDougal, as an agent, had to ensure the well-being of the Innu of Seven Islands, whose chief was George Régis.

[273] MacDougal's description of the Innu contrasts noticeably with the description of the Innu in his reports before Inspector Parker's arrival. His tone in his reports changed in 1916:

All our Indians are law-abiding. They are, generally speaking, industrious; but some depend altogether too much upon aid from the department, owing to the generous assistance given them by the department in equipping them for the hunt (when the fur catch failed) in 1912-13 and 1913-14, and which assistance was not repaid to the department by the Indians as had been promised. They are consequently becoming indolent and poorer. [Exhibit P-67, Tab 287, "Report of C. A. MacDougal, M.D., Indian Agent for the Montagnais of Seven Islands and Moisie, Quebec" in *Annual Report of the Department of Indian Affairs for the Year Ended March 31, 1916*]

[274] Parker implied in his second report that he was responsible for changing MacDougal's attitude (Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at pp 14–15): "Our Agent at Seven Island shows a marked improvement since my visit in 1915. He is more alive to the necessity of economy and more convinced of the mistake easily made in supposing that Indians are being helped by gratuitous assistance."

* * *

[275] During this period, the village was becoming increasingly insistent in demanding taxes from the Innu.

[276] The DIA responded with a clear position: It did not consider itself to be responsible for paying the taxes. It appears that the initial plan, namely to purchase the Ross Lot and move, at the DIA's expense, the Innu houses that were left off the reserve when it was created, was both abandoned and forgotten.

[277] Yet, the Innu believed that they were living on the reserve (Exhibit P-66, Tab 278, letter from Secretary-Treasurer Vigneault to Agent MacDougal, November 30, 1915; Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at p 23). It was the clergy that came to the defence of the Innu, while the DIA refused to act (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 140–43).

[278] According to the new assessment roll prepared by the town in August 1918, there were at that time 24 houses belonging to Innu people that were located outside the boundaries of the reserve, on town land (Exhibit P-67, Tab 295, 1918 Assessment Rolls for Seven Islands).

H. 1917 to 1922: Reserve lots sold

[279] In 1917, the Province began selling reserve lots. The first was Lot 34, Range 2 (Exhibit P-67, Tab 292, letters patent No. 27598, November 19, 1917).

[280] In September 1919, lots 28, 29, 30, 57, 58 and 59, Range 2, were sold (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 166; the sources for lots 28 to 30 and 57 to 59 seem to be missing, the only reference being the table in the opposing expert opinion of Jean-Pierre Garneau at p 164). In October 1919, 18 additional lots were sold, namely lots 25 to 27, 52

to 54, 116 to 121 and 138 to 143, Range 2 (Exhibit P-67, tabs 306, 307 and 308, letters patent No. 29388, No. 29389 and No. 29391, December 15, 1919; letters patent No. 29391 in Exhibit P-67, Tab 308, also mentions lots 355, 356, 463 and 464). Finally, in 1920 and 1921, the province sold two additional reserve lots, namely lots 33 and 35, Range 2 (Exhibit P-67, Tab 316, letters patent No. 29954; Exhibit P-43, Tab 354A, Register of the domain of the State, lots 33, 34, 35, Range II, Sept-Îles; Exhibit P-43, Tab 354B, land terrier of the township of Letellier, North Shore Agency, ranges I and II, Seven Islands). In all, 27 of the 44 village lots reserved in 1906 were sold by Quebec over a five-year period (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 164).

[281] On September 26, 1919, the Reverend Father Pétel alerted the DIA to the sale of lots on the Uashat Reserve (Exhibit P-67, Tab 299).

[282] In his letter, Pétel stated that the town was determined to collect taxes from the Innu. He also stated that the Agent of the Quebec Department of Crown Lands, Edmond Joncas, was refusing to recognize the reserve created in 1906 despite the fact that there was a boundary marker at the corner of Lot 6 on which was written [TRANSLATION] “RESERVE”. Consequently, Joncas was merely taking into account the proposed reserve surveyed in 1903 and was selling lots on the actual reserve to Euro-Canadian settlers.

[283] Pétel asked the DIA for clarification regarding the issue of taxes on Innu houses located off the reserve and asked it to notify the Quebec land terrier that its agent was refusing to recognize the reserve and was selling reserved lots.

[284] In response to receiving this letter, the DIA sent three letters on October 7.

[285] First, Pétel’s letter prompted Inspector Parker to write to Chief Surveyor Bray (Exhibit P-67, Tab 303, letter from Inspector Parker to Chief Surveyor Bray, October 7, 1919). In his letter to Bray, Parker noted the confusion surrounding the location of the reserve. He stated that this confusion might be at the root of the problem regarding taxes on Innu houses.

[286] Second, the DIA replied to Pétel on October 7, stating that the houses located on the reserve were not taxable. The DIA further stated that Pétel had accurately identified the reserve in his letter and that no encroachment would be tolerated. It also forwarded him a copy of the Order-in-Council

establishing the reserve and suggested that he show it to Agent Joncas of the Quebec Department of Crown Lands. Finally, the DIA reiterated its position regarding taxes on Innu houses located off the reserve, namely that the onus to pay the taxes was on the Innu themselves and not on the Department (Exhibit P-67, Tab 300, letter from Secretary McLean to Father Pétel).

[287] Lastly, on the same day, Secretary McLean wrote a brief letter to the Deputy Minister of Lands and Forests of Quebec, F. Miville-Deschêne, to inform him of the correspondence received from Father Pétel.

[288] McLean asked the Deputy Minister to properly explain to his Lands Agent the boundaries of the reserve created in 1906 and requested that any sales of lots on the reserve be cancelled:

I shall be obliged if you will be good enough to inform your Agent of the limits of the reserve and that if he has actually made sales of any of the lots comprising it, that he is to immediately cancel them. [Exhibit P-67, Tab 301, letter from Secretary McLean to Deputy Minister Miville-Deschêne, October 7, 1919]

[289] Expert witness Garneau points out that no letter from Quebec in response to McLean's letter can be found in the archival records, and that the records show no change in Quebec's position since, a week later, on October 14, Agent Caron sold 18 other lots on the reserve to Euro-Canadians (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 166).

[290] Also on October 7, Secretary McLean forwarded Father Pétel's letter to Agent MacDougal and instructed him not to allow any encroachment on the reserve lots. McLean told MacDougal that he would send him, under separate cover, three copies of the plan showing the boundaries of the reserve, one to give to the band Chief, another to give to the Mayor of Seven Islands, and a third to keep at his office (Exhibit P-67, Tab 302).

[291] On October 23, MacDougal acknowledged receipt of McLean's letter and the reserve plans, and confirmed his intention to carry out the DIA's instructions (Exhibit P-67, Tab 304).

[292] At this point, Quebec had sold 24 of the 44 reserve lots.

[293] The following summer, on July 12, 1920, Father Brière, seeking a resolution, contacted D. C. Scott, Deputy Superintendent General of the DIA, to plead once again in favour of the Innu

of Seven Islands, since the issues regarding the location of the reserve, the taxes on Innu houses and the sale of reserve lots had still not been settled.

[294] Brière criticized the DIA for failing to act and asked that it purchase the lands where the Innu were living. Apparently, he was unaware that some of those lands were already part of the reserve. He also asked [TRANSLATION] “the Department of Indians . . . [to conduct] an investigation and a serious inspection, something that has not been done for years” (Exhibit P-67, Tab 310, letter from Father Brière to Deputy Superintendent General Scott, July 12, 1920).

[295] Still having received no response to his initial letter, Brière wrote again to the DIA in August to reiterate his request that a serious investigation be conducted in Seven Islands (Exhibit P-67, Tab 311, Father Brière’s letter to Deputy General Superintendent Scott). The second letter indicated that Agent MacDougal was not very popular. Moreover, Brière stated that the Agent appeared to be exploiting the Innu of Seven Islands and acting against their best interests.

[296] In fact, Brière wrote that the DIA should be ashamed to have such representatives on the North Shore and that, except in Betsiamits, the Innu were not being treated humanely.

[297] On September 3, McLean responded to Brière and reiterated the DIA’s position, stating that the Innu were responsible for paying taxes on their houses located off the reserve or for arranging to have those houses moved onto the reserve (Exhibit P-67, Tab 312).

[298] On September 15, Brière wrote again, reiterating that it would be absurd to move the houses of the Innu onto the reserve, which was essentially uninhabited. In his opinion, the land occupied by the Innu should be reserved instead:

[TRANSLATION]

You know that the Indians of Seven Islands do not reside on the reserve, they are on the sea shore, on a ground of sand, uncultivable. Consequently they are harming nobody; it is therefore useless to complicate matters and stir trouble by wanting to transport their poor shacks on a reserve which has been abandoned for a hundred years. We ask the Department to have them ceded by the Quebec government that piece of land where they are now. [Exhibit P-67, Tab 313]

[299] Brière’s comment that the [TRANSLATION] “reserve . . . has been abandoned for a hundred years” suggests that he, too, was unaware of the reserve’s location.

[300] He then resumed his head-on attack against the Agent posted in Seven Islands, accusing him of being responsible for the misery of the Innu, and asked the DIA to conduct a thorough investigation into the situation.

[301] Seven months later, on April 13, 1921, a representative of the Hudson's Bay Company wrote to the DIA to complain about four houses belonging to Innu people on Lot 4, Range 1, which was owned by the Company, and to request the DIA's assistance in clearing the lot (Exhibit P-67, Tab 319, letter from the Land Commissioner of the Hudson's Bay Company to Secretary McLean).

[302] Secretary McLean replied a few days later that the DIA had no means at its disposal to force the eviction of the Innu occupants of Lot 4 but that he would tell Agent MacDougal to order the Innu to leave the lot immediately. He also suggested that the Hudson's Bay Company pay the moving costs of the Innu (Exhibit P-67, Tab 320, letter from Secretary McLean to the Land Commissioner of the Hudson's Bay Company, April 18, 1921).

[303] On the same day, McLean forwarded the Hudson's Bay Company's letter to MacDougal (Exhibit P-67, Tab 321, letter dated April 18, 1921), who acknowledged receipt on April 28 and confirmed that he had a plan showing the location of the reserve, although the reserve was neither fenced nor demarcated (Exhibit P-67, Tab 322).

[304] On June 23, MacDougal wrote to the DIA to confirm that Constable Jos. Gamache had informed the Innu in question that they had to stop occupying Lot 4, Range 1, which belonged to the Hudson's Bay Company (Exhibit P-67, Tab 326, letter from Agent MacDougal to Secretary McLean). According to expert witness Garneau, the eviction notice had no effect (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 143).

[305] One year later, on May 12, 1922, a man named Rousseau of the Hudson's Bay Company wrote to MacDougal regarding the Innu occupying Lot 4, Range 1. Rousseau suggested that the Innu or the DIA purchase the back part of Lot 4, mistakenly believing that there was no reserve in Seven Islands and that the Innu therefore had nowhere to move to:

I have had several Letters from The Company regarding to Indians houses on the Company property, and to what I can understand the Indians here has no

reserve. If this is the case, It would be hard for them to move on other Peoples Property, I would suggest that the Indians or the Indian Department purchased the back part of Lot NO. 4, and I Presume the Company would let same at a fair price. At which I presume would be near Twenty Dollars each.

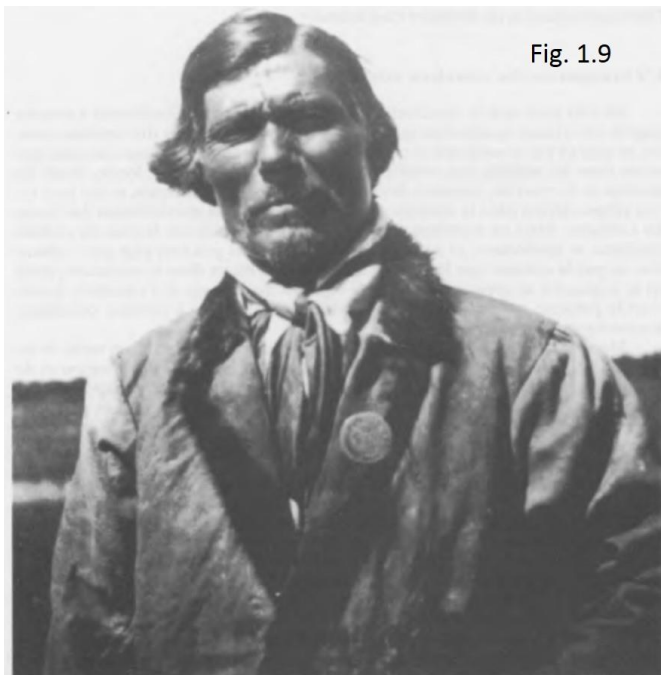
However, I wish you would give me your opinion of these Indian Houses on the Companys Property, and only wish to have what would be fair to the Department an the Company.

With a replya oblige . . . [Exhibit P-67, Tab 328]

[306] MacDougal replied a few days later, stating that the Innu occupying Lot 4 had been told to leave and move to the reserve, but without specifying the location (Exhibit P-67, Tab 329, letter from Agent MacDougal to Rousseau, Hudson's Bay Company, May 19, 1922).

[307] Expert witness Garneau writes that the election of July 29, 1922, which made Sylvestre McKenzie chief, took place in an atmosphere of tension and hostility felt by part of the Innu community towards MacDougal (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 36). (After giving up the position of chief to George Régis in 1926, McKenzie was elected again in 1929, 1932 and 1941.) This will be discussed further below.

[308] The following is Chief McKenzie (Fig. 1.9), wearing his Chief's medal, in a photograph taken by Frank G. Speck in 1924:



[309] On November 22, Dr. Louis-Napoléon Michaud succeeded MacDougal, whose services in Seven Islands were ultimately dispensed with, as agent (Exhibit P-33, Tab 2, G. M. Matheson, *Historical Directory of Indian Agents and Agencies in Canada*, excerpts, at p 88; Exhibit P-23, Tab 367, letter from Agent Michaud to Trudelle (Sun Life), October 12, 1923).

I. 1923 to 1924: Inspections conducted, houses moved

[310] In summer 1923, Inspector Émile Jean was sent to Seven Islands to gather information and recommend possible solutions. Expert witness Garneau notes that Jean was from the Department's accounting unit and an officer with 37 years of experience. Garneau states that Jean's trip to Seven Islands in 1923 was significant (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 196).

[311] In his report of September 5 to the DIA, Jean wrote, "there is considerable confusion as to what lands really constitute the Indian Reserve" (Exhibit P-23, Tab 366, memorandum of Inspector Jean to Secretary McLean, September 5, 1923). Among other things, he stated that a certain Robert Ross was claiming that his father, Dr. George Ross, owned Lot 5 in its entirety and that the Mayor of Seven Islands supported his claim (Bob Ross was the son of George Ross, an influential fur trader; the younger Ross was Mayor of Seven Islands from 1937 to 1944 and from 1944 to 1945).

[312] Jean also noted that lots 25 to 35, 52 to 62, 111 to 121 and 138 to 148, Range 2, that is to say all the lots reserved in 1906 except for Lot 5-2, Range 1, and Lot 492, Range 2, had been sold by Quebec, which meant, in his opinion, that "consequently these lands [had] been eliminated from the Reserve").

[313] However, it should be noted that the historical documents filed in evidence show that not all the lots in the village had been sold when Jean wrote his report (Exhibit P-43, Tab 354A, Register of the domain of the State, lots 33, 34, 35, Range II, Sept-Îles; Exhibit P-43, Tab 354B, land terrier of the township of Letellier, North Shore Agency, ranges I and II, Seven Islands). In particular, lots 60, 61, 62, 111, 112, 113, 114 and 115, Range 2, had not yet been sold to third parties.

[314] Given the confusion and tensions he observed in Seven Islands, Jean suggested that the DIA raise the issue of encroachment with the Province as quickly as possible to obtain compensation and replacement lands:

It will be seen from the foregoing that the question of ownership of a portion of the Seven Islands Reserve is in dispute and complicated, and as there is much friction between the Indians and the White population, and it is almost impossible for the Agent to deal with cases of trespass and other offences against the Indian Act, the matter should be taken up with the Provincial Authorities with the least possible delay with a view to obtaining compensation for the lots sold and securing other lands in lieu thereof.

[315] In addition, Jean recommended the surrender of Lot 492, which he described as “not looked upon by the Indians as part of their Reserve and [as] of no value to them, except for a little timber which is of very poor quality and only fit for fuel”.

[316] Finally, following discussions with the Mayor of Seven Islands and Agent Michaud, Jean made the following proposal (Exhibit P-23, Tab 366, memorandum from Inspector Jean to Secretary McLean, September 5, 1923):

1. designate the proposed reserve surveyed in 1903 as a replacement reserve;
2. purchase the Ross Lot for \$500;
3. purchase or lease a small portion of Lot 6, Range 1, including improvements, for \$1,500; and
4. move the Innu houses on lots 1 to 4, Range 1, instead of buying these lots, which he felt would be more costly.

[317] However, Jean does not appear to have consulted the Innu or Chief McKenzie, even though he was in Seven Islands during the summer (Exhibit P-75, Tab 4, testimony of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at p 19).

[318] On December 12, the town of Seven Islands resumed its efforts to collect unpaid taxes from the Innu. The Secretary-Treasurer of the municipality informed Agent Michaud that the Innu owners of houses located off the reserve had to pay taxes or he would threaten to have their houses seized and sold by the municipality (Exhibit P-67, Tab 335).

[319] On December 15, Michaud forwarded the letter to Secretary McLean (Exhibit P-67, Tab 336). He did not recommend paying the taxes, leaving the decision up to the DIA.

[320] The following year, on June 16, 1924, the Mayor of Seven Islands, P. J. Romeril, wrote to federal Member of Parliament Edmond Savard, asking him to intervene so that the DIA would buy the land occupied by the Innu to create a reserve in Seven Islands, thereby demonstrating that the mayor at the time did not know that a reserve had been created 18 years earlier (Exhibit P-68, Tab 341).

[321] On receiving Romeril's letter, Savard contacted Superintendent Scott in support of the Mayor's request to create a reserve in Seven Islands (Exhibit P-68, Tab 342, letter dated July 2, 1924).

[322] Clearly, information about the Uashat Reserve created in 1906 had been lost over the years.

[323] Scott immediately replied that, in his understanding, the issue to which Savard and the Mayor were referring was that of taxes payable by the Innu, and he stated that there was in fact a reserve at Seven Islands but that the Innu occupied only its outskirts (Exhibit P-68, Tab 343, letter dated July 3, 1924).

[324] In summer 1924, the DIA sent a second inspector, H. J. Bury, to Seven Islands to continue the work done by Inspector Jean and to find a comprehensive solution. Bury was hired by the DIA in 1915. He was officially Supervisor of Indian Timber Lands but, as noted by expert witness Garneau, his responsibilities were broader and included land issues and reserves (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at p 195).

[325] On August 25, Bury filed a report primarily on the problems observed in Seven Islands with respect to the Innu houses located off the reserve (Exhibit P-68, Tab 347). He stated in his report that lots 25 to 35 and 111 to 121, Range 2, had been sold by the Province.

[326] Unlike Jean, who had overestimated the number of reserve lots sold by the province, Bury did not mention all the lots; however, lots 52 to 54 and 138 to 143, Range 2, had been sold by the time Bury wrote his report (Exhibit P-67, tabs 306, 307 and 308, letters patent No. 29388, No. 29389 and No. 29391, December 15, 1919).

[327] In addition, Bury reported that he had met with Agent Michaud, Father Doucet, Chief Sylvestre McKenzie and Mayor Romeril, and had obtained their consent to resolve the impasse as follows (Exhibit P-68, Tab 347, memorandum from Inspector H. J. Bury, August 25, 1924):

1. purchase the Ross Lot on which seven Innu houses were located;
2. remove 14 houses from the lots belonging to Euro-Canadians (10 houses on Lot 3, Range 1, and 4 on Lot 4, Range 1);
3. surrender the entire Lot 492 and the 44 subdivided lots of Range 2 to Quebec, including the lots that had not yet been sold to settlers; and
4. obtain from the Province the proposed reserve surveyed in 1903, in addition to retaining the chapel and the residential portion of the existing reserve (Lot 5, Range 1).

[328] Bury did not reiterate Jean's recommendations to obtain compensation from Quebec for reserve land sold to third parties, and to purchase or lease a portion of Lot 6.

[329] Bury's visit to Seven Islands on July 24, 1924, was reported in a post journal of the Hudson's Bay Company:

Thursday [July] 24th [1924] . . . Indians had their Procession this p.m. and the closing of their mission, by Mgr Levantoux. I had to-day the visit of Mr Bury, Indian Dept. Inspector. He is down there to settle the question of "Land reserve for Indians" it is propose to buy Dr Roos's lot next to ours and to move all the Indians houses on a reserve. It has also been decided that No advances should be given to the Indians by the agent, and any assistance given to Indians should be treated as relief, and the relief given to the Merchant who quote the lowest prices. [Exhibit P-24, Tab 402, post journal, June 1, 1924, to May 31, 1925, at p 8]

[330] On the same day, A. F. MacKenzie, Assistant Deputy Minister of the DIA, explained Bury's recommended solution to Agent Michaud and asked him to obtain bids for moving the 14 houses to Lot 5, Range 1 (Exhibit P-68, Tab 345, letter dated August 25, 1924).

[331] Also on August 25, MacKenzie wrote to the Quebec Minister of Colonization, Mines and Fisheries, J. E. Perrault, to inform him of the confusion over the Seven Islands Reserve ("[a]s you are perhaps aware, considerable confusion has arisen in recent years with respect to the Indian

Reserve at Seven Islands, Que.”) and to point out that approximately 20 reserve lots had been sold to Euro-Canadian settlers. He did not state that the sales were illegal but wrote that they had caused “some discontent among the Indians” (Exhibit P-68, Tab 346). He did not request any compensation for the sales. Instead, he forwarded the details of the solution suggested by Bury and attached a plan of the reserve. He reproduced the incomplete list of reserve lots sold that appeared in Bury’s report, namely lots 25 to 35 and 111 to 121, Range 2, without noticing the error.

[332] On August 28, the Quebec Department of Colonization, Mines and Fisheries acknowledged receipt of the letter and plan sent by the DIA (Exhibit P-68, Tab 348, letter from the Private Secretary of Quebec’s Minister of Colonization, Mines and Fisheries, A. Soulard, to the Assistant Deputy Minister of the DIA, A. F. MacKenzie). On September 2, it did the same, stating that the DIA’s proposal was being considered (Exhibit P-68, Tab 349, letter from the Deputy Superintendent of the Quebec Department of Lands and Forests, C. E. Bernier, to the Assistant Deputy Minister of the DIA, A. F. MacKenzie). The Deputy Superintendent then wrote to Agent Caron of the Quebec Department of Crown Lands to ask his opinion of the DIA’s proposal (Exhibit P-68, Tab 353, letter of October 2, 1924).

[333] On September 5, Assistant Deputy Minister Mackenzie wrote to the Ross family to inform them that the DIA was prepared to purchase the Ross Lot for \$500 (Exhibit P-68, Tab 350, letter from the Assistant Deputy Minister of the DIA, A. F. MacKenzie, to P. Ross, September 5, 1924). (These attempts did not bear fruit until 1985.) However, this purchase only took place in 1985, after more than a half century of inaction on the DIA’s part (Exhibit P-27, Tab 576, certificate of adjudication to Her Majesty the Queen in Right of Canada by the Deputy Sheriff, February 26, 1985, and index of immovables for lots 5-1-A and 5-1-B of Range 1). Again in 1966, Bob Ross insisted that he was the owner of the Ross Lot. He wanted to exchange it for another lot on the shore of the Bay of Seven Islands, which surprised the Innu because they thought that land was part of the reserve (Exhibit P-70, Tab 446, R. M. Ross to Donald Blanchette, Mayor of Seven Islands, May 27, 1966).

[334] On September 17, Agent Michaud sent the DIA bids for the relocation of the Innu houses situated on lots 3, 4 and 6 of Range 1 to Lot 5, Range 1 (Exhibit P-68, Tab 351). On September 29, the DIA acknowledged receipt of the bids and asked Michaud to confirm the information that three

of the four bids required repairs to the foundations of the houses prior to their relocation, informing him that the work would have to be postponed to the following year because the funding was not yet available (Exhibit P-24, Tab 383, letter from Secretary McLean to Agent Michaud).

[335] On October 7, Agent Caron of Quebec Crown Lands replied to the Department of Lands and Forests that, according to his own records, the lots that the DIA wanted to exchange (lots F-1, G, H, I and 489) already belonged to the reserve, and had since 1906 (Exhibit P-68, Tab 354, letter from Agent Caron of Crown Lands to the Deputy Superintendent of the Quebec Department of Lands of Forests).

[336] This response suggests an error in the Province's records regarding the location of the Uashat Reserve.

[337] Again on October 7, Secretary McLean wrote to Agent Michaud to inform him that funds were available to pay for the relocation of the houses at the beginning of the winter (Exhibit P-68, Tab 355). He also asked Michaud to send the DIA more specific information about the bids, particularly with respect to the repair work required for the foundations of the houses to be relocated.

[338] On October 14, Michaud answered that the bids included all the costs of repairing the foundations (Exhibit P-68, Tab 356).

[339] In light of this clarification, Secretary McLean confirmed to Agent Michaud the acceptance of a bid from a certain Louis Toutang for a total amount of \$1,750 (Exhibit P-68, Tab 357, letter from Secretary McLean to Agent Michaud, October 27, 1924). He asked that the move take place as soon as possible and that the houses be relocated in accordance with the positions indicated by Inspector Bury on the plan submitted to Michaud by the DIA. McLean instructed that the houses be installed with sufficient space between them, in a line, and leaving enough space in front of the church and facing the bay.

[340] On October 29, McLean followed up with the Quebec Department of Lands and Forests (Exhibit P-68, Tab 358, letter from Secretary McLean to the Deputy Superintendent of the Quebec Department of Lands and Forests, October 29, 1924).

[341] The Deputy Superintendent of the Department then reported to Minister Honoré Mercier to present the DIA's proposal and recommend that he accept it (Exhibit P-68, Tab 359, Report by the Deputy Superintendent of the Quebec Department of Lands and Forests, November 3, 1924). This report confirms the confusion caused by the response of Agent Caron of Crown Lands, namely that the abandonment of the reserve surveyed in 1903 and the designation of the reserve created in 1906 had not been properly registered by the Province in its records at the registry office. Accordingly, Quebec had then sold reserved lots, believing they were Quebec Crown lands.

[342] The Deputy Superintendent of the Department then confirmed to the DIA that the proposal had been submitted to the Minister (Exhibit P-68, Tab 360, letter of November 4, 1924). Then, on November 13, he informed the DIA of Minister Mercier's approval (Exhibit P-68, Tab 361). In his letter, he describes the lots to be surrendered as follows: Lot 492, Range 2, and the 44 village lots, namely lots 25 to 35, 52 to 62, 111 to 121 and 138 to 148, Range 2. The letter indicated that lots 489, F-1, G, H and I were the lots to be reserved. Finally, he confirmed that an Order-in-Council would be adopted once the DIA had transferred the ownership of the lots of the 1906 reserve to the Province.

[343] On November 27, the DIA's Chief Surveyor, D. F. Robertson, pointed out in a memorandum the need to have the reserve lands surrendered before being able to proceed with the proposed land exchange (Exhibit P-68, Tab 363).

[344] The next day, Secretary McLean confirmed to the Quebec Department of Lands and Forests that Agent Michaud had received the necessary instructions to arrange a formal surrender of the village lots for the purpose of exchanging them with lots F-1, G and I, Range 1, and lots 489 and H, Range 2 (Exhibit P-68, Tab 365, letter of November 28, 1924).

[345] The DIA then wrote to Agent Michaud to inform him of the agreement reached with Quebec and to give him instructions for the formalization of the surrender of the Uashat Reserve.

[346] It asked the Agent to submit the proposed surrender to the Innu at a meeting as soon as possible and return to the DIA a list of the votes for and against surrender, as well as an affidavit signed by himself and by the band Chief (Exhibit P-68, Tab 366, letter from the DIA to Agent Michaud and Form of Surrender, November 29, 1924).

[347] On December 31, Louis Toutang sent the DIA an invoice for \$1,750 for the relocation of 15 houses (Exhibit P-68, Tab 370, Louis Toutant's invoices; Exhibit P-68, Tab 369, letter from the DIA to Louis Toutant, December 26, 1924). The houses on the Ross Lot were not moved, given the DIA's intention to acquire this lot to add it to the reserve.

[348] It was not until they returned to the coast the following summer that the majority of the Innu became aware that their houses had been relocated (Exhibit P-15, expert opinion of Sylvie Vincent at pp 16–17; Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at pp 64–65; Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at pp 8–9; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 147–48).

[349] The Innu were surprised to discover that their houses had been moved and even, in some cases, damaged during the relocation process. As reported by expert witness Sylvie Vincent, Marcel Jourdain noted that the houses had been pulled by horses and left haphazardly on the reserve (Exhibit P-15, expert opinion of Sylvie Vincent at pp 16–17; Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at pp 64–65).

[350] Inspector Bury reported, in his letter of August 1, 1927, to A. F. Mackenzie, that certain houses had been damaged during the relocation. He asked the DIA agent based in Seven Islands to provide construction materials to make the necessary repairs (Exhibit P-69, Tab 417).

[351] The surprise felt by the Innu when they discovered that their houses had been moved was also described in Blandine Jourdain's testimony (Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at pp 8–9, 23).

[352] Here is a photograph of her (Fig. 1.10) during her testimony (Exhibit P-70, Tab 461, "Plan of a portion of the village of Seven Islands", screen capture from the audiovisual recording of the examination and cross-examination of Blandine Jourdain, August 31, 2006, at Uashat, by David Schulze and Marie-Ève Robillard):

Fig. 1.10



[353] During her testimony, she was also shown an aerial photograph of Seven Islands. She pointed out the placement of the Innu houses and explained that the Innu were happy to have them well spaced out on what she considered land belonging to the reserve before their relocation:

[TRANSLATION]

Blandine Jourdain

That's the Gabriel house. Our place, I think, was pretty far back. That all belonged to Mckenzie's. Here, it was Picard. There were buildings there.

David Schulze, counsel

Okay. I had it shown to her for the purposes of the recording. We are going to make a copy of the photo I am showing to Ms. Jourdain to be placed in the record.

Blandine Jourdain

We were happy. We were happy. Look at the houses, all of them, there were others much farther than that. Everywhere. You see there. As we say, it was so big, there were more here, all down here at the bottom, and up there, and over there.

David Schulze, counsel

And when you testified, the houses that were hauled away, relocated, where were they before?

...

Blanche Jourdain

. . . Around here, that there wasn't moved. Not that either. But the other homes, there, they are all here, all there.

Marguerite Cormier

Maybe if you show her the old photograph.

David Schulze, counsel

Okay.

Blandine Jourdain

All that was the reserve.

. . .

David Schulze, counsel

So I am showing her another photograph with "Sept-Iles, réserve des Indiens" [Seven Islands, Indian reserve] marked at the bottom, in which a church can be seen on the far right.

Blandine Jourdain

. . . All that, all that. The Grégoires were over there. And further over there, further still. And that was Sylvestre Mckenzie's place. All Mckenzie's, here. We were back here, in the back. [Exhibit P-70, Tab 456, examination of Blandine Jourdain, August 31, 2006, in Uashat, by David Schulze and Marie-Eve Robillard, FC File No. T-2492-03 (original version), *Innu Takuaikan Uashat mak Mani-Utenam v HMQC* at pp 14–15]

[354] She states that, when her family members returned from their hunting grounds in December, their houses had all been [TRANSLATION] "hailed away somewhere else", "off in a corner", surrounded by a tall picket fence "so that we could not cross or jump over the fence". According to her, the Innu were considered to be [TRANSLATION] "like animals". She states that it was then, [TRANSLATION] "when they moved the houses into an enclosure" (Exhibit P-70, Tab 456, examination of Blandine Jourdain, August 31, 2006, in Uashat, by David Schulze and Marie-Eve Robillard, FC File No. T-2492-03 (original version), *Innu Takuaikan Uashat mak Mani-Utenam v HMQC* at pp 9, 30), that the Innu understood that the land where their houses had been situated before was no longer part of the reserve:

[TRANSLATION]

Yes, when we went up into the woods, in the autumn, it was in November, all the Innu of Uashat, all the houses were in their spots, our land was quite vast. When we arrived on the coast in December, (*surprise*) our houses had all been moved

(hailed elsewhere), the entire stretch of land that belonged to us had been taken, leaving only a little bit. It (the land) was tiny. Apparently fences had been put up “that’s where you will put them (the houses)”, all of our houses, as many as there were. The space we were given was so small (in area). When we saw that hard wire mesh, that solid iron mesh going all around (our houses), it was with that (the mesh or chain link) that it was fenced in. That barbed wire fence went up to . . . our fences were so high, so high that we couldn’t climb over them, for example if we wanted to travel to town. We were penned in like animals. I don’t know who it was who . . . When we returned to the coast, all of the Innu were surprised, everyone was looking for their houses. They were no longer there (where they had been when the group had gone into the woods). That is the part I don’t understand. [Emphasis in original; Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at p 9]

[355] Expert witness Garneau, on the other hand, is of the view that the surprise in question was not related to the relocation project itself, but rather to the date of the relocation (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 147–48).

[356] The accuracy of Mr. Garneau’s statements on this point are questionable, given that Ms. Jourdain’s testimony clearly demonstrates that what surprised the Innu was their discovery that, suddenly, their houses had been moved.

J. 1925: Reserve surrendered

[357] The following photograph (Fig. 1.11), taken in 1925 by Frederick Johnson, an undergraduate student at the University of Pennsylvania, studying with American anthropologist Frank Speck, provides information about life on the reserve. Two young Innu men in jacket and pants can be seen, as well as an Innu girl, all seated on a wooden plank, and in the background there are Innu houses, a fence and other wooden structures, as well as the bell tower of the chapel (Exhibit P-68, Tab 373, Frederick Johnson, “Two unidentified young men and an unidentified girl of mixed French/Innu descent”, Uashat-Maliothenam, summer 1925, *National Museum of the American Indian (Smithsonian)*, catalogue number N14792):



[358] Following the DIA's instructions, Agent Michaud held a meeting with the Innu of Seven Islands on July 5, 1925, to obtain their consent to the surrender agreed upon with Quebec and to formalize the land exchange.

[359] On July 11, he sent the DIA a terse letter, lacking in details, indicating that the Innu had accepted the surrender of the reserve unanimously. Joined to his letter were the Form of Surrender signed on July 5 and the signed sworn statement (Exhibit P-68, Tab 386, sworn statement; Exhibit P-69, Tab 393, deed of surrender; Exhibit P-69, Tab 394, letter from Agent Michaud to the DIA):

Sir,

Please find herewith enclosed Form4903-1a signed at a meeting of indians held at Seven Islands the fifth of July 1925.

All the Indians were unanimous to surrender the village lots and lot 492 and all those present signed in favor of such a surrender

Very Truly Yours

(signed)

Agent [Exhibit P-69, Tab 394, letter from Agent Michaud to the DIA, July 11, 1925]

[360] According to this form, about a hundred voting members of the Seven Islands Band voted in favour of the surrender. The sworn statement was signed on July 11, 1925, before the Justice of the Peace and Mayor of Seven Islands, P. J. Romeril, by Agent Michaud, Chief Sylvestre McKenzie, Tommy Vollant and Johnny Pilot.

[361] According to this statement written on an English-language form, Chief McKenzie and the other two Innu signatories certified the following:

- the surrender was approved by themselves and a majority of the male band members at least 21 years of age;
- the surrender was made during a meeting called for that purpose and in the presence of the Agent;
- all of the voting Indians in attendance normally resided on the reserve and held an interest in it; and
- interpretation of the terms of the surrender was provided from English to the Innu language.

[362] It should be noted here that two separate versions of the voting list were found in the archives, one copy at the DIA and a second in the Privy Council's records (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau at pp 182–87).

[363] On August 24, the DIA sent the Governor in Council a copy of the Form of Surrender to confirm the surrender of the reserve lands and to ask Quebec to proceed with the agreed-upon exchange (Exhibit P-69, Tab 397, letter from Superintendent General Stewart to the Governor in Council). The Order-in-Council approving the surrender was adopted on September 1 (Exhibit P-69, Tab 398, PC 1465) and a certified copy was sent to the DIA the following day (Exhibit P-69, Tab 399, Clerk of the Privy Council to Deputy Minister Mackenzie, September 2,

1925), and to the Under Secretary of State for registration (Exhibit P-69, Tab 402, letter from Deputy Minister Mackenzie to Under Secretary of State Mulvey, September 10, 1925).

[364] The registration of the surrender was confirmed on September 21 (Exhibit P-69, Tab 403, letter from Under Secretary of State Mulvey to Deputy Minister Mackenzie).

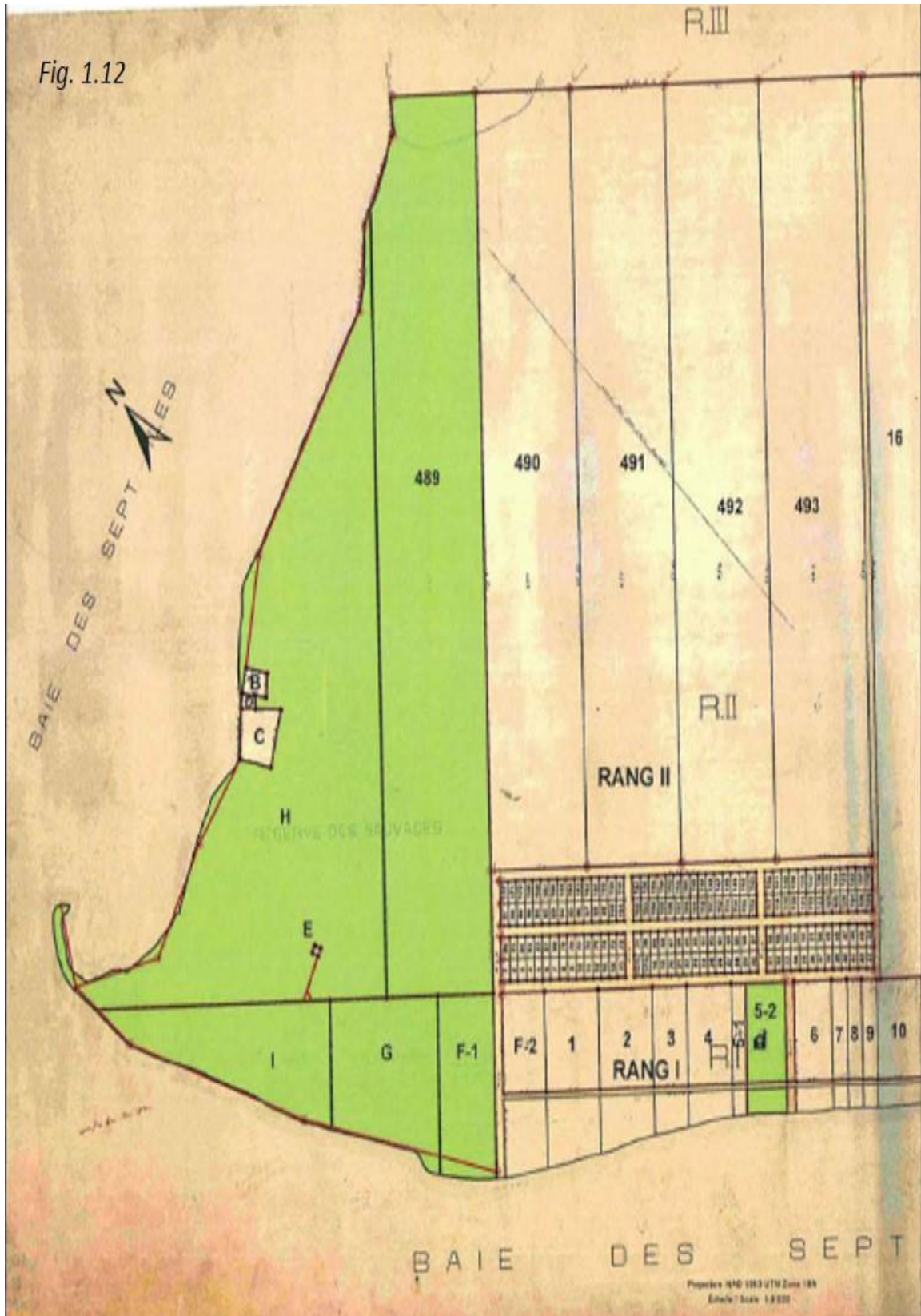
[365] The DIA then sent the Order-in-Council approving the surrender to the Quebec Department of Lands and Forests, asking it to send a copy of its Order-in-Council creating the new reserve as soon as it was approved (Exhibit P-69, Tab 401, letter from Deputy Minister Mackenzie to the Quebec Department of Lands and Forests, September 5, 1925).

[366] On October 1, the Province issued an Order-in-Council, this time to approve the creation of a new reserve (Exhibit P-69, Tab 404, Executive Council Report). A copy was then sent to the DIA (Exhibit P-69, Tab 405, letter from Deputy Minister Lemieux to Secretary McLean, October 9, 1925).

[367] As of that date, the original 1906 reserve, except for the chapel lot, was officially surrendered, namely 88.8 acres of land, and replaced by the Pointe-au-Sable Reserve, the total area of which was 255.5 acres.

[368] The plan below (Fig. 1.12) represents the 1925 reserve:

Fig. 1.12



K. Events subsequent to the surrender

[369] After the surrender, the Innu continued living on Lot 5-1 and the portion of Lot 5 that was still not part of the reserve, the Ross Lot. It was not until the 1960s that the Innu of Seven Islands began living on the Pointe-au-Sable Reserve (Exhibit P-26, Tab 503, letter from Jean-Baptiste Jean-Pierre et al to H. M. Jones, November 3, 1959; Exhibit P-22, Tab 507, letter from Jones to Jourdain, February 15, 1960).

[370] Following the 1925 surrender, several events marked the evolution of the Uashat Reserve. Without getting into specifics, as these events are not part of this dispute, a brief overview of the events following the surrender may nevertheless be useful to paint a more complete picture of the context surrounding the issues before the Court in this case.

[371] Twenty years after the surrender-exchange, the DIA acquired for \$2,000 from the Hudson's Bay Company, for the Innu of Uashat, Lot 4, Range 1, and the improvements on the lot (Exhibit P-26, Tab 444, letter from the DIA to Watson of the Hudson's Bay Company, January 26, 1945; Exhibit P-26, Tab 445, letter from Lindley of the Hudson's Bay Company to the Director of the Department of Mines and Resources, February 19, 1945; Exhibit P-26, Tab 446, letter from the DIA to the Hudson's Bay Company, March 3, 1945; Exhibit P-26, Tab 447, PC 1879, March 20, 1945; Exhibit P-26, Tab 448, letter from the DIA to the Department of Justice, March 24, 1945; Exhibit P-26, Tab 449, letter from the Department of Justice to the DIA, May 14, 1945; Exhibit P-26, Tab 450, memorandum from the Department of Mines and Resources, May 23, 1945; Exhibit P-26, Tab 451, letter from the DIA to the Deputy Minister of the Department of Justice, May 26, 1945; Exhibit P-26, Tab 453, memorandum from Inspector Thibeault of the DIA, August 21, 1945; Exhibit P-26, Tab 454, deed of sale by the Hudson's Bay Company, September 19, 1945; Exhibit P-26, Tab 455, Office of the Registrar in Saguenay to Justice Canada, September 20, 1945). On October 12, 1945, the transaction was registered with the Saguenay Registry Office (Exhibit P-26, Tab 456, Registry Office, Deed No. 10038, October 12, 1945). However, it was not until June 22, 1967, that Lot 4, Range 1, was formally added to the Uashat Reserve by Order-in-Council (Exhibit P-27, Tab 547, PC 1967-1252).

[372] Then, the Maliotenam reserve (Mary Town in Innu) was created by the acquisition of two parcels of land in Moisie, in August 1947 and April 1949 respectively (Exhibit P-26, Tab 461,

PC 1947-3451, August 26, 1947; Exhibit P-26, Tab 464, deed of sale between Her Majesty the Queen in Right of Canada and Wilfrid-Eugène Gallienne, January 27, 1948; Exhibit P-26, Tab 470, PC 1949-1793, April 12, 1949). Since then, the Uashat and Maliotenam reserves have joined to form a single band, though they are separated by several kilometres (Exhibit P-26, Tab 490, PC 6016, November 12, 1951, and letter from the DIA to the Seven Islands Agency, November 22, 1951).

[373] Following the construction of the railroad between Seven Islands and Schefferville in the 1950s, some Innu families settled near Schefferville (Exhibit P-71, Tab 466, testimony of Grégoire Jourdain, May 11, 2017; Exhibit P-26, Tab 496, letter from the Regional Supervisor of Indian Agencies, R. L. Boulanger, to the DIA, September 5, 1957). The DIA acquired land in 1967 that would later become the Matimekosh Reserve (Exhibit P-27, Tab 581, Matimekosh Land Title History, Natural Resources Canada, June 1, 2001). However, unlike in Maliotenam, the Innu of this new reserve decided, following a referendum held on January 10, 1970, to form their own band (Exhibit P-27, Tab 549, Seven Islands Band Council Resolution, October 10, 1969; Exhibit P-27, Tab 550, Seven Islands Band Council Resolution, November 15, 1969; Exhibit P-27, Tab 551, Notice of Referendum, December 22, 1969; Exhibit P-27, Tab 552, referendum result, January 19, 1970; Exhibit P-27, Tab 562, Order-in-Council establishing certain bands for the purposes of the *Indian Act*, PC 1973-3571, November 13, 1973).

[374] As for the Ross Lot, it was not acquired by the DIA until 1985 (Exhibit P-27, Tab 576, certificate of adjudication to Her Majesty the Queen in Right of Canada by the Deputy Sheriff, February 26, 1985, and index of immovables for Lots 5-1-A and 5-1-B, Range 1). The lot was then added to the Uashat Reserve by Order-in-Council in 1989 (Exhibit P-27, Tab 578, PC 1989-2060, October 12, 1989).

[375] Finally, in 2012, a series of lots was added to the Seven Islands Reserve for the benefit of the Innu of Uashat mak Mani-Utenam (Exhibit P-27, Tab 582, in a bundle, documents relating to the addition of lands to the Uashat Reserve in 2012, May 11, 2012).

IV. ISSUES

[376] Generally speaking, the dispute involves the issue of whether Canada breached its fiduciary obligations in the administration and oversight of the Uashat Reserve lands between 1906 and

1925 and at the time of the surrender of almost all of the reserve lots in 1925.

[377] In response, the Memorandum of Fact and Law of the Innu of Uashat raises six issues, which the Court reformulates as follows.

[378] First, relying on section 14 of the *SCTA*, the Innu of Uashat allege three types of breaches of Canada's legal obligations, on the basis of the following:

- a. the *Indian Act* or any other legislation pertaining to Indians or lands reserved for Indians (see paragraph 14(1)(b) of the *SCTA*);
- b. the provision of reserve lands (see paragraph 14(1)(c) of the *SCTA*); and
- c. Canada's administration of the assets of the First Nation (see paragraph 14(1)(c) of the *SCTA*).

[379] Next, the Innu of Uashat submit that Canada breached its fiduciary duties underlying each of the legal obligations mentioned above (a, b and c).

[380] Finally, the Innu of Uashat allege that Canada's above-mentioned breaches have caused them compensable losses (see subsection 14(1) of the *SCTA*).

[381] Canada added an additional issue, in the event that the Court allows the claim. It asks that the Court determine Canada's share of liability for the losses suffered by the Innu of Uashat.

[382] In short, the Court must answer the following questions:

1. Did Canada breach its legal and fiduciary obligations in the administration and oversight of the Uashat Reserve lands after the reserve was created in 1906?
 - 1.1. Did Canada take the necessary steps after the reserve was created to prevent encroachments on the reserved lands in Seven Islands?
 - 1.2. Did Canada act with due diligence at the time the reserve lots were sold by Quebec?

2. Did Canada breach its legal or fiduciary obligations in the context of the 1925 surrender?
3. If questions 1 and/or 2 are answered in the affirmative, did Canada's breaches result in a loss for the Innu of Uashat that is compensable by Canada?
4. If question 3 is answered in the affirmative, what is Canada's share of the liability for the loss suffered by the Innu of Uashat?

V. DID CANADA BREACH ITS DUTIES OF ADMINISTRATION AND OVERSIGHT OF THE RESERVE AFTER IT WAS CREATED IN 1906?

A. Did Canada take the necessary steps after the reserve was created to prevent encroachments on the reserved lands in Seven Islands?

1. Parties' claims

(a) Claims of the Innu of Uashat

[383] The Innu of Uashat state that Canada failed to fulfill its obligation to act diligently, which required it to take all the measures available to it to protect their reserve lands from the time the reserve was created in 1906.

[384] To establish this lack of diligence, the Innu of Uashat raise the following breaches committed before the lots of the reserve were sold:

1. Failure to take measures to **prevent encroachments** on the reserve:
 - a. Surveying: Although it had the necessary power to authorize a survey of the reserve, Canada did not take the necessary measures for the reserve to be surveyed following its creation in 1906. No physical demarcations were installed around the reserve to allow its boundaries to be clearly identified. No accurate plan of the reserve's location was drawn up. This resulted in confusion regarding the location and boundaries of the Uashat Reserve from the time it was created (Memorandum of the Innu of Uashat at paras 431–51).

- b. Description of the reserve: The Uashat Reserve was described incorrectly several times in the DIA's annual reports, especially with regard to its area, without the errors being rectified, attesting to Canada's lack of diligence in its management of the reserve at the time of the illegal sale of the reserve lots (Memorandum of the Innu of Uashat at paras 452–64).

(b) Canada's claims

[385] Canada argues that it acted, from the time of the reserve's creation in 1906 to the time of its surrender in 1925, with the diligence required in the circumstances and within the limits of the means available to it to protect the reserve lands.

[386] It responds as follows to the allegations that it breached its obligations:

1. With respect to **surveying**, Canada submits that the power to designate and survey reserve lands pursuant to *An Act respecting Indians and Indian Lands*, CSLC 1860, c 14, was held exclusively by Quebec. At the time, it was not until the reserve was created that, according to Canada, the Surveyor General of Canada was authorized to prepare subdivisions of lots in order to issue certificates of possession, lay out streets, etc. Accordingly, Canada submits that the Surveyor General of Canada could not survey public lands in Quebec at the time the reserve was created in 1906 (Canada's Memorandum at para 68–80). It adds that it verified the adequacy of the 1904 survey with two inspections in the field in 1907 and 1908, as well as taking all necessary measures to enable the Innu and third parties to locate the reserve and its boundaries (Canada's Memorandum at paras 240–70).
2. Canada submits that it has no share in the liability for an alleged error in the **description of the reserve** that led to the sale of the reserved lots. It submits that Quebec is solely liable for the sale of the reserve lots because it did not maintain its records correctly, having failed to record the reserved lots for the Innu of Uashat. Canada notes that Quebec admitted to this error in 1924. Canada also states that it has no obligation of oversight over Quebec, so it could reasonably expect Quebec to take the necessary measures to comply with the 1905 Order-in-Council regarding the transfer of lands for the creation of the Uashat Reserve. Furthermore, Canada

argues that this error led to the sale of the lots that Quebec believed to be available and that these sales constituted the trigger for the 1925 surrender-exchange (Canada's Memorandum at paras 305–35).

[387] As for the failure alleged by the Innu of Uashat to take measures to **prevent encroachments** on the reserve, Canada submits that the legislative framework existing at the time the Uashat Reserve was created required cooperation between the federal Crown and the Province. Because the latter was responsible for the selection, designation and surveying of the public lands that were to be converted into an Indian reserve, the creation of the Uashat Reserve could only be accomplished by the combined action of both levels of government. Its location was the result of difficult negotiations (Canada's Memorandum at paras 98, 104–110). Canada adds that the factual situation that arose following the creation of the reserve in 1906 resulted from the reserve creation process, during which cooperation with Quebec was difficult, despite the efforts of the federal Crown (Canada's Memorandum at paras 112–16, 198–235). In short, Canada argues that the sale of the reserve lots was caused not by a breach it committed, but rather by Quebec's inadequate record keeping (Canada's Memorandum at para 270).

2. The law

(a) State of the law: fiduciary duty

(i) Nature

[388] The idea that there is a fiduciary relationship between Canada and Indigenous peoples is not new in Canadian law. The basis for this relationship is said to be the British Crown's historical promise to protect the land rights of Indigenous peoples, or the simple fact that the Crown declared its sovereignty over Indigenous lands (Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013 at p 133).

[389] However, this relationship was long considered a "political trust". For decades, the courts described Canada's obligations to Indigenous peoples as political in nature, without any legal foundation. They were therefore considered insulated from any form of judicial review. (In *St Catharines Milling and Lumber Co v R* (1887), 13 SCR 577 at p 649, Justice Taschereau of the Supreme Court described the Crown's duty to Indigenous peoples in the following words: ". . . sacred political obligation, in the execution of which the state must be free from judicial

control” (taken from *Wewaykum Indian Band v Canada*, 2002 SCC 79 at para 73, [2002] 4 SCR 245). In the same case, Lord Watson of the Judicial Committee of the Privy Council wrote, “. . . the tenure of the Indians was a personal and usufructuary right, dependent upon the good will of the Sovereign” (*St Catherine’s Milling and Lumber Co v R* (1888), 14 App Cas 46 (JCPC).)

[390] It was not until 1973, in *Calder et al v Attorney-General of British Columbia*, [1973] SCR 313, that the Supreme Court of Canada recognized for the first time the existence of legally enforceable rights of Indigenous peoples derived from the fact that “when the settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries” (*Calder et al v Attorney-General of British Columbia*, [1973] SCR 313 at p 328). From that moment, courts have considered Aboriginal rights to be judicially enforceable.

[391] A decade later, in *Guerin v R*, [1984] 2 SCR 335 [*Guerin*], the Supreme Court of Canada confirmed the legal nature of the fiduciary relationship that binds Canada and Indigenous peoples:

It should be noted that fiduciary duties generally arise only with regard to obligations originating in a private law context. Public law duties, the performance of which requires the exercise of discretion, do not typically give rise to a fiduciary relationship. As the “political trust” cases indicate, the Crown is not normally viewed as a fiduciary in the exercise of its legislative or administrative function. The mere fact, however, that it is the Crown which is obligated to act on the Indians’ behalf does not of itself remove the Crown’s obligation from the scope of the fiduciary principle. As was pointed out earlier, the Indians’ interest in land is an independent legal interest. It is not a creation of either the legislative or executive branches of government. The Crown’s obligation to the Indians with respect to that interest is therefore not a public law duty. While it is not a private law duty in the strict sense either, it is nonetheless in the nature of a private law duty. Therefore, in this sui generis relationship, it is not improper to regard the Crown as a fiduciary. [Emphasis added; *Guerin* at p 385]

[392] *Guerin* established the *sui generis* nature of Canada’s fiduciary duty towards Indigenous peoples, in addition to declaring that Aboriginal title is an independent legal interest, the existence of which is not a creation of either the legislative or executive branches of government. For the Supreme Court of Canada, it is a *sui generis* duty given the “Indians’” right to their lands and their historical ties with Canada. Accordingly, although Canada’s fiduciary duty to Indigenous peoples does not constitute a trust, it is subject to principles similar to those which govern the law of trusts (*Guerin* at p 387).

[393] The Supreme Court of Canada recognized that Canada’s fiduciary obligations are rooted

in its discretion with respect to Indigenous peoples:

Through the confirmation in the *Indian Act* of the historic responsibility which the Crown has undertaken, to act on behalf of the Indians so as to protect their interests in transactions with third parties, Parliament has conferred upon the Crown a discretion to decide for itself where the Indians' best interests really lie.

...

This discretion on the part of the Crown, far from ousting, as the Crown contends, the jurisdiction of the courts to regulate the relationship between the Crown and the Indians, has the effect of transforming the Crown's obligation into a fiduciary one. [Emphasis added; *Guerin* at pp 383–84]

[394] In short, *Guerin* stands for the following proposition: “the existence of a public law duty does not exclude the possibility that the Crown undertook, in the discharge of that public law duty, obligations ‘in the nature of a private law duty’ towards aboriginal peoples” (*Wewaykum Indian Band v Canada*, 2002 SCC 79 at para 74, [2002] 4 SCR 245 [*Wewaykum*]).

[395] In other words, when Indigenous peoples have an independent legal interest, Canada may be bound by fiduciary obligations that are legal in nature and therefore judicially enforceable.

(ii) Scope

[396] However, it is important to note that *Guerin* did not involve the surrender of reserve lands for the purpose of granting a lease to a third party. It was only several years later that the Supreme Court made a broader statement about Canada's fiduciary duty towards Indigenous peoples, in *R v Sparrow*, [1990] 1 SCR 1075 [*Sparrow*]. In that case, the Court significantly expanded the scope of Canada's fiduciary duty in relation to its initial interpretation in *Guerin*:

In our opinion, *Guerin*, together with *R. v. Taylor and Williams* (1981), 34 O.R. (2d) 360, ground a general guiding principle for s. 35(1) [of the *Constitution Act, 1982*]. That is, the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship. [Emphasis added; *Sparrow* at p 1108]

[397] Accordingly, since *Sparrow*, it has been clear that Canada's fiduciary duty towards Indigenous peoples applies broadly to the relationship between Canada and Indigenous peoples. Moreover, these obligations were constitutionally entrenched in section 35(1) of the *Constitution Act, 1982* (John J. Borrows and Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials &*

Commentary, 5th ed, Markham, ON: LexisNexis Canada, 2008 at pp 418–19). Canada’s fiduciary duty towards Indigenous peoples is now understood to be a principle of constitutional law (J. Timothy S. McCabe, *The Honour of the Crown and its Fiduciary Duties to Aboriginal Peoples*, Markham, ON: LexisNexis Canada, 2008 at p 52).

[398] The existence of a fiduciary duty is not limited to the rights guaranteed by section 35 of the *Constitution Act, 1982*, or to reserve lands, as discussed in *Sparrow* and *Guerin*, respectively. As noted by the Supreme Court in *Wewaykum*, “[t]he fiduciary duty, where it exists, is called into existence to facilitate supervision of the high degree of discretionary control gradually assumed by the Crown over the lives of aboriginal peoples” [emphasis added; *Wewaykum* at para 79].

[399] Thus, Canada’s fiduciary duty may be called into existence whenever a statute, agreement or even a unilateral undertaking requires it to act for an Indigenous beneficiary, and that obligation carries with it a discretionary power (*Innu First Nation of Essipit v Her Majesty the Queen in Right of Canada*, 2017 SCTC 1 at para 209, citing *Canada v Kitselas First Nation*, 2014 FCA 150 at para 42).

(iii) Content

[400] As a fiduciary, Canada must exercise its discretionary control in accordance with the standard of conduct to which equity holds a fiduciary (*Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 at para 46, [2018] 1 SCR 83 [*Williams Lake*]). The fiduciary must always act in the best interest of the beneficiary (Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013 at p 195). Accordingly, in its capacity as a fiduciary, Canada has a duty to act with *uberrima fides*, utmost good faith, in the best interest of Indigenous peoples (John J. Borrows and Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials & Commentary*, 5th ed, Markham, ON: LexisNexis Canada, 2008 at p 423):

The existence of such unconscionability is the key to a conclusion that the Crown breached its fiduciary duty. Equity will not countenance unconscionable behaviour in a fiduciary, whose duty is that of utmost loyalty to his principal. [Emphasis added; *Guerin* at pp 388–89]

[401] Canada may therefore not allow its own interests or those of third parties to interfere with its obligations towards Indigenous peoples. “The duty on the Crown as fiduciary was ‘that of a

man of ordinary prudence in managing his own affairs” (*Blueberry River Indian Band v Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344 at para 104 [*Blueberry River*]). This includes the duty to act in a timely manner (J. Timothy S. McCabe, *The Honour of the Crown and its Fiduciary Duties to Aboriginal Peoples*, Markham, ON: LexisNexis Canada, 2008 at p 196):

A fiduciary must deal with the property he is entrusted to look after as if it was his own. The fiduciary must act with reasonable skill and diligence. Generally, I think that must include acting in a timely manner. [*Fairford First Nation v Canada (AG)*, [1999] 2 FC 48 at para 221, [1998] FCJ No 1632]

[402] Moreover, Canada must avoid all conflicts of interest and cannot unilaterally renounce its responsibility or duty to account for its management to the beneficiary (Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013 at p 195). This includes a duty to provide full disclosure of its actions while acting in its fiduciary capacity and a duty to forego personal benefit, as well as a duty of rigorous accountability (John J. Borrows and Leonard I. Rotman, *Aboriginal Legal Issues: Cases, Materials & Commentary*, 5th ed, Markham, ON: LexisNexis Canada, 2008 at p 423).

[403] That said, the fiduciary duty does not exist at large. It arises from Canada’s discretionary control over a specific or cognizable Aboriginal interest (*Williams Lake* at para 47; *Wewaykum* at paras 81, 83, 85; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 18, [2004] 3 SCR 511; *Manitoba Metis Federation Inc v Canada (AG)*, 2013 SCC 14 at para 51, [2013] 1 SCR 623). Accordingly, the content of Canada’s fiduciary duty varies with the nature and importance of the specific and cognizable Aboriginal interest sought to be protected (*Wewaykum* at paras 86, subpara 1; 92). Thus, not every aspect of the fiduciary relationship between Canada and Indigenous peoples will give rise to fiduciary duties that are subject to judicial oversight (*Quebec (AG) v Canada (National Energy Board)*, [1994] 1 SCR 159 at p 183).

[404] Canada’s duty with regard to reserve lands must be assessed in relation to an Aboriginal interest in specific lands (*Williams Lake* at para 90). Furthermore, when such a duty exists, “[t]he Crown fulfills its fiduciary obligation by meeting the prescribed standard of conduct, not by delivering a particular result” (*Williams Lake* at para 48). It is therefore the process rather than the product that is determinative.

[405] Accordingly, to determine whether Canada acted consistently with its fiduciary duties with regard to reserve lands, at the time of the creation of the reserve or later, what must be considered are Canada's actions and omissions in relation to that land, not in relation to other land or to the band's best interest in general (*Williams Lake* at para 73).

i. Prior to reserve creation

[406] In *Wewaykum*, the Supreme Court of Canada set out the content of Canada's fiduciary duty with regard to reserve lands. First, the Court held the following with respect to Canada's obligations during the reserve creation process:

Prior to reserve creation, the Crown exercises a public law function under the *Indian Act* — which is subject to supervision by the courts exercising public law remedies. At that stage a fiduciary relationship may also arise but, in that respect, the Crown's duty is limited to the basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the aboriginal beneficiaries. [Emphasis added; *Wewaykum* at para 86, subpara 2]

ii. Once a reserve is created

[407] Once the reserve has been created, Canada remains bound by its obligations of loyalty, good faith, full disclosure and ordinary prudence in the best interest of the Indigenous people (J. Timothy S. McCabe, *The Honour of the Crown and its Fiduciary Duties to Aboriginal Peoples*, Markham, ON: LexisNexis Canada, 2008 at p 200). Now that the band has acquired a legal interest in the reserve, the content of Canada's fiduciary duty has expanded:

Once a reserve is created, the content of the Crown's fiduciary duty expands to include the protection and preservation of the band's quasi-proprietary interest in the reserve from exploitation. [Emphasis added; *Wewaykum* at para 86, subpara 3]

[408] This means that Canada has a duty to act with “ordinary diligence . . . to avoid invasion or destruction of the band's quasi-property interest”, whether by an exploitative bargain with third parties or exploitation by the Crown itself (*Wewaykum* at para 100).

[409] In the specific context of reserve lands, the concept of an “exploitative bargain” means any form of threat to the existence of the Aboriginal interest in the reserve lands. Accordingly, Canada's fiduciary duty requires it to be eternally vigilant concerning such threats and diligent in repelling them (J. Timothy S. McCabe, *The Honour of the Crown and its Fiduciary Duties to Aboriginal*

Peoples, Markham, ON: LexisNexis Canada, 2008 at p 176).

iii. When reserve lands are surrendered

[410] *A priori*, when Canada has to decide whether or not to agree to the surrender of reserve lands, it must, because of the band's specific interest in those lands, act solely in the band's interest.

[411] However, in *Blueberry River*, the Supreme Court added that Canada must also respect the band's autonomy, and that the band remains entirely free to consent to the surrender or not. This is because the provisions of the *Indian Act* governing the surrender of reserve lands seek to strike a balance between the band's autonomy and the government's duty to protect the band's interests (*Blueberry River* at para 35). Accordingly, in the context of the surrender of reserve lands, the Supreme Court held that the Crown's duty is founded only on preventing exploitative bargains (*Blueberry River* at para 33, citing *Guerin*).

[412] In that case, the Supreme Court of Canada decided that Canada did not have a fiduciary obligation to prevent the surrender, since the evidence demonstrated that the band, which had been informed of the planned surrender of the reserve lands, was given the opportunity to debate it at a surrender meeting and also informally within its family and hunting groups. It had also been informed of and understood the consequences of the surrender and had not abnegated its power of decision over the surrender (*Blueberry River* at paras 39–40).

[413] It therefore appears from the case law relating to the surrender of reserve lands that the content of the fiduciary obligation is limited to protection against exploitation, without, however, requiring Canada to promote the interests of the band or to act in its best interests (Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013 at p 133). Accordingly, it is for the courts to verify whether the price and other conditions of the surrender, as well as the circumstances, were fair (Sébastien Grammond, *Terms of Coexistence: Indigenous Peoples and Canadian Law*, Toronto: Carswell, 2013 at p 133).

[414] For example, in *Semiahmoo Indian Band v Canada*, [1998] 1 FC 3, [1998] 1 CNLR 250 (CA) [*Semiahmoo*], the Federal Court of Appeal held that Canada had breached its fiduciary duty because one of the conditions of surrender had never been met and the band had acted under threat of expropriation, which had the effect of vitiating its consent.

[415] The Federal Court of Appeal also stated in *Semiahmoo* that Canada's fiduciary duty is to withhold its own consent to surrender where the transaction is exploitative. Canada therefore has a duty to scrutinize the proposed transaction to ensure that it is not an exploitative bargain. Therefore, in the context of a surrender, Canada is held to a strict standard of conduct (*Semiahmoo* at para 45).

3. Decision and analysis

[416] What is the situation here?

[417] Did Canada take the necessary measures after creating the reserve to prevent encroachments on the reserve lands?

[418] Let us first consider the issue of the surveying of the reserve.

(a) Surveying

[419] The Innu of Uashat had a specific and cognizable Aboriginal interest in the reserve lands at the time the reserve was created. After its creation, the transfer by order of the usufruct from the Government of Quebec to the federal government effectively assigned to the latter the administration of public lands of the Province.

[420] The Court is of the view that the scope of Quebec's power with respect to any surveying completed *before* the creation of the reserve in 1906 is clear. The issue is therefore what Canada's responsibilities were after the reserve was created.

[421] While the legislative history involving the reserve creation process is interesting, it is irrelevant to the extent that the issue before us is the powers and duties of the Crown following the creation of the reserve.

[422] Once the reserve was created in 1906, Canada had the power to conduct a survey. Section 20 of *An Act Respecting Indians*, RSC 1906, c 81 [1906 *Indian Act*], specifically provides for it:

20. The Superintendent General may authorize surveys, plans and reports to be made of any reserve for Indians, showing and distinguishing the improved lands, the forests and lands fit for settlement, and such other information as is

required; and may authorize the whole or any portion of a reserve to be subdivided into lots.

[423] As noted in the section on the fiduciary duty, and in accordance with the Supreme Court of Canada's teachings in *Wewaykum*, the creation of the reserve called into existence Canada's basic obligations of loyalty, good faith in the discharge of its mandate, providing full disclosure appropriate to the subject matter, and acting with ordinary prudence with a view to the best interest of the Indigenous beneficiaries.

[424] As a fiduciary, Canada must act with the care and diligence of a "man of ordinary prudence" managing his own affairs.

[425] What would a reasonably prudent and diligent land owner have done in the same circumstances? This is the question the Court must ask itself when considering the measures that Canada should have taken to prevent any encroachment on the lands of the Uashat Reserve.

[426] According to the Court, this reasonably prudent land owner would first have recognized the importance of an accurate plan and would have marked the boundaries of the reserve with a series of visible physical markers to secure the title and ensure that the reserve lands set aside for the Innu of Uashat were clearly defined and identifiable by all.

[427] It is critical for the owner of a piece of land to determine, clearly and unambiguously, where this land's boundaries are. This enables everybody to know where these boundaries are located and therefore what will constitute a trespass or encroachment on the property.

[428] The surveyor is a key player in the creation of the reserve and has a crucial role in preventing conflicts between neighbours.

[429] We will now take a closer look at whether Quebec's 1903 survey was sufficient to prevent the encroachments on the reserve created in 1906.

[430] The importance of having a properly demarcated reserve to protect against the growing number of Euro-Canadian settlers was highlighted by the Innu and Agent Gagnon as early as September 1901 (Exhibit P-62, Tab 33, letter from Agent Gagnon to Secretary McLean, Department of Indian Affairs, September 20, 1901).

[431] The first planned reserve, which was abandoned, was surveyed by Lefrançois in 1903. (See summary of the evidence, paragraphs 110 et seq. This proposed reserve comprised lots B, C, D, E, F-1, G, H, I and 489; Exhibit P-63, Tab 92, Lefrançois's survey plan and notes, October 5, 1903.) The plan of the proposed reserve was submitted to the DIA on May 10, 1904.

[432] Lefrançois also surveyed the village of Seven Islands at the same time. He received instructions to [TRANSLATION] "mark . . . Gédéon Gagnon's . . . surveying posts . . . village of Seven Islands" and to "paint numbers on the posts demarcating the lots [of the] village of Seven Islands" (Exhibit P-20, Tab 117, minutes or record of certain surveying work performed at Seven Islands, township of Letellier, county of Saguenay, village of Seven Islands, by N. J. Émile Lefrançois, March 28, 1904; Exhibit P-20, Tab 163, survey book, L105 Letellier, N. J. É. Lefrançois, December 15, 1904; Exhibit P-20, Tab 164, survey book, report, minutes and telegram, N. J. Émile Lefrançois, December 15, 1904; Exhibit P-45, Tab M-12, book of field notes for part of the Letellier Township, N. J. É. Lefrançois, A.P., Québec, March 28, 1904, filed under number C0121904, Cadastre of Quebec, to accompany the plan (boundary line) T612 C.L.S.R.; Exhibit P-20, Tab 150, Taché to Lefrançois (telegram), September 29, 1904, exhibit attached to the minutes or report of certain survey work performed at Seven Islands, township of Letellier, county of Saguenay, village of Seven Islands, by N. J. Émile Lefrançois).

[433] He then subdivided the village lots in Range 2. On the survey plan he drew up, he illustrated the markers he had placed in the field. According to his plan and survey book, it is also possible to see the presence and location of posts and markers planted by Gédéon Gagnon in 1896.

[434] In his survey book, Lefrançois confirms that he planted numbered posts at the road corners and at the extremities of each of the divisions. He states that between the lots, he planted non-numbered posts, but [TRANSLATION] "sufficiently wide and solidly implanted in the soil" and the posts are located on the streets, as demonstrated by the survey plan (Exhibit P-45, Tab M-11, plan of a portion of the village of Seven Islands, county of Saguenay, made in accordance with the instructions of the Department of Mines and Fisheries in Québec on August 8, 1903, N. J. Émile Lefrançois, surveyor, March 28, 1904; Exhibit P-20, Tab 163, survey book, L105 Letellier, N. J. Émile Lefrançois, December 15, 1904; P-20, Tab 164, survey book, report, minutes and telegram, N. J. Émile Lefrançois, December 15, 1904 at p 5).

[435] Lefrançois also worked on the subdivision of Lot 5, thereby creating lots 5-1 (the Ross Lot) and 5-2 (the chapel and cemetery). He traced, among other things, a road between ranges 1 and 2. These two operations were also marked by markers and posts (Exhibit P-20, Tab 163, survey book, L105 Letellier, N. J. É. Lefrançois, December 15, 1904, at pp 7, 83; P-45, Tab M-11, plan of part of the village of Seven Islands, county of Saguenay, prepared pursuant to instructions from the Department of Mines and Fisheries in Québec dated August 8, 1903, N. J. Émile Lefrançois, March 28, 1904; take note also of the new specification of Lot 5 in July 1905: C-E Gauvin, [TRANSLATION] “New Specification of Lot No. 5”, July 14, 1905, Exhibit P-65, Tab 185).

[436] What is clear is that the surveyor used several physical markers that were visible from a distance. His markings were intended to, among other things, clearly identify the boundaries of the proposed reserve of 1903.

[437] The new proposal for a reserve began to take shape in early 1905. Although the reserve proposed and surveyed in 1903 by Lefrançois was still considered woodlot, Agent Scott proposed a new solution with the addition of 20 acres of land on lots located near the chapel.

[438] Over the course of 1905, a great deal of correspondence took place between the DIA and Quebec regarding the vacant lots and the work required to set aside the new lands identified by Agent Scott (see summary of the evidence, subtitle III.E.).

[439] On August 24, a tripartite agreement was reached by the DIA, represented by Agent Scott, Reverend Father Boyer of the Seven Islands Mission and Agent Caron of the Quebec Department of Forests and Lands, as well as Paul Blouin, representative of the Quebec’s Minister of Lands.

[440] Together, they specifically identified the lots to be included in the creation of the reserve (Lot 5-2, Range 1, and lots 25 to 35, 52 to 62, 111 to 121, 138 to 148 and 492, Range 2; Exhibit P-65, Tab 193, Tripartite Agreement; Exhibit P-65, Tab 194, letter from Agent Scott to the DIA, August 28, 1905).

[441] In a letter written to Secretary McLean of the DIA on December 10, Agent Scott raised the risk of disputes associated with the lack of clear boundaries and markers identifying the perimeter of the reserve. Agent Scott noted that conducting the survey would cost \$100:

As the section of land on which the reserve will be located, was surveyed, en Bloc, and the division lines on the plan are not marked on the land, it would be necessary to have the section measured and the boundaries marked by a surveyor, to avoid disputes in future, this would probably cost about one hundred dollars . . . [Emphasis added; Exhibit P-65, Tab 203]

[442] A few days later, the Chief Surveyor of the DIA recommended the allocation of a budget of \$1,500 for the process of creating the reserve, an amount that included surveying fees (Exhibit P-65, Tab 204, letter from Chief Surveyor Bray of the DIA, December 14, 1905).

[443] On July 16, 1906, McLean confirmed by letter to Scott that a budget had been set aside for the creation of the reserve. He wrote that a blueprint of the reserve was enclosed with the letter and asked Scott to prepare a larger-scale plan of the reserve:

The land to be reserved for the church and cemetery should be very clearly defined. Enclosed herewith is a blue print copy of the reserve, which you will probably find useful. Kindly prepare from it a sketch on a larger scale, if necessary, showing the subdivision you propose should be surveyed by the Government Surveyor, as well as the land to be reserved for the church and the cemetery. [Exhibit P-66, Tab 224]

[444] On September 1, Scott submitted a report to the DIA in which he described the reserve inaccurately. He also specifically stated that there was a risk that the public would trespass on the reserve and asked that it be surveyed and that markers be installed to limit any confusion as to its boundaries (Exhibit P-66, Tab 225, report by Agent Scott to Deputy Superintendent General Pedley, at p 53).

[445] On June 24, 1907, Agent Scott sent his final report to Secretary McLean. He attached a plan of the village and explained the state of the situation with respect to the possession and occupation of certain lots (Lot 5), the situation involving the houses of the Innu off the reserve and the presence of a settler, Mr. Rochette, on the church lot (Exhibit P-66, Tab 228, report by Agent Scott to Secretary McLean, June 24, 1907).

[446] He also clearly informed McLean of the need to have the reserve surveyed and have markers placed to demarcate the boundaries to prevent the harvesting of wood by settlers within the reserve. Scott noted that this work could be carried out for a relatively low cost during the summer months while the surveyors were on location:

The Reserve should be surveyed and the boundaries marked and thus prevent the white settlers from cutting fire-wood and other timber within the line, this could be done at small expense as during summer surveyors often call at the place. [Emphasis added.]

[447] On July 2, Chief Surveyor Bray wrote to the Deputy Minister to recommend that the amount of \$1,500 again be voted on by Parliament, despite the new information contained in Agent Scott's report to the effect that it would no longer be necessary to offer compensation to the missionaries or to purchase the Ross Lot. While he did not expressly mention the need for the survey, we know from the history of the file that surveying fees were included in the initial budget (Exhibit P-66, Tab 229, memorandum from Chief Surveyor Bray to the Deputy Minister of the DIA).

[448] On July 12, Secretary McLean wrote to Agent Tremblay, who was new to the position, to provide him with a plan of the reserve.

[449] In his letter, he questioned the need for the survey. He stated that a survey had been recently carried out by Quebec and that markers had been installed. He nevertheless asked him to inform the DIA in case it considered it important to have a new survey performed and, if necessary, plant new posts, as recommended by Tremblay's predecessor, Agent Scott:

The late Indian Agent, Mr. Scott, has requested that the Reserve should be surveyed and the boundaries marked. All these lands were surveyed at a recent date by the Provincial Government, and the posts then planted should be easily found. It would be well for you to make a special search, and if necessary, plant substantial new posts by the side of those planted by the surveyor, but do not on any account remove the posts planted by the surveyor. If you find that a new survey is absolutely necessary you will please report in full to the Department. [Emphasis added; Exhibit P-66, Tab 230]

[450] Although Tremblay confirmed receipt of this letter, there is no evidence indicating that he followed these instructions.

[451] Canada is of the view that Tremblay likely determined, after visiting the site and verifying the posts, that Lefrançois's 1904 survey was sufficient, since he did not ask that it be redone (Canada's Memorandum at para 261).

[452] The Tribunal finds it curious that McLean asked Tremblay, the new agent, whether he considered this survey "absolutely necessary".

[453] McLean seemed to be insinuating that such a survey was not essential, which may partly explain why Tremblay never left any records regarding the issue of the surveying of the reserve creating in 1906.

[454] Again, the Tribunal notes a change in the DIA's intentions with respect to the surveying of the reserve (as mentioned above, the budget set aside for a new survey was approximately \$100).

[455] The confusion that followed between then and 1925 regarding the location of the reserve implies that Tremblay carried out none of the DIA's instructions to him on this point.

[456] One year later, in a report dated September 9, 1908, Inspector J.A. MacRae wrote that he had promised Chief McKenzie a blueprint of the reserve. Once obtained, this reserve plan would be sent to the Agent, Dr. Tremblay, for public posting. This shows that it was necessary to post a plan of the reserve to enable the public, including Indigenous people and settlers, to visualize its boundaries.

[457] As raised by the Innu of Uashat, it is highly surprising to read in this report that the Innu were satisfied with their reserve and that the reserve had "defined boundaries", while the report nevertheless stipulates that half of the Innu houses were located outside the reserve and that it was necessary to send a blueprint of the reserve to Chief McKenzie and have it publicly posted (Memorandum of the Innu of Uashat at para 193).

[458] On December 4, Chief Surveyor Bray recommended that the amount of \$1,500 be voted on again by Parliament (no evidence was filed on this point) to take into account the land issues in Seven Islands that had yet to be resolved (Exhibit P-66, Tab 242).

[459] The boundary-marking exercise, performed so scrupulously by Surveyor Lefrançois in 1903, was not repeated when the reserve was created in 1906. Despite the numerous requests to this effect made by Agent Scott, the newly created reserve was never surveyed.

[460] It is also worth noting that in 1919, Father Pétel saw only a single marker, at the corner of Lot 6, on which "Réserve" was written (Exhibit P-23, Tab 319, letter (and translation) from Father Pétel, Missionary to the Indians, to the Minister of Affairs, September 26, 1919; Exhibit P-23, Tab 322, letter from J. D. McLean to Father Pétel, October 7, 1919; see also the testimony of Jean-

Pierre Garneau, transcript of hearing, April 12, 2018, Exhibit P-75, Tab 4, at pp 4–6). This lot is not within the reserve created in 1906, but falls well outside of it.

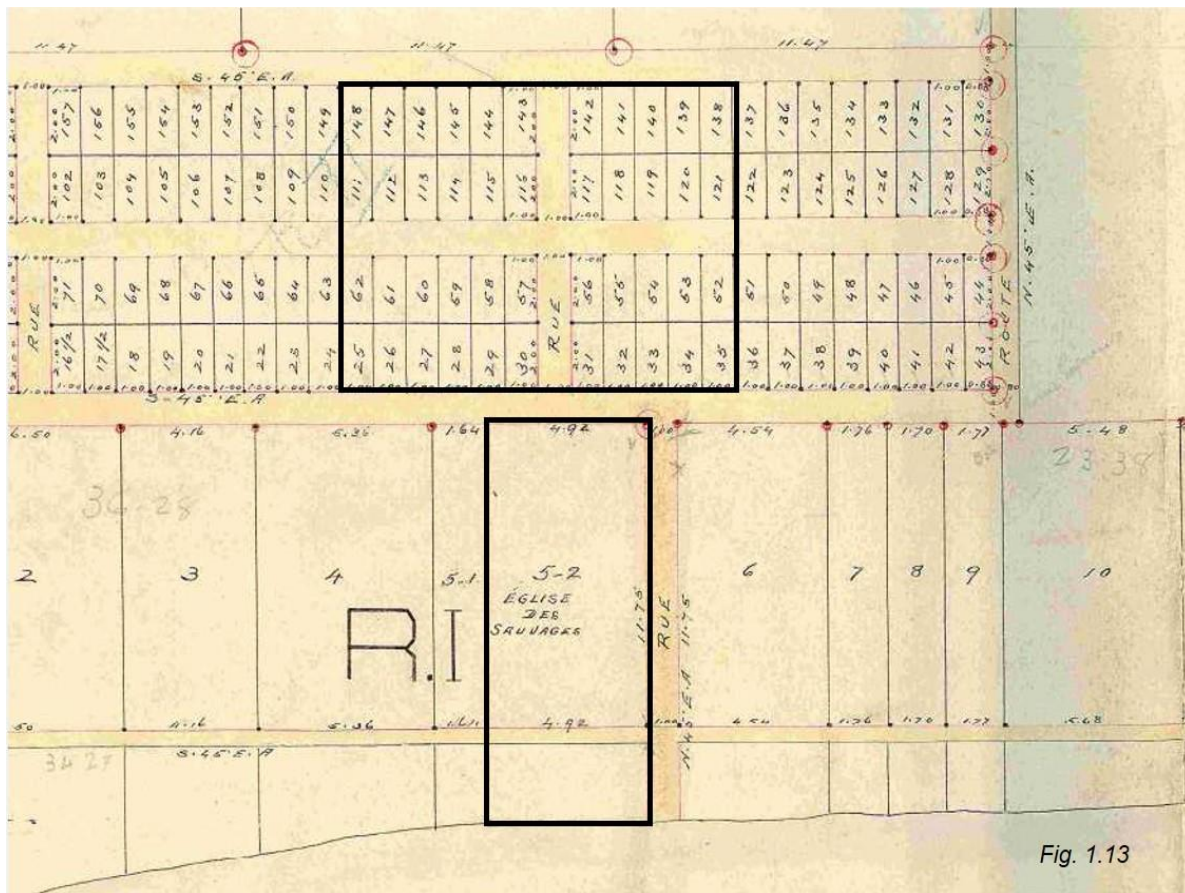
[461] The Tribunal notes that a single marker does not allow for an adequate demarcation of the 44 lots of Range 2 within the reserve.

[462] Years later, in April 1921, following the sale of several lots on the reserve by Quebec, Agent MacDougal wrote that “[t]he reserve is not fenced and there are no landmarks to indicate its limits” (Exhibit P-67, Tab 322, letter from Agent MacDougal to Secretary McLean, April 28, 1921).

[463] Canada submits, in its Memorandum of Fact and Law, that the lack of clearing or building on the reserve meant that it was impossible for MacDougal to suspect that the Government of Quebec had sold reserve lots by mail (Canada’s Memorandum at para 332). Canada claims that it was for this reason that the DIA did not bring this up sooner with Quebec.

[464] Canada notes that all of the lots constituting the 1906 reserve were surveyed by Lefrançois when he performed his work. However, as we saw from the facts set out above, the lots constituting the 1906 reserve were not those marked by Lefrançois.

[465] The photograph of the plan below (Fig. 1.13) clearly illustrates which lots from Range 2 were selected for the 1906 reserve from those surveyed and identified on Lefrançois’s survey plan. The superposition of the boundaries of the 1906 reserve can clearly be seen on the plan dating from 1904. From this plan, one can observe that the markers planted by Lefrançois do not demarcate the reserve that was ultimately created in 1906.



[466] The steps taken by Lefrançois to demarcate the reserve proposed in 1903 were not taken for the 1906 reserve.

[467] It is essential to note here that Agent Scott, who was on location, was better placed than anybody else to recognize that an additional survey would be useful to prevent confusion over the boundaries of the reserve.

[468] He participated in the tripartite agreement of August 24, 1905, he saw the lots that were surveyed by Lefrançois, he knew the needs of the Innu and he was conscious of the Euro-Canadian pressure on the land located in the heart of the village. He was the one who proposed lots that differed from those of the original reserve but that better corresponded to the needs of the Innu. He concluded that this new reserve should be surveyed because “. . . the division lines on the plan are not marked on the land . . .” (Exhibit P-65, Tab 203, letter from Agent Scott to Secretary McLean, December 10, 1905). According to the Tribunal, he is the best possible witness to testify on such an issue.

[469] The Tribunal notes from documents received as evidence that at the time the reserve was created and during the years that followed, it was imperative that the lands set aside for the Innu of Uashat be surveyed and that a marking of the boundaries was requested multiple times to avoid encroachment by settlers living nearby.

[470] On top of these many requests, there is the fact that a budget including surveying fees was allocated, year after year, from the time the reserve was created.

[471] In conclusion, while Canada is of the view that the DIA took all necessary measures following the creation of the reserve to protect the Innu's quasi-proprietary interest and that Lefrançois's survey was sufficient to allow the Innu and third parties to know the location and boundaries of the reserve, the Tribunal finds instead that Canada had a duty to survey and clearly mark the boundaries of the reserve to avoid confusion and thus prevent any encroachment on the reserve lands.

[472] The Tribunal also notes that Canada's prevarication and the lack of rigorous follow-up regarding the surveying of the reserve and the use of the funds allocated by Parliament constitute definite shortcomings in its performance of its fiduciary duties.

[473] The Tribunal therefore finds that Canada's failure to survey and mark the reserve to protect the Innu's interest in the reserve lands constitutes a breach of its fiduciary duty.

(b) Description of the reserve

[474] Let us now consider the allegation of Canada's lack of diligence in its description of the reserve.

[475] The evidence leaves no doubt that the reserve established in 1906 was incorrectly described several times in the DIA's annual reports and that there were significant confusion and several erroneous beliefs as to its size and location between 1906 and 1925 among the stakeholders at the time, particularly the Innu, the Hudson's Bay Company, missionaries from the Catholic Church, the Province of Quebec, the municipality and the Ross family.

[476] The Tribunal notes that the confusion surrounding the location and size of the reserve began in 1906, when Agent Scott described the new reserve incorrectly in his annual report and the DIA

neither noticed the error nor made any effort to rectify it (Exhibit P-66, Tab 225, report by Agent Scott to Deputy Superintendent General Pedley, September 1, 1906; Exhibit P-22, Tab 246, letter from Secretary McLean to Agent Scott, September 24, 1906).

[477] From 1913 to 1925, Agent MacDougal stated in his annual report that the reserve had an area of 6 acres instead of 94.57 acres (Exhibit P-66, tabs 259, 262 and 268, annual reports of the DIA for 1912–13, 1913–14 and 1914–15; Exhibit P-67, tabs 286, 289, 293, 297, 309, 317, 327 and 333, annual reports of the DIA for 1915–16, 1916–17, 1917–18, 1918–19, 1919–20, 1920–21, 1921–22 and 1922–23; Exhibit P-68, tabs 338 and 388, annual reports of the DIA for 1923–24 and 1924–25). This error by the physician, reproduced many times over, reveals how little attention he accorded to his agency work and the lack of care and diligence he brought to the position.

[478] In 1914, the municipality estimated that 38 Innu houses were located off the reserve. It was clearly confusing houses located on the reserve with those located off the reserve. The municipality even proposed that Canada grant the Innu a reserve, suggesting that it was unaware of the very existence of the reserve created in 1906 (Exhibit P-66, Tab 264, letter from F. H. Vignault, Secretary Treasurer, to Agent MacDougal, December 4, 1914; Exhibit P-66, Tab 263, 1914 Assessment Rolls for Seven Islands).

[479] In July 1915, Inspector Parker estimated that there were only 25 Innu houses located off the reserve in Seven Islands (Exhibit P-66, Tab 272, report by Inspector Parker to the Deputy Superintendent General of the DIA, July 23, 1915).

[480] On November 30, the municipality informed the DIA that the Innu were refusing to pay municipal taxes on the grounds that they believed their houses were situated on a reserve (Exhibit P-66, Tab 278, letter from Secretary Treasurer Vignault to Agent MacDougal).

[481] According to the 1918 municipal assessment roll, there were 24 Innu houses situated off the reserve (Exhibit P-67, Tab 295).

[482] In September 1919, Father Pétel made the DIA aware of the sale of certain lots of the reserve and explained that Quebec refused to recognize the 1906 reserve. According to him, the Crown Lands Agent, Edmond Joncas, was willing to recognize only the proposed reserve surveyed by Lefrançois in 1903 (Exhibit P-67, Tab 299, letter from Reverend Father Pétel to the DIA,

September 26, 1919).

[483] Pétel also informed the DIA that the municipality had stated that it did not know where the reserve was located and that, when provided with a description of its boundaries, it refused to believe that it existed:

[TRANSLATION]

Despite all the explanations I provided to the Municipal Council, it would not listen to reason. Hence our difficulties. [Exhibit P-67, Tab 299, letter from Reverend Father Pétel to the DIA, September 26, 1919]

[484] One year later, on September 15, 1920, it was Father Brière who did not seem to know exactly where the reserve was located (Exhibit P-67, Tab 313, letter from J. M. Brière, Missionary, to the DIA).

[485] In a memorandum dated October 7, 1919, Inspector Parker acknowledged the great confusion that reigned at that time in Seven Islands:

The attached letter refers to taxes on Indian dwellings, which it is claimed, are built on municipal property. The Department refused, some years ago, to pay the taxes. There has always been a doubt, however, amongst Seven Islands people as [to] what constituted the Indian Reserve. I have shown them the blue print as supplied to me by the Department but there are some who claim that the location of the reserve is changed. [Emphasis added; Exhibit P-67, Tab 303, letter from Inspector Parker to Chief Surveyor Bray]

[486] On May 12, 1922, the Hudson's Bay Company, believing that the Innu had no reserve, informed the DIA that it would be willing to sell part of Lot 4 (Exhibit P-67, Tab 328, letter from Rousseau, of the Hudson's Bay Company, to Agent MacDougal).

[487] In September 1923, following his visit to the reserve, Inspector Jean noted the confusion regarding its location and boundaries. He wrote that the Mayor of Seven Islands and Bob Ross were of the view that the latter was the owner of Lot 5, including the chapel and cemetery. Moreover, he made a mistake and overestimated the number of lots sold, illustrating yet again both the confusion in Seven Islands and the lack of rigour employed by the members of the DIA (Exhibit P-23, Tab 366, memorandum from Inspector Jean to Secretary McLean, September 5, 1923).

[488] In June 1924, the Mayor of Seven Islands contacted the federal Member of Parliament to ask him to intervene to ensure that the DIA purchased the lands occupied by the Innu to create a reserve at Seven Islands (Exhibit P-68, Tab 341, letter from Mayor Romeril to federal Member of Parliament Savard, June 16, 1924).

[489] On August 25, 1924, Inspector Bury reported on his visit to Seven Islands. Ironically, while Inspector Jean overestimated the number of lots sold, Bury underestimated the number (Exhibit P-68, Tab 347, memorandum from Inspector H. J. Bury).

[490] The same day, the Assistant Deputy Minister of the DIA wrote to Québec to point out the confusion surrounding the reserve and report the sale of the reserve lots. He copied Bury's incomplete enumeration of the reserve lots sold by Quebec (Exhibit P-68, Tab 345, letter from the Assistant Deputy Minister of the DIA, A. F. MacKenzie, to Agent Michaud, August 25, 1924).

[491] Canada's repeated errors and omissions illustrate a lack of reasonable diligence in its management of the reserve. It is clear that its efforts to dispel the confusion over the years were inadequate. They did not work.

[492] In light of this evidence, the Tribunal finds that Canada did not act with the same care that it would have taken in managing its own affairs.

B. Did Canada act diligently following the sale of the reserve lots by Quebec?

1. Parties' claims

(a) Claims of the Innu of Uashat

[493] The Innu submit that Canada did not take the necessary measures to **stop the encroachments** on the reserve (Memorandum of the Innu of Uashat at paras 525–34). In particular, they raise the failure to take the following measures:

- a. **Ejectment:** Under the provisions of the *Indian Act* as it then applied, Canada had several avenues available to it to rectify the illegal encroachments of the reserve lands. During the period in question, Canada used its powers to eject squatters from other reserves. However, it failed to use its remedial powers in the case of the

Uashat Reserve, which constitutes a violation of its fiduciary duties to protect the interests of the Innu (Memorandum of the Innu of Uashat at paras 467–96).

- b. **Cancellation:** Canada honoured the location tickets and letters patent issued by the Government of Quebec despite the fact that the transactions granting rights in the reserve lands to third parties were invalid from the outset because Quebec did not possess the necessary jurisdiction and the specific mechanism for this set out in the *Indian Act* as it then applied was not followed. However, because of its fiduciary obligations, Canada was required to oppose these sales of lots on the reserve and take any measures available to it to do so, including its power to initiate procedures to obtain the cancellation of the rights erroneously granted by the Province (Memorandum of the Innu of Uashat at paras 497–524).

(b) Canada's claims

[494] Canada submits that it has acted in a manner consistent with the honour of the Crown and its fiduciary obligations with respect to the Uashat Reserve since its creation in 1906, in particular at the time of the surrender-exchange of 1925.

[495] According to Canada, the sale of the reserve lots that led to the 1925 surrender-exchange is solely attributable to an error made by Quebec, which failed to keep accurate records by registering the proposed reserve of 1903 rather than the reserve created in 1906.

[496] With regard to the alleged failure to take the measures available to it to **stop the encroachments** on the reserve, Canada responds that it had considerable latitude with respect to how it chose to fulfill its legal obligations.

[497] As for the **ejectment** mechanism set out in the *Indian Act*, Canada's response to the claims of the Innu of Uashat that such a mechanism was not available in this case because the occupants of the lots sold were not squatters, but third parties in good faith who had obtained letters patent from Quebec. Therefore, Canada argues that section 33 of the *Indian Act* regarding writs in action of ejectment was not applicable in this case (Canada's Memorandum at paras 444–52).

[498] As for the Innu's claim that Canada breached its fiduciary duty by failing to exercise its

power to **cancel** letters patent, Canada submits that such a claim is unfounded in law because the federal Crown lacked jurisdiction to cancel letters patent issued by Quebec (Canada's Memorandum at paras 468–85).

[499] It adds that, in this case, an amicable settlement was favoured and that not only was the surrender-exchange a remedial measure commonly used in the circumstances, but also this measure was accepted by Quebec, which granted the replacement lands as compensation to the Innu of Uashat for its error (Canada's Memorandum at paras 486–95).

[500] Finally, Canada states that if Quebec had refused to settle the situation amicably, its sole remaining recourse would have been to initiate a claim to resolve conflicting titles by filing a writ of *scire facias*, as set out in the *Code of Civil Procedure*, which was not necessary given that Quebec accepted the settlement proposed by Canada (Canada's Memorandum at paras 505–22).

[501] Canada states that it acted with the necessary diligence and adds that its fiduciary duty to protect the Innu's quasi-proprietary interest in the lands of the Uashat Reserve did not include a duty to prevent all surrenders of land, especially given that the surrender-exchange was for the benefit of the Innu of Uashat (Canada's Memorandum at paras 544–45).

2. Analysis and decision

[502] As discussed above, the case law states that as a fiduciary, Canada must exercise reasonable vigilance at all times in the face of threats to the Innu's interest in the reserve and act with all necessary care and diligence in the administration of the reserve.

[503] It must, among other things, respond promptly and with due diligence to any encroachment following the creation of a reserve.

[504] Canada also has an obligation to act in a timely manner to counter and stop any encroachments to protect the Innu's interests in the reserve lands.

[505] What happened in this case?

[506] We know that the first reserve lot was sold by Quebec in the fall of 1917 (Exhibit P-67, Tab 292, letter patent No. 27598, November 19, 1917). Lot 34, Range 2, is situated right on the

street facing Lot 5-2, the chapel lot, where several Innu houses were located (see Fig. 1.13). Next, in September 1919, six additional lots were sold (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 166).

[507] Curiously, and inexplicably, it was Father Pétel who, in September 1919, informed the DIA of this, and not Agent MacDougal. It can therefore not be said that the latter exercised reasonable vigilance at all times in the face of the encroachments. He certainly did not work assiduously to prevent them or to protect the quasi-proprietary interest of the Innu of Uashat. He appeared to be asleep at the wheel.

[508] Nevertheless, he was a physician who lived in Seven Islands at the time the facts of the case took place. During his examination, expert witness Garneau recognized that Agent MacDougal should have known what was happening in Seven Islands because it was a small village. He states that he does not understand why it was not MacDougal who informed the DIA of the sale of the reserve lots by Quebec (Exhibit P-75, Tab 4, testimony of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at pp 6–7).

[509] However, it can be noted that the DIA responded quickly by sending three letters, on October 7, 1919, including a letter to Quebec's Deputy Minister of Lands and Forests to inform it of the sales and ask it to cancel them immediately (Exhibit P-67, Tab 301, letter from Secretary McLean to Deputy Minister Miville-Deschêne, October 7, 1919). He also wrote to Agent MacDougal and Father Brière, insisting that no encroachment would be tolerated (Exhibit P-67, Tab 302, letter from Secretary McLean to Agent MacDougal; Exhibit P-67, Tab 300, letter from Secretary McLean to Father Pétel, October 7, 1919). However, MacDougal was given no instructions as to what procedure he was to follow to stop the encroachments or eject the squatters.

[510] Quebec's written response has not been found. What we do know is that one week later, Quebec sold 18 more reserve lots (Exhibit P-67, tabs 306, 307 and 308, letters patent No. 29388, No. 29389 and No. 29391, December 15, 1919; letter patent No. 29391 in Exhibit P-67, Tab 308, also refers to lots 355, 356, 463 and 464).

[511] The evidence presented does not reveal what actions were taken by Agent MacDougal to prevent or avoid encroachments on the reserve after this communication with the DIA. He

acknowledged receipt of McLean's letter and wrote that he wished to provide the Mayor of Seven Islands and Chief Régis with the plans. He said nothing about the illegal sales, despite the fact that this was the most important and urgent item at the time.

[512] The DIA did not follow up with MacDougal after instructing him not to allow any encroachments.

[513] Nor is there any evidence that the DIA followed up with the Province regarding the request for the immediate cancellation of the sales of reserve lots.

[514] The issue of encroachments no longer seemed to be of any concern to Canada.

[515] From that point onwards, Canada would only turn its attention to this issue when pressured to do so by third parties, as happened the following year, in July 1920, when Father Brière wrote to the DIA to denounce its lack of action and to ask it to conduct a serious investigation (Exhibit P-67, Tab 310, letter from Father Brière to Deputy Superintendent General Scott, July 12, 1920).

[516] In August, having received no response to his letter, he wrote a new letter to the DIA reiterating his request (Exhibit P-67, Tab 311, letter from Father Brière to Deputy Superintendent General Scott).

[517] It was not until September 3 that the DIA sent a reply, which did not propose any solutions or acknowledge the concerns raised regarding Agent MacDougal's integrity, but repeated its position that Canada was not responsible for property taxes (Exhibit P-67, Tab 312, letter from Secretary McLean to Father Brière).

[518] On September 15, Father Brière wrote again, insisting on the need for a serious investigation (Exhibit P-67, Tab 313, letter from J. M. Brière, Missionary, to the DIA).

[519] One hundred years later, on reading his writings, what comes through is the frustration he felt at being unable to get the seriousness and urgency of the situation across to the DIA, which was delaying taking the necessary measures to put an end to the illegal sales and protect the Innu from legal pressure from the municipality, which was attempting to tax the houses that were off the reserve.

[520] It does not appear that he was taken very seriously. There is no documentary evidence indicating that the DIA replied to this letter or did anything at all about the encroachments or the sale of the reserve lots.

[521] Time passed. It was only three years later, in the summer of 1923, as a result of pressure from the Hudson's Bay Company (Exhibit P-67, Tab 319, letter from the Hudson's Bay Company's Commissioner of Lands to Secretary McLean, April 13, 1921), that Inspector Jean was sent to Seven Islands to gather information and recommend potential solutions. In light of his observations of the encroachments, he suggested that the DIA raise this issue with Quebec "with the least possible delay" to obtain compensation and replacement lands (Exhibit P-67, Tab 334, report by Inspector Jean to Secretary McLean, September 5, 1923).

[522] It appears that Canada did not act rapidly, as Inspector Jean had recommended.

[523] The following year, after more interventions by the municipality (Exhibit P-75, Tab 4, testimony of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at p 19; Exhibit P-67, Tab 336, letter from Agent Michaud to Secretary McLean, December 15, 1923) and the federal Member of Parliament for the riding (Exhibit P-68, Tab 341, letter from Mayor Romeril to federal Member of Parliament Savard, June 16, 1924), the DIA sent a new inspector to find a comprehensive solution. Inspector Bury submitted his report on August 25, 1924 (Exhibit P-68, Tab 347, memorandum of Inspector H. J. Bury). He stated that he had found a solution acceptable to all to resolve the situation.

[524] The same day, the DIA wrote to the Quebec Department for the first time in five years. It neither raised the illegality of the sales nor asked that they be cancelled. Instead, the DIA noted the sale of about 20 lots and passed along the solution proposed by Inspector Bury, which was to return the 44 lots of Range 2 and Lot 492 in exchange for the reserve proposed in 1903 (Exhibit P-68, Tab 345, letter from the Assistant Deputy Minister of the DIA, A. F. MacKenzie, to Agent Michaud, August 25, 1924).

[525] Therefore, the Tribunal finds from these facts that Canada did not act with reasonable diligence in the circumstances to protect the reserve against encroachments and put an end to the illegal sale of its lands.

[526] The Tribunal also notes that Canada had different powers and recourses available to it to stop the encroachments on the reserve and eject the squatters. The silence of the documentary evidence shows that such recourses were not evaluated in these circumstances.

[527] However, during the same period, in the case of the Doncaster Reserve, the DIA did study this issue. It obtained a legal opinion from the Minister of Justice, who recommended the use of the power to eject squatters (Exhibit P-72, Tab Don-16, E. L. Newcombe, Minister of Justice, to the Superintendent General of Indian Affairs, May 12, 1893). Canada then sent notices to the squatters informing them that if they did not cease to occupy the reserve they would be ejected (Exhibit P-72, Tab Don-8, A. B. Fillion, Forest Ranger, “Copy of notice served on each squatter”, December 7, 1881). The DIA ultimately decided to compensate the squatters to ensure that they left the Doncaster Reserve.

[528] In this case, Canada could have, among other things, initiated legal proceedings to retake possession of the sold reserve lands under section 37A of the 1906 *Indian Act*, as amended in 1910 and 1911, which reads as follows:

37A. If the possession of any lands reserved or claimed to be reserved for the Indians, or of any lands of which the Indians or any Indian or any band or tribe of Indians claim the possession or any right of possession, is withheld, or if any such lands are adversely occupied or claimed by any person, or if any trespass is committed thereon, the possession may be recovered for the Indians or Indian or band or tribe of Indians, or the conflicting claims may be adjudged and determined or damages may be recovered in an action at the suit of His Majesty on behalf of the Indians or Indian or of the band or tribe of Indians entitled to or claiming the possession or right of possession or entitled to or claiming the declaration, relief or damages. [Emphasis added; *An Act to amend the Indian Act*, SC 1911, c 14]

[529] However, the DIA chose not to take legal action. It favoured an amicable solution given the complexity of the situation in Seven Islands. It preferred diplomacy to confrontation.

[530] However, the DIA made no effort to follow Inspector Jean’s recommendation to obtain compensation for the Innu for the illegal sales. Nor did it consider the purchase of certain lots on which Innu houses were situated, except in the case of the Ross Lot.

[531] However, Inspector Jean had pointed out in 1924 that some of the lots on which Innu houses were situated could have been purchased for a reasonable price. Also, the Hudson’s Bay Company had made an offer to the DIA in 1922 to sell part of Lot 4 for an affordable price (Exhibit P-67,

Tab 328, letter from Rousseau, of the Hudson's Bay Company, to Agent MacDougal, May 12, 1922), about \$20 per house, which would have cost less than moving them (the relocation of the 15 Innu houses on the reserve cost \$1,750, or approximately \$115 per house).

[532] As Father Brière put it in 1920, [TRANSLATION] “one need not struggle too hard” to understand what was in the best interests of the Innu of Uashat (Exhibit P-67, Tab 313, letter from J. M. Brière, Missionary, to the DIA, September 15, 1920). Since 1880, they had been requesting a reserve near the chapel (Exhibit P-62, Tab 13, report by L. F. Boucher to the DIA, September 20, 1880, at pp 37–38) and not, as noted in 1903, [TRANSLATION], “[a lot] far from everything we need” (Exhibit P-63, Tab 93, letter from Jean-Baptiste Picard to Agent Gagnon, November 15, 1903).

[533] The Tribunal finds that Canada breached its fiduciary duty when it failed to take into account the Innu's best interests: the purchase of the lots they occupied and on which their houses had been situated for a long time. It also failed to take into consideration its powers to rectify the illegal and invalid sales.

[534] Given its fiduciary obligations, Canada was required to oppose these illegal sales and rectify the situation. It breached its obligations by failing to take any serious measures to oppose them diligently.

[535] It must be acknowledged that this failure to act and lack of reasonable diligence constitute a violation of Canada's fiduciary duty.

[536] In short, the Innu of Uashat suffered from a lack of serious follow-up by Canada after Quebec sold lots on the reserve. Months and years passed without any concrete action. The evidence points to an inefficient administration, a lack of professionalism and a culture of complacency, inaction, contradictions, forgetfulness and delays.

VI. DID CANADA BREACH ITS LEGAL AND FIDUCIARY DUTIES IN THE CONTEXT OF THE 1925 SURRENDER?

A. Parties' claims

1. Claims of the Innu of Uashat

[537] The Innu of Uashat allege that Canada also breached its legal obligations in the context of the 1925 surrender.

[538] With respect to the second stage of these proceedings, the Innu of Uashat raise the following breaches:

- a. Failure to respect the rules applicable to the **conditions of validity of a surrender** of reserve lands: pursuant to section 49 of the 1906 *Indian Act*, in force at the time of the 1925 surrender, Canada had a duty to ensure that the lands reserved for the Indians were not surrendered without the prior consent of the First Nation. However, the Form of Surrender and the sworn statement were written in English and there is no evidence suggesting that an interpreter was present. Furthermore, the list of names produced in connection with the surrender contains several irregularities, or, at least, doubts as to the real number of Innu present at a meeting held on July 5, 1925.
- b. Failure to validly obtain the **consent** of the Innu to the surrender: according to the Innu of Uashat, the circumstances surrounding a possible surrender meeting on July 5, 1925, do not support a finding that the Innu were able to provide their free and informed consent to the transaction proposed by the DIA. The 1925 surrender was therefore illegal on account of a defect of consent (Memorandum of the Innu of Uashat at paras 565–600).
- c. Approval of an **exploitative transaction** at the time of the 1925 surrender: the Innu of Uashat allege, in the alternative, that the 1925 surrender was an exploitative transaction because it offered inadequate compensation that Canada should not have approved in light of its fiduciary obligations (Memorandum of the Innu of Uashat at paras 601–07).

- d. Failure to **impair as little as possible the rights** of the Innu: the Innu of Uashat claim, also in the alternative, that Canada breached its fiduciary duty to ensure that the surrender impaired as little as possible the rights of the Innu in the reserve lands (Memorandum of the Innu of Uashat at paras 608–17).

2. Canada's claims

[539] Canada states that it adequately remedied the situation by negotiating the surrender-exchange with Quebec and acting in accordance with the will, autonomy and interests of the Uashat Band.

[540] Canada submits that the surrender-exchange constituted an available and appropriate measure to remedy the situation of the sold lots. Accordingly, Canada maintains that the Tribunal must limit its analysis to the validity of this specific measure and not consider whether it would have been appropriate to apply other available measures or speculate on their possible outcomes.

[541] Canada adds that the 1925 surrender-exchange was the remedy available under the *Indian Act* that was favoured after an assessment of the situation on the Uashat Reserve and that it would not be right to reconsider the appropriateness of that measure today, nearly a century after the facts.

[542] In other words, Canada submits that the Tribunal is limited to determining whether the solution selected to the situation of the sales of reserved lots in Seven Islands, the surrender-exchange, was consistent with the obligations of a fiduciary, without considering the merits and relevance of the various remedies available at the time that Canada did not exercise (Canada's Memorandum at paras 442–43).

[543] Moreover, Canada submits that, through the surrender-exchange, the Innu of Uashat obtained compensation for the sale of the reserve lots by Quebec. On this point, Canada states that the conditions of validity of the surrender-exchange were respected, including obtaining the consent of the Innu of Uashat during a surrender meeting. It also states that the area of the replacement lands exceeded the area of those surrendered. Therefore, Canada submits that the surrender-exchange constituted a just and fair remedial measure of the type normally granted in such circumstances.

[544] Furthermore, it replies as follows to the breaches alleged by the Innu of Uashat, stating that its actions implied that it had sought a balance between the protection of the interests of the Innu of Uashat and respect for their autonomy:

- a. Canada states that it fully respected the **conditions of validity for a surrender** of reserve lands, namely, by acting in accordance with the procedural requirements set out in the *Indian Act*, including holding a meeting at which the band members with voting rights supported the surrender (Canada's Memorandum at paras 552–58).
- b. Canada submits that it properly obtained the free and informed **consent** of the Innu of Uashat prior to the surrender and acted in a manner consistent with the band's autonomy. It adds that the sworn statements certifying that a majority of the band approved the surrender-exchange constitute sufficient evidence that the consent of the Innu of Uashat was obtained in accordance with the requirements of the *Indian Act* (Canada's Memorandum at paras 559–93).
- c. Canada submits that the Innu of Uashat are incorrect in asserting that the surrender constituted an **exploitative transaction**, as they were adequately compensated in kind by the granting of replacement lands with a greater area than those surrendered. According to Canada, the Tribunal must consider the transaction as a whole, which constituted a just and fair remedy in the circumstances. Accordingly, Canada is of the view that it fulfilled its fiduciary duty in consenting to the 1925 surrender-exchange, which was neither an exploitative bargain nor an inappropriate solution for preserving the quasi-proprietary interest of the Innu of Uashat and respected their will and autonomy (Canada's Memorandum at paras 594–623).
- d. As for the duty to **impair as little as possible the interests** of the Innu, Canada submits that this test is not applicable in this case because the surrender included compensation, namely, the replacement lands, meaning that the appropriate test for evaluating the fiduciary duty is actually the exploitative transaction test (Canada's submissions, transcript of hearing, April 17, 2019).

[545] Canada admits to having breached its fiduciary obligations with respect to the Ross Lot by

failing to inform the Innu of Uashat of the negotiations relating to the transaction for the purpose of acquiring this lot from March 28, 1906, to October 26, 1959.

[546] However, it maintains that this failure did not result in any compensable loss for the Innu of Uashat, as the Ross Lot was added to the reserve on February 20, 1985, and, throughout the negotiations, they benefited from the use of this lot with the tolerance of the owner (Canada's Memorandum at paras 290–91).

B. Analysis and decision

[547] Canada's fiduciary duty in the context of a surrender required in this case that it obtain the informed consent of the Innu in advance and that the requirements of the *Indian Act* relating to surrender be met.

[548] Section 49 of the 1906 *Indian Act*, in effect at the time of the 1925 surrender, set out the following conditions of validity for a surrender of reserve lands:

49. Except as in this Part otherwise provided, no release or surrender of a reserve, or a portion of a reserve, held for the use of the Indians of any band, or of any individual Indian, shall be valid or binding, unless the release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose, according to the rules of the band, and held in the presence of the Superintendent General, or of an officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General.

2. No Indian shall be entitled to vote or to be present at such council, unless he habitually resides on or near, and is interested in the reserve in question.

3. The fact that such release or surrender has been assented to by the band at such council or meeting shall be certified on oath by the Superintendent General, or by the officer authorized by him to attend such council or meeting, and by some of the chiefs or principal men present thereat and entitled to vote, before any person having authority to take affidavits and having jurisdiction within the place where the oath is administered.

4. When such assent has been so certified, as aforesaid, such release or surrender shall be submitted to the Governor in Council for acceptance or refusal. [*Indian Act*, RSC 1906, c 81, s 49, as amended in 1918 by *An Act to amend the Indian Act*, SC 1918, c 26, s 2]

[549] What happened in this case?

1. High vulnerability of the Innu

[550] Note first that the situation in Seven Islands and several events occurring before the 1925

surrender demonstrate how vulnerable the Innu were at the moment they were asked for their consent. As we shall see below, it was a time in their history in which they could only have felt threatened from every side.

(a) Surprise regarding the relocation of their houses and the loss of what they considered part of their reserve

[551] Upon returning to the coast from their hunting grounds, most of the Innu were surprised to discover that 15 of their houses had been moved from lots 3 and 4, which they had occupied for more than a generation, to Lot 5-2, the lot with the chapel.

[552] Blandine Jourdain testified to the surprise and confusion felt by the Innu when they saw that several of their houses had been moved. According to her, their understanding was that what had been taken was [TRANSLATION] “the entire stretch of land that belonged to us . . . , leaving only a little bit” (Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at p 9).

[553] What is apparent from several sources is that the relocation process was not conducted conscientiously by the DIA. Its work was not rigorous.

[554] Among other things, the foundations of certain houses collapsed following the relocation, to the extent that some of the Innu of Uashat, namely, Chief Georges Régis, Johnny Pilot and Alphonse St-Onge, had to travel to Ottawa in 1927 to ask the DIA to repair them (Exhibit P-69, Tab 417, letter from H. J. Bury to A. F. MacKenzie, August 1, 1927).

[555] This extreme step taken by the Innu, who were forced to travel more than a thousand kilometres from their isolated reserve to the National Capital, implies that Agent Michaud refused or neglected to assist them with this issue.

(b) Euro-Canadian demographic growth

[556] It is also worth noting that this was a period of significant growth of the Euro-Canadian population of Seven Islands, increasing pressure for land.

[557] Expert witness Jean-Pierre Garneau explains that as of the second half of the 1910s, the Euro-Canadian population of Seven Islands [TRANSLATION] “looked upon the Innu presence within

the municipality with growing antipathy” (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 167).

[558] He also explains the spike in sales of reserve lands with reference to the end of World War I, the vigorous development of the economy and the growth of the Euro-Canadian population from 540 residents in 1911 to 866 in 1921 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at pp 168–69).

(c) Pressure from the municipality

[559] Since 1914, the Innu had been under pressure from the municipality to pay municipal taxes, especially in 1920, when Father Brière recounted having defended an Innu man before a judge for the non-payment of property taxes, and, more contemporaneously, in December 1923, when the municipality threatened to seize and sell their houses located off the reserve (Exhibit P-67, Tab 310, letter from Father Brière to Assistant Superintendent General Scott, July 12, 1920; Exhibit P-67, Tab 335, letter from the Secretary-Treasurer of Seven Islands to Agent Michaud, December 12, 1923).

[560] Given the DIA’s inaction and its position against paying property taxes or purchasing the lands where the Innu houses were located, the only solution remaining was to have these houses moved onto the reserve.

(d) Pressure from the Hudson’s Bay Company

[561] For several years the Innu had also been enduring pressure from the DIA to move four houses from Lot 4, which belonged to the Hudson’s Bay Company. In June 1921, Constable Jos. Gamache was sent to inform them that they had to cease occupying that lot (Exhibit P-67, Tab 326, letter from Agent MacDougal to Secretary McLean, June 23, 1921).

[562] The fact that a constable rather than an agent was dispatched to give the message to the Innu may have had a psychological impact on them.

(e) Socio-economic pressures

[563] We also know that the period of the 1925 surrender was marked by significant socio-economic changes. Among other things, Inspector Parker’s 1916 policy to reduce financial support

for hunters (Exhibit P-67, Tab 288, report by Inspector Parker, August 10, 1916, at p 6), and immediately implemented by the DIA, had a negative impact on their ability to earn income.

[564] Expert witness Sylvie Vincent writes that the fur market collapsed around 1920 (Exhibit P-15, expert opinion of Sylvie Vincent, at p 23). More specifically, and more contemporaneously, in July 1924, Inspector Bury informed the Hudson's Bay Company Officer in Seven Islands that the DIA would not be making any advance payments to the hunters (Exhibit P-24, Tab 402, post journal, June 1, 1924, to May 31, 1925, at p 8).

(f) Health problems

[565] The documentary evidence also shows that the Innu had been suffering from multiple health problems for years.

[566] Expert witness Vincent writes that nothing indicates that the health of the Innu improved between 1917 and 1925 (Exhibit P-15, expert opinion of Sylvie Vincent, at p 28): [TRANSLATION] “The fact that they had been through some difficult years, during which they suffered from hunger because of the scarcity of game, must have had a negative impact on their health and their ability to fight off diseases.”

[567] In a letter to the DIA of July 31, 1922, Chief Régis accuses Agent MacDougal of failing to provide care for Innu who had contracted measles, adding that [TRANSLATION] “several have died for lack of the necessary care” (Exhibit P-87).

(g) Conflict with Agent MacDougal

[568] Expert witness Garneau also recounts that between 1915 and 1922, there was an open conflict between Agent MacDougal and many heads of families. Among other things, the 1921 election was cancelled by MacDougal, with the result that there was no chief or council for a full year.

[569] Garneau noted that the 1922 election was held [TRANSLATION] “in an atmosphere of tension and hostility” of a large part of the Innu community towards Agent MacDougal (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 36).

[570] Let us consider more carefully the actions of Dr. MacDougal, DIA Agent in Seven Islands

from 1911 to 1922, which support a finding that he was careless in fulfilling his administrative duties.

[571] Several available historical documents suggest that he even acted in bad faith, possibly because of a bias against Indigenous peoples. It goes without saying that such an attitude is incompatible with the Crown's fiduciary duty towards the Innu, whom Agent MacDougal was supposed to represent in his role for the DIA.

[572] First, in July 1920, Missionary J. M. Brière, who was then posted to Seven Islands, wrote the following in a letter to the Deputy Superintendent General of the DIA, D. C. Scott:

[TRANSLATION]

I would like to point out one thing to you, and that is that our Indians were the first people to live here: if they abandoned the old fort where the first reserve was located, it was because the current post is easier to access by boat: in any case they have been here for more than a hundred years: Hudson's Bay has its post here and the mission has its church here: this is therefore a true Indian village: if the municipal council of Seven Islands and a few merchants are causing trouble for the Indians, it is because nobody has ever raised a voice to defend them: in the province of Quebec, a squatter having occupied a piece of land for more than 30 years cannot be disturbed, Indians have been here for more than a century and we want to deprive them of their legitimate rights: we forget that they are the sons of the true owners and we constantly push them back.

Mr. Superintendent, I would have you note that this is land unsuitable for cultivation: it is a piece of sand that therefore is of no use to anybody, except to the Indians for the short time they are at sea, and your Department could easily acquire it from Quebec, or the so-called merchants who supposedly purchased it and [then] our poor Indians will be set at ease.

Last week, I pleaded before Justice Simard and had postponed until next year the suit against the Indians . . . and I call upon your Department to send an inspector with good sense and with the Indians' interests at heart to come and resolve this and other matters quickly: I just want to say that if you need further explanations, I will provide them, the good name and honour of the Department of Indians hinge on conducting an investigation and a serious inspection, something that has not been done for years. [Emphasis added; Exhibit P-67, Tab 310, letter from Father Brière to Deputy Superintendent General Scott, July 12, 1920]

[573] This first letter from the Missionary sounded the alarm as to the negligent attitude of Dr. MacDougal, who did nothing to defend the Innu.

[574] One month later, Father Brière wrote to Scott again, telling him in greater detail what he thought of Agent MacDougal, and confirming his initial missive:

[TRANSLATION]

You should also have received a signed petition from all of the Indians regarding their agent: we have yet to receive any official response.

We hope, however, that you will take note of our fair observations and that the Seven Islands tribe will not be exploited by your representatives for much longer. I asked you in my letter to undertake a serious inquiry so that you will know with whom you are dealing in Seven Islands.

If the Department will not take my word for it, ask Gulf Pulp and Paper Co., ask Hudson's Bay Co., and any honest person in the area and you will learn whether we are wrong to assert that it is shameful for a Department such as yours to have representatives such as the ones you have on the North Shore.

You will soon receive a report from Commanding Officer Bernier, Fishery Service, and you will be able to confirm what I have said As a small nation protected by the British Crown, [the Innu] are entitled to better treatment, but they will never get it if you do not gather accurate information, and especially if you do not give them good agents. [Emphasis added, Exhibit P-67, Tab 311, letter from Father Brière to Deputy Superintendent General Scott, August 1920]

[575] It is surprising to see a man of religion writing with so much indignation. While Father Brière comes across as harsh, it appears that his criticisms of Agent MacDougal are legitimate, as he refers the DIA to several other sources to corroborate them.

[576] Father Brière was so convinced of MacDougal's bad faith that he wrote a third letter to the DIA the following month. In that letter he suggested that Agent MacDougal had been putting his own interests ahead of those of the Innu, who were suffering as a result, and that this situation had the tacit approval of individuals at DIA headquarters:

[TRANSLATION]

Second, I would say that from the point of view of hygiene, [the Innu] are treated like animals. You have received their complaints and I ask that you conduct a serious investigation and acquaint yourselves with the situation. I am too familiar with the matter not to see it; individual interest does not come ahead of the general interest and sacrificing an entire tribe to maintain an agent in his position is barbaric; friendship is one thing, but a civil servant for whom anything goes, who does not care, on the pretext that he is the friend of a minister or an inspector, is a monstrosity; I also asked that you conduct an inquiry; in the meantime, your agent has travelled to Ottawa, where he could pull some strings, and your Department seems to have decided to do nothing. In any case, I have done my duty; Commanding Officer Bernier, Sir Lomer Gouin, the Honourable Taschereau and others have visited the site, have seen as I have the misery of the Indians . . . [Emphasis added; Exhibit P-67, Tab 313, letter from J. M. Brière, Missionary, to the DIA, September 15, 1920]

[577] The historical record shows that those in positions of responsibility at the DIA in Ottawa did not respond to Father Brière's denunciations of Agent MacDougal and that no investigation

was conducted.

[578] Next, Jean-Pierre Garneau notes in his expert opinion that MacDougal attempted to manipulate the 1921 Uashat Band Council election by asking the DIA to designate another individual as chief. Obviously, this request was refused (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at pp 35–36).

[579] This action by MacDougal appears to have been motivated by his personal conflict with Chief George Régis, with whom he did not speak between July 1919 and August 1921 (Exhibit P-43, Tab 347, letter from MacDougal to MacKenzie, August 15, 1921), a period of more than two years. It is even possible that the conflict between Régis and MacDougal began earlier than that: in a letter to the DIA written in 1916, Chief Régis requested a visit from an inspector and deplored the fact that the Innu of Seven Islands were treated like beasts while MacDougal did nothing to change the situation:

[TRANSLATION]

I regret, Sir, to have to make some comments about the items given to elders and widows. Having conducted a small investigation myself, I have observed that certain suppliers are engaging in speculation and also departments in the distribution of entitlements; there are elders who receive nothing at all and who are not only very poor but also sick, and even medical assistance is being denied them. Finally, I declare, and am ready to prove it, if you so require, that certain suppliers do not merit the favours of the Government; the Indians really are treated like beasts; it is truly revolting. I understand that the Agent, Doctor MacDougal, should look into it, but based on what I have seen, he is not available. Unfortunately, these advances and forms of assistance are being used as political patronage. If an Inspector were to come, I could prove everything I am saying and provide plenty of additional details.

...

I have no doubt that you will consider these complaints and that justice will be done. [Emphasis added; Exhibit P-67, Tab 283, letter from Chief Régis of the DIA, January 31, 1916]

[580] More contemporaneously, on April 5, 1922, Chief Régis wrote to the DIA to confirm the need for a serious investigation into the conduct of Agent MacDougal, as raised by Father Brière in his 1920 letters. He mentioned fraudulent manoeuvres employed by the Agent during the 1921 election:

[TRANSLATION]

. . . when election time comes, I would like to see it done in accordance with the law. Not like your agent did last fall. He held an election after the Indians had left for the woods, when the only ones remaining in Seven Islands were five or six old Indians he kept around to serve him.

. . .

. . . your Seven Islands agent, who treats us very poorly. He takes care of his own business very well, but that of the Indians not at all.

. . .

I have already written often to the Department and have received no response . . .
[Exhibit P-80, letter from Chief George Régis to the DIA, April 5, 1922]

[581] A few months later, on July 31, Régis wrote again to the DIA to state that, in his view, MacDougal was unfit to act as an agent for the Innu of Uashat. He wrote that MacDougal had committed, again, in his opinion, electoral fraud during the 1922 elections. He wrote that MacDougal had allowed minors to vote and that he had counted the votes of people who had not voted. In this new letter, he also accused him of medical negligence with respect to the Innu. The consequences of this negligence were serious, including, in some cases, death:

[TRANSLATION]

I must inform you that the election that took place on Saturday, July 29, 1922, was not legal; more than a majority of the Indians did not vote they do not want to recognize Dr. MacDougall they say that he is unfit to be the Indian agent because he does not wish to take care of the sick and he lets them die, and he provides no services to the tribe, . . . we do not recognize him as agent because he does not treat the sick: several people have died for want of necessary care. Even now many are sick with measles and are receiving no care, this week alone three people have died for lack of treatment. Finally, he did not want to listen to us [and] went ahead with the election. I must tell you that this election is completely illegal [that he called on] children to vote and also added the names of Indians who did not go [to vote].
[Emphasis added; Exhibit P-87, letter from Chief Régis to the DIA, July 31, 1922]

[582] These accusations of political bias, illegal interference in the elections of 1921 and 1922 and the lack of care for the Innu are worrisome. They certainly shed some light on MacDougal's departure three or four months later.

[583] It is interesting to note that, on the same day, MacDougal wrote a letter to the DIA in which he explained that the elections were held in the home of the leadership candidate Sylvestere McKenzie, who, coincidentally, won the election (Exhibit P-23, Tab 360, letter from C. A. MacDougal to J. D. McLean, July 31, 1922).

[584] This unusual situation also appears to have generated a number of conflicts of interest. It reveals MacDougal's lack of neutrality in the circumstances. He also failed to report to the DIA that 52 Innu abstained from voting, as Régis claimed, which is indicative of his lack of transparency. Finally, he noted that three constables were present for the election, which appears strange and superfluous.

[585] There is no compelling evidence to suggest that a serious inquiry was conducted by the DIA into Régis's allegations.

[586] Everything seems to indicate that Régis should be believed. As explained above, his statements are partially corroborated by those of Father Brière, a neutral source given his occupation, who refers the DIA to other individuals to confirm Agent MacDougal's lack of good faith.

[587] George Régis also seems to have been respected by the Innu of Uashat at that time, as they elected him as chief multiple times.

[588] The historical documents ultimately paint Régis as an articulate individual who cared deeply for the interests of his people, going so far as travelling to Ottawa to defend them to the DIA (Exhibit P-69, Tab 417, letter from H. J. Bury to A. F. Mackenzie, August 1, 1927), a difficult trip at that time, considering the limited modes of transportation available. Inspector Parker himself, who, unlike Régis, had the many resources of the DIA at his disposal, complained in a report of the arduous journey he undertook to get from Ottawa to Seven Islands (Exhibit P-22, Tab 295, report by Inspector Parker, July 23, 1915).

[589] MacDougal's bad faith is equally apparent from his failure to act when, in 1917, Quebec began mistakenly selling lots from the Innu reserve to Euro-Canadian settlers (Exhibit P-67, Tab 292, letter patent No. 27598, November 19, 1917: sale of Lot 34, Range 2). According to expert witness Jean-Pierre Garneau, 27 of the 44 lots making up the reserve were sold by the Province between 1917 and 1921 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at pp 164, 166). However, it was not Agent MacDougal, who was responsible for the well-being of the Innu of Seven Islands, who alerted his superiors at DIA headquarters to the situation, but rather Reverend F. Pétel, in September 1919 (Exhibit P-67, Tab 299, letter from the Reverend

Father Pétel to the DIA, September 26, 1919).

[590] Agent MacDougal therefore actively chose to ignore for two years the sale of lots from the reserve for which he was responsible.

[591] Following the receipt of the letter from Reverend Pétel, on October 7, the DIA assigned MacDougal the task of preventing any subsequent encroachments on the reserve (Exhibit P-67, Tab 302, letter from Secretary McLean to Agent MacDougal). However, there is no documentation indicating that MacDougal took any steps whatsoever to this effect during his mandate at Seven Islands, despite the fact that the municipality's assessment roll shows that a building was constructed on Lot 35 located within the reserve (Exhibit P-23, Tab 355, 1921 Assessment Roll for Seven Islands, at p 3).

[592] Finally, MacDougal's written communications to the DIA themselves reveal his biased attitude towards the Innu. In a 1916 report, he characterized the Innu as "indolent and [poor]" (Exhibit P-67, Tab 287, "Report of C. A. MacDougal, M.D., Indian Agent for the Montagnais of Seven Islands and Moisie, Quebec", report covering a period ending on March 31, 1916). The same year, in a letter to the DIA, he had the same tone when discussing Chief Régis and the Innu (Exhibit P-22, Tab 312, letter from Officer MacDougal of the DIA, August 1, 1916): ". . . the Chief seems to support the Indains in acting dishonourably, and schemes with them in trying to bluff the Department."

(h) Agent Michaud

[593] It appears from the historical evidence that Agent MacDougal's successor in Seven Islands also put little effort into fulfilling his obligations. His name was Dr. Louis-Napoléon Michaud, and he remained in the position until June 9, 1931 (Exhibit P-33, Tab 2, G. M. Matheson, *Historical Directory of Indian Agents & Agencies in Canada*, excerpts, at p 88). (Please note that "Michaud, Dr. L.H." is written in the document. However, Jean-Pierre Garneau's opposing expert opinion, cited in the next sentence, calls him "Michaud, Louis-Napoléon".) He was therefore in Seven Islands at a critical moment—he had to manage the surrender-exchange of the reserve in 1925 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 198).

[594] Agent Michaud was given three principal tasks to fulfill the DIA's fiduciary duty towards

the Innu. He had to manage the municipal tax issue, as well as the presence of Innu houses on Lot 4, which was owned by the Hudson's Bay Company; move any Innu houses that were situated off the reserve onto the reserve and obtain approval for the surrender-exchange. The following analysis supports a finding that his approach to meeting his obligations was inefficient and mediocre.

[595] First, when Michaud stepped into his role in Seven Islands, he found himself faced with the problem of taxation of Innu houses situated off the reserve, in particular those situated on Lot 4, owned by the Hudson's Bay Company (Exhibit P-23, Tab 366, memorandum from Inspector Jean to Secretary McLean, September 5, 1923, at p 2). On December 12, 1923, Agent Michaud received claims from the town of Seven Islands, which threatened to seize and sell the Innu homes (Exhibit P-67, Tab 335, letter from the Secretary-Treasurer of Seven Islands to Agent Michaud, December 12, 1923). Accordingly, in a bow to the inevitable, the houses were relocated in the fall of 1924 (Exhibit P-68, Tab 370, invoices from Louis Toutant, December 31, 1924), as mentioned above.

[596] As stated earlier, several sources indicate that the relocation process was not carried out conscientiously by Agent Michaud and the DIA. The work was not performed rigorously.

[597] In the expert opinion of Sylvie Vincent, the historical record and evidence do not support a finding that Agent Michaud and the DIA obtained the consent of the Innu for the relocation of their homes (Exhibit P-15, expert opinion of Sylvie Vincent, at pp 41–42). However, since 1907, obtaining consent in such circumstances has been a requirement (Exhibit P-66, Tab 228, report by Agent Scott to Secretary McLean, June 24, 1907). A 1907 letter from J. D. McLean of the DIA to Agent Tremblay, who occupied the position at the time, notes that “[y]ou should explain very fully to the Indians the necessity of their removing their houses to their own reserve and obtain as soon as you can an engagement from each Indian that he will remove accordingly” (Exhibit P-66, Tab 230, letter from Secretary McLean to Agent Tremblay, July 12, 1907).

[598] As mentioned previously, the foundations of some of the houses collapsed after the move, forcing some of the Innu of Uashat to travel all the way to Ottawa to ask that the DIA repair them (Exhibit P-69, Tab 417, letter from H. J. Bury to A. F. MacKenzie, August 1, 1927). One may conclude from this that Agent Michaud refused to assist them in this matter.

[599] Finally, the event that most marked Dr. Michaud's tenure as agent in Seven Islands was the 1925 surrender-exchange. As we will see below, Michaud did not ensure that he was respecting the laws in place at the time with regard to obtaining the consent of an Indigenous band to a surrender of reserve lands.

2. Faced with a *fait accompli*

[600] When the Innu were asked to approve the surrender in the summer of 1925, they were faced with a *fait accompli*. They were not really given a choice because one of the most important aspects of the 1924 agreement, the relocation of 15 houses, had already been carried out by the DIA. The Innu understood, brutally and traumatically, that they had been uprooted from their lands and that they had lost most of the land where they had resided for generations.

[601] The historical record also indicates that the need to obtain the Innu's approval of the surrender was in fact an afterthought of the DIA, and that suddenly, things needed to be done in a hurry.

[602] On August 25, 1924, the DIA wrote to Quebec to provide it with Inspector Bury's proposed solution of surrendering some of the reserve lands in exchange for the reserve originally proposed in 1903 (Exhibit P-68, Tab 346, letter from the Assistant Deputy Minister of the DIA, A. F. MacKenzie, to Minister Perrault).

[603] According to expert witness Jean-Pierre Garneau, the relocation of the Innu houses was completed the week of November 11 (Exhibit P-31, opposing expert report of Jean-Pierre Garneau, at p 147).

[604] On November 13, the Quebec Department confirmed the Minister's approval of the proposed exchange (Exhibit P-68, Tab 361, letter from the Deputy Superintendent of the Quebec Department of Lands and Forests to Secretary McLean).

[605] It was not until November 27 that the Chief Surveyor of the DIA raised the need to proceed with the surrender before the proposed exchange could take place (Exhibit P-68, Tab 363, memorandum from Chief Surveyor Robertson).

[606] The next day, the DIA wrote to Agent Michaud to instruct him on how to submit the

proposed surrender to the Innu. The letter was accompanied by a Form of Surrender to be completed:

I have therefore to authorise you to submit the enclosed surrender to the Indians at the first possible opportunity when there are present at the Reserve a majority of the band. You should submit a voters' list showing the names of the Indians voting in favor of this surrender and exchange and those voting against.

The enclosed affidavit of execution of surrender should be signed in duplicate by yourself and the Chief, before any person who is commissioned to take oaths and you should then return all the documents to the Department. [Emphasis added; Exhibit P-68, Tab 366, letter from the DIA to Agent Michaud and Form of Surrender, November 29, 1924]

3. The meeting of July 5, 1925

[607] The Tribunal notes, for the following reasons, that at the meeting on July 25, 1925, Canada did not respect the high standard of diligence required by its fiduciary obligation.

[608] There is no indication that Agent Michaud followed the DIA's instructions to submit a list of voters in accordance with the applicable procedure. The remarkably brief letter of transmittal from Michaud was accompanied by two lists of the Innu who participated in the meeting, one registered with the copies of the documents of surrender held in the Indian Lands Registry (Exhibit P-69, Tab 393, deed of surrender, July 5, 1925) and another in the Privy Council archives (Exhibit P-44, Tab 398B, Report of the Committee of the Privy Council, PC 1465, September 1, 1925).

[609] An examination of the two lists shows that they are very different—a mishmash of names, not the same number of names on each list and containing about ten names of women (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 187; Exhibit P-14, Tab A, Sylvie Vincent's reply at p 32; Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at pp 83–84; Exhibit P-75, Tab 4, testimony of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at p 71).

[610] The following images (Figs. 1.14.1 to 1.14.4) are four pages of these historical documents. The differences between the two lists of voters' names are apparent. The first two pages are from the Privy Council copy:

Fig. 1.14.1

IN WITNESS WHEREOF, we have hereunto set our hands and affixed our seals this *fifth* day of *July* in the year of our Lord one thousand nine hundred and *twenty five*

Signed, Sealed and Delivered,

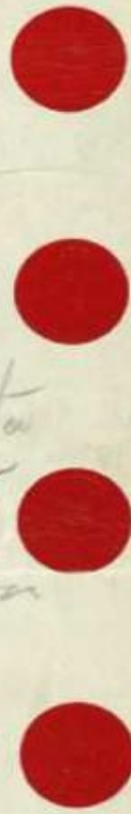
IN THE PRESENCE OF

Deloitte McHenry
John Pilot
Shady Volland
Pom

Wm. J. ...
Pom

Wiel et al
Shil' Pab me thabla
Whe me P lat
Wion: Menden's map
E. de Tontant
Thomas de ...
Almardis ...
George Regis
Matek Kicuala
Charles ...
Francis ...
Wm ...
Pierre ...
Francis ...
Paul ...
Wm ...
St. ...
Francis ...
Paul ...
Wm ...
St. ...
M. ...
Wm ...

Robert Nassip
W. ...
atw ...
Late ...
W. ...
Jean ...
W. ...
W. ...
Charles Volland
Joseph ...
Pierre Gabriel
Antoine ...
Simon ...
W. ...
W. ...
W. ...
W. ...



<p>Don</p> <p>Agathe Mouch Andre Mathis Louis Bouchet Franck Stegure Offrande Thumk Philias S'Orge</p> <p>mi ste m p a sha u Franck Guyon p's</p> <p>sha u mas Sylvain Purnan Jean Ouvre</p> <p>to p's ou m's m's Franck Bouchet Paul Gervais</p> <p>Paul Bouchet Eugene Bouchet Eugene Bouchet Etienne Gervais</p> <p>ma p'ie a h'ien cha m'ie cha ta ue le ka h'ien p' m'z g'ie re p' de h'ien a te lat h'ien tan ma p'ie h'ien de h'ien a te ma gh</p> <p>t'hi h'ien m's ma h'ien P'ou lat glu h'ien h'ien h'ien h'ien h'ien h'ien h'ien p' la men p' la h'ien a m' jag m' stel mal h'ien a h'ien h'ien sha sha pa a fa e</p>	<p>Don</p> <p>cha h'ien p' - p' m'ak ma l' ma h'ien u' m'ak ma l' ma h'ien h'ien ma m' h'ien h'ien h'ien p' de h'ien p' h'ien a ne h'ien h'ien p' la men h'ien h'ien telet a m' g' p' h'ien ma l' ma a h'ien h'ien ma l' p' h'ien p' iel h'ien h'ien h'ien m' m' h'ien h'ien p' la men h'ien cha h'ien</p> <p>Stua h'ien m' 100 h'ien h'ien h'ien h'ien h'ien h'ien h'ien ce h'ien h'ien a h'ien p' h'ien h'ien h'ien</p> <p>sha h'ien p' a h'ien sha h'ien p' a h'ien a tu uan a h'ien h'ien h'ien h'ien h'ien h'ien h'ien h'ien h'ien h'ien p' iel h'ien h'ien a tu uan h'ien h'ien i h'ien h'ien h'ien h'ien h'ien h'ien h'ien</p>
--	--

[612] The presence of women's names on the list shows a lack of understanding by Agent Michaud and the Innu present at the surrender meeting of the rules applicable to voting on a surrender, as only men at least 21 years of age, normally residing on or near the reserve, were eligible to vote under section 49 of the *Indian Act*.

4. Did Canada obtain the valid consent of the Innu?

(a) Consent to the relocation

[613] Let us first consider whether Canada obtained an undertaking from the Innu to move their houses. The experts disagree with each other.

[614] Expert witness Garneau reports that Inspector Bury noted in his memorandum of August 25, 1924, that the Innu affected by the move had agreed to it (Exhibit P-68, Tab 347, memorandum of Inspector H. J. Bury, August 25, 1924; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 144): "The Indian owners of the houses to be removed are agreeable to removal"

[615] Bury suggested that the consent of the Innu had been obtained, but no written record of such an agreement exists (Exhibit P-68, Tab 347, memorandum of Inspector H. J. Bury, August 25, 1924; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 145). The evidence demonstrating that Bury was in Seven Islands at the end of the Catholic mission, at the time of the community's annual gathering, shows, according to Garneau, that it is likely that discussions were held with the owners affected by the move (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 146).

[616] Expert witness Sylvie Vincent instead concludes that the fact that the Innu were gathered in Seven Islands does not necessarily support a finding that the owners of the houses slated for relocation had been made aware of the situation. She notes the absence of a contemporaneous confirmation from another observer (Exhibit P-15, expert opinion of Sylvie Vincent, at p 41; Exhibit P-14, Tab A, at p 27). In her view, with reference to the sole available source (Exhibit P-68, Tab 347, memorandum of Inspector H. J. Bury, August 25, 1924), the facts simply do not support a finding that the consent of the Innu affected was obtained (Exhibit P-15, expert opinion of Sylvie Vincent, at p 42; Exhibit P-14, Tab A, Sylvie Vincent's reply at p 28).

[617] The lack of consent of the Innu affected by the move is confirmed by the testimony of August 31, 2006, of Blandine Jourdain (Exhibit P-70, Tab 464, at p 26). According to expert witness Garneau, it is possible that she spoke of the meeting between Bury and the owners of the Innu houses at the time of her testimony (Exhibit P-75, Tab 3, testimony of expert witness Jean-Pierre Garneau, transcript of hearing, April 11, 2018, at pp 176–78).

[618] Ms. Jourdain stated with respect to this meeting with the inspector that approximately ten people attended and that there was nobody to act as interpreter. She did not understand what the meeting was about, and she did not see anybody sign anything:

[TRANSLATION]

David Schulze

You told me yesterday that you remembered a meeting from that period, a meeting with the inspector; can you tell us about that[?]

...

Blandine Jourdain

... there were about ten people as far as I can remember, I was there, and there was nobody there to interpret. But I was there anyway, I listened, I did not understand what was being asked. I did not see anybody sign anything.

...

Marie-Ève Robillard

O.k. This morning you also told us that you had attended a meeting at which about ten people were present. What was that meeting about?

...

Blandine Jourdain

... *Eukuan ne* that's it, for me I don't know, it must be that that they wanted... when the inspector arrived who had... there was nobody with enough French who understood enough French to understand what he wanted. I think that is what he was trying to do, to kick us off our reserve. [Bold in the original; Exhibit P-70, Tab 464, testimony of Blandine Jourdain, August 31, 2006 (as revised on November 13, 2015), at pp 26, 100–01]

[619] This testimony indicates that it is highly likely that the Innu did not understand the situation sufficiently to be able to consent to the relocation.

(b) Consent to the surrender

[620] What about the surrender-exchange?

[621] The Form of Surrender and sworn statement sent by the DIA were written in English, despite the fact that very few of the Innu spoke that language and Chief McKenzie spoke neither French nor English.

[622] The sworn statement makes reference to an interpreter “qualified to interpret from the English language to the language of the Indians” (Exhibit P-69, Tab 393, deed of surrender, July 5, 1925), despite the fact that, according to expert witness Jean-Pierre Garneau, the meeting was held in French and Innu (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 189). This statement is therefore very likely to be false.

[623] Nor do we have any documentation indicating that an interpreter was present at the meeting, which would have allowed those Innu who spoke French to consent orally to the surrender of their lands. The record contains no trace of the hiring or payment of such a translator.

[624] According to expert witness Sylvie Vincent, much is unknown about the meeting held on July 5, 1925:

[TRANSLATION]

. . . we know the date of the meeting, we do not know precisely how it was announced, whether there was any discussion, whether there was a presentation, an explanation, a debate, etc., so we have absolutely no idea what happened. [Exhibit P-75, Tab 2, testimony of Sylvie Vincent, transcript of hearing, April 10, 2018, at p 89]

[625] The Tribunal is of the view that the lack of information about how the meeting of July 5, 1925, was conducted and the lack of minutes from the meeting do not support a finding that the Innu gave their free and informed consent to the 1925 surrender.

[626] As we have seen, Canada’s fiduciary duty requires it to provide full disclosure of information to the Innu, regardless of the circumstances. The duty of good faith also requires transparency.

[627] It is highly likely that Agent Michaud set forth only one solution to the Innu and failed to

inform them of the following options, among others:

- i. the nullity of the sales and the potential recourses available to have them cancelled;
- ii. the possibility of purchasing a part of Lot 4, on which four Innu houses were situated, at a price of \$20 per house; and
- iii. the possibility of purchasing part of Lot 6, as proposed by Inspector Jean in 1923.

[628] The Tribunal is of the view that, without all of this information, the Innu were not in a position to make an informed decision regarding the appropriateness of a surrender.

[629] In short, the evidence does not demonstrate that Agent Michaud respected the laws in place to ensure that the surrender was properly conducted with the informed consent of the Innu, with the result that the DIA did not respect the fiduciary obligation it owed them.

[630] It is possible to conclude that he preferred to accelerate the process to satisfy his superiors at DIA headquarters following its substantial period of failing to take action to protect the interests of the Innu in their reserve and to prevent or cancel the erroneous sale of their lands to Euro-Canadian settlers.

[631] The rush to get the surrender over with is apparent from the efforts to cut corners. The sworn statement of July 11, 1925, was administered by none other than Mayor P. J. Romeril of the town of Seven Islands, who had a professional interest in the finalization of the surrender of the village lots (Philip John Romeril (1878-1965), Mayor of Seven Islands from 1917 to 1937 and 1941 to 1943).

[632] In the words of expert witness Garneau, the surrender was a victory for Mayor Romeril:

[TRANSLATION]

What is in some respects unpleasant, is that the solution ultimately adopted, consolidating the residential part of the reserve on Lot #5, but pushing the timber reserve further northwest, to the outskirts of the Euro-Canadian village, constituted a victory of sorts for the municipality of Seven Islands and its mayor, P. J. Romeril, who clearly obtained what they wanted. [Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 178]

[633] In fact, if Agent Michaud had waited one more day, Father Doucet, who was to arrive in

Seven Islands the next day, could have acted as the Commissioner of Oaths. He would then have had the opportunity to verify the understanding of the Innu, who had signed the sworn statement.

[634] Therefore, the evidence does not demonstrate that Agent Michaud acted in accordance with the applicable legislation to ensure that the surrender was properly conducted with the consent of the Innu, meaning that the DIA did not meet the fiduciary obligation it owed them.

5. Inexplicable unanimity

[635] Finally, the Tribunal notes that there is no explanation for the unanimity of the Innu of Uashat announced by Agent Michaud for the proposed surrender. Why would they have unanimously accepted the surrender of lands near the Bay of Seven Islands, the chapel and their houses in exchange for a remote, inferior piece of land they had rejected 20 years earlier?

[636] Agent Michaud's assertion of unanimity is highly doubtful because the Innu of Uashat were rarely unanimous: in particular, they did not vote unanimously in the Band Council elections of 1909, 1912, 1915, 1918, 1921 (subject to irregularities) and 1922 (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at pp 35–36).

[637] According to expert witness Garneau, the 1918 election [TRANSLATION] “was hotly contested and even divisive” (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 35), Chief Régis being elected by only two votes (39 for, 37 against).

[638] The 1921 election was subject to irregularities because of an open conflict with Agent MacDougal.

[639] The 1922 election was also held in an [TRANSLATION] “atmosphere of tension and hostility felt by part of the community towards Agent MacDougal” (Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 36). This was a deeply divided community: about 50 men refused to vote (Exhibit P-87, letter from Chief Régis to the DIA, July 31, 1922), 41 voted for Sylvestre McKenzie and 19 voted for Ange Picard (Exhibit P-23, Tab 360, letter from C. A. MacDougal to J. D. McLean, July 31, 1922).

[640] Also, the important testimony of Grégoire Jourdain, Marie-Clara Jourdain and Anne-Marie Labbé shows that the Innu of Uashat were far from unanimous on the subject of the relocation of

the Uashat Reserve to Moisie in the 1940s and 1950s (Exhibit P-71, Tab 466, testimony of Marie-Clara Jourdain, Anne-Marie Labbé and Grégoire Jourdain, May 8, 9, 10 and 11, 2017).

[641] The historical documents and oral testimony demonstrate that about 40 families refused to move to Moisie despite the pressure, affliction and worries caused by their situation (Exhibit P-26, Tab 460, letter (and translation) from Michel Vachon to a DIA inspector, August 19, 1947; Exhibit P-26, Tab 476, letter from Xavier Grégoire (Councillor) to J. A. Kren, August 25, 1950; Exhibit P-26, Tab 467, letter from Sylvestre McKenzie to the DIA, July 12, 1948; Exhibit P-26, Tab 475, redacted letter from Pauzé to McCrimmon, July 9, 1949; Exhibit P-26, Tab 479, letter from Xavier Grégoire et al to Kren, April 14, 1951; Exhibit P-26, Tab 480, letter (and translation) from Marcel Jourdain et al to Kren, April 19, 1951).

[642] To conclude, the Tribunal finds that Canada failed to fulfill its legal obligations in the context of the 1925 surrender.

VII. DID CANADA'S BREACHES RESULT IN COMPENSABLE LOSS FOR THE INNU OF UASHAT?

A. Parties' claims

1. Claims of the Innu of Uashat

[643] The Innu of Uashat submit that, while the details of the losses will not be debated until the final stage of the proceedings, each of Canada's breaches likely led to a loss.

[644] They submit in particular that the illegal surrender caused the loss of the surrendered lands and that the existence of the lands received in exchange is irrelevant at this stage of the proceedings (Memorandum of the Innu of Uashat at paras 619–21).

[645] They also claim to have lost the use of certain lots of their reserve between 1917 and 1925, without compensation, or without adequate compensation (Memorandum of the Innu of Uashat at para 622).

2. Canada's claims

[646] Canada submits that, even if the Tribunal were to find that there were breaches of its legal and fiduciary duties, it must reject the claim. The Innu of Uashat have not, in its view, suffered any

compensable loss pursuant to the *SCTA*, given that the sale of the reserve lands was adequately compensated by the granting of lands with a greater area than that of the surrendered lands (Canada's Memorandum at paras 624–25).

B. Analysis and decision

[647] The Tribunal is of the view that the Innu suffered a significant loss when they surrendered the 44 lots of Range 2 and Lot 492, for a number of reasons.

[648] First, the replacement of these lots by the proposed reserve of 1903 does not remedy Canada's breach of its fiduciary obligation. The Supreme Court made the following comments in *Williams Lake*, penned by Chief Justice Richard Wagner:

A breach of fiduciary obligation can be found even where the beneficiary has not proven that the breach resulted in a compensable loss, or has not suffered a loss at all: *Keech v. Sandford* (1726), Sel. Cas. T. King 61, 25 E.R. 223; *Lac La Ronge Band* (S.C.T.), at para. 197. By the same token, the fact that the Crown eventually procured a reserve for the band in the Williams Lake area cannot — as Canada argued, and as the Federal Court of Appeal accepted (at para. 109) — undo the earlier breach of fiduciary duty, although it may reduce the loss that can be said to have flowed from it. Here, too, the Act recognizes the distinction between finding a breach of fiduciary obligation and remedying the consequences of that breach. It does so by directing the Tribunal to deduct from the amount of compensation the value of any benefit received by the claimant in relation to the subject matter of the specific claim: s. 20(3). [*Williams Lake* at para 49]

[649] Second, it is true that the existence of the lands provided in exchange is not relevant at this stage of the proceedings because the details of the losses will be debated in the second stage. At that point, the Tribunal, pursuant to subsection 20(3) of the *SCTA*, must deduct from the amount of compensation calculated the value of any benefit received by the Innu of Uashat in relation to this specific claim.

[650] Third, Canada admits that the Innu lost the use of certain lots in Range 2 between 1917 and 1925 without adequate compensation.

[651] Finally, the Tribunal finds that the Innu lost lots that were centrally situated in the heart of Seven Islands, near the chapel and the Hudson's Bay Company store, which they had sought repeatedly since 1880. It is also important to note the importance the Innu placed on having access

to water and the coast of the Bay of Seven Islands.

[652] Nor should we minimize the loss of Lot 492, situated in the centre of the village of Seven Islands, near the Innu houses. That lot could have been used as a source of timber. It would have facilitated the work of collecting firewood for the Innu living near the chapel.

[653] The historical documents show that in 1901, they already had 37 houses situated near the reserve lots (Exhibit P-62, Tab 35, letter from Agent Gagnon to J. D. McLean, Secretary of the DIA, October 21, 1901; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 68).

[654] In 1903, Jean-Baptiste Picard insisted that the Innu wished to obtain a reserve where their houses were situated, [TRANSLATION] “[a] piece of land” that they had “always occupied”, near the church. He noted that the reserve proposed in 1903 was [TRANSLATION] “far from everything we need” (Exhibit P-63, Tab 93, letter from Jean-Baptiste Picard to Agent Gagnon, November 15, 1903).

[655] In September 1903, Deputy Superintendent General Pedley wrote that the suggestion of the proposed reserve would be unjust to the Innu:

It will of course be a very great injustice if the Indians should not be confirmed in the possession of the land on which their houses stand, or if they should be compelled to remove to the land reserved for them without being fairly compensated for their several losses. [Exhibit P-63, Tab 91, letter from Deputy Superintendent General Pedley to Deputy Minister Taché, September 24, 1903]

[656] In 1904, Agent Scott wrote that the reserve proposed in 1903 was “. . . too far away from the site of their houses which they ha[d] been occupying for years”. He wrote that the site “ha[d] been selected with little judgment” (Exhibit P-64, Tab 129, report by Agent Scott to the DIA, August 27, 1904).

[657] The same year, Father Arnaud wrote that the Innu wished to live near the church (Exhibit P-64, Tab 130, letter from Charles Arnaud to the Secretary of the DIA, September 27, 1904).

[658] In a report from December 1904, Agent Scott described the lands of the proposed reserve as inadequate. He provided several reasons for this assessment:

This Reserve is situated at one third to three quarters of a mile North of the present sites of many of the Indian houses, and the whole being covered with a thick growth of bush, well suited for use as fuel and building purposes, but for many reasons not suitable for the purpose of an Indian settlement.

There being, a wide mud and sand flat immediately in the front, or on the West side of the property, which is perfectly dry at low tide, in fact at half tide, which prevents canoes or boats going near the place except at certain stages of the tides, this would be at all time an expense and inconvenience to Indians settled there. When the tide is at full flood, there remains but a narrow strip of soft sandy beach between the sea and the bush, and at times even this is covered by the sea, when heavy weather prevails, thus the only safe place on the Reserve, for an Indian to erect a house or other buildings would be in the woods, where, owing to Seven Islands being one of the worst localities on the coast for flies in summer, they strongly object to being located here, as to avoid the fly pest, they endeavour to camp or build as near the sea coast as possible while on the coast during the summer. [Exhibit P-64, Tab 147, report by Agent Scott to the DIA, December 29, 1904]

[659] In February 1905, an employee of fur merchant Revillon Frères wrote to federal Member of Parliament Girard that the location of the proposed reserve was not very hospitable:

[TRANSLATION]

We would be sending the Indians $\frac{3}{4}$ of a mile to the west, to a dry, desolate point, a piece of land bounded to the west by a swamp; to the south by a beach on which one cannot disembark at low tide; and to the east by open, uninhabited land. In short, we would be relegating them far from any conveniences. [Exhibit P-65, Tab 165, letter from J. Salone, employee of Revillon Frères, to federal Member of Parliament J. Girard, February 23, 1905]

[660] The Tribunal finds that the reserve provided in exchange in 1925 was no nearer to their houses and no more adequate, hospitable or accessible than it had been twenty years earlier when the Innu refused it in 1903.

[661] It is also worth noting that the Innu of Uashat did not use their new reserve until the 1960s (Exhibit P-26, Tab 503, letter from Jean-Baptiste Jean-Pierre et al to H. M. Jones, November 3, 1959).

VIII. WHAT SHARE OF LIABILITY IS BORNE BY CANADA FOR THE LOSS SUFFERED BY THE INNU OF UASHAT?

A. Parties' claims

1. Canada's claims

[662] According to the Memorandum of Fact and Law filed by Canada, the direct cause of the

losses suffered by the Innu was the wrongful conduct of the Government of Quebec, which the Tribunal must find solely liable.

[663] In other words, the breaches committed by Canada, the existence of which Canada denies, did not cause the circumstances that gave rise to the 1925 surrender-exchange, the event that crystallized the loss suffered by the Innu of Uashat.

[664] Canada points mainly to the wrongful sale by Quebec of 27 reserve lots in 1906, which was [TRANSLATION] “solely” attributable to the error and lack of diligence of the Government of Quebec and which, in the respondent’s unequivocal language, constituted [TRANSLATION] “what triggered the events leading up to the surrender-exchange in 1925” (Canada’s Memorandum at paras 293–94).

[665] Canada also claims that the situation of the Innu houses located off the reserve after its creation in 1906 is solely attributable to Quebec’s wrongful conduct, in particular its refusal to [TRANSLATION] “agree in a timely manner to sell available public lands to the DIA as reserve lands” and its “refusal to sell lots to Innu who had erected houses on those lots” (Canada’s Memorandum at para 338). Together, this wrongful conduct constitutes the [TRANSLATION] “direct cause of the municipality’s taxation claims rather than any failure on the part of the Respondent to meet its fiduciary obligations”, such as “confusion regarding the location of the reserve attributable to the DIA” (Canada’s Memorandum at para 39).

[666] Finally, Canada submits that there is no connection between the surrender-exchange of 1925 and the relocation of the Innu houses on 1924. In its view, the 1924 relocation was caused by circumstances relating to the creation of the reserve in 1906, while the surrender-exchange was caused by Quebec’s sale of reserve lots after its creation. Even if both events were caused by Quebec’s wrongful conduct, Canada emphasizes that they had [TRANSLATION] “neither the same causes, nor the same purposes” (Canada’s Memorandum para 438).

2. Claims of the Innu of Uashat

[667] It is important to note that it was Canada that raised the issue of its share of liability. Even if it did not deal with the issue explicitly, the claimant has addressed it implicitly by noting on several occasions that Canada’s breaches were the source of the loss suffered by the Innu of Uashat.

[668] According to the Innu of Uashat, the confusion generated by Canada's breaches of its fiduciary obligations led to the 1925 surrender. They claim that this confusion [TRANSLATION] "exacerbated, indeed provoked, two significant problems, namely, the sale of reserve lands by the Province and the claims for municipal taxes against Innu who owned [houses] off the reserve" and that "it was these very problems that the DIA chose to resolve by obtaining the surrender of the reserve in 1906" (Memorandum of the Innu of Uashat at paras 461–62).

[669] To this confusion generated by the DIA's lack of diligence can be added Canada's failure to make use of appropriate remedies to stop the encroachments. Indeed, [TRANSLATION] "[a] large part of the losses suffered by the Innu of Uashat mak Mani-Utenam that are the subject of this claim arose from the Crown's failure to take measures to stop the illegal encroachments on their lands" (Memorandum of the Innu of Uashat at para 465).

[670] Ultimately, the surrender-exchange in 1925, an act that was unlawful in that the transaction was exploitative and the consent of the Innu was not validly obtained, sealed the fate of the 1906 reserve. The causal link between Canada's breaches and the Innu's loss is direct, according to the claimant's Memorandum of Fact and Law (Memorandum of the Innu of Uashat at para 620): [TRANSLATION] "[t]he illegal or exploitative surrender caused the loss of the surrendered lands".

[671] In short, according to the Innu of Uashat, while [TRANSLATION] "in the case of a bifurcated claim such as this one" they are not required to [TRANSLATION] "prove in detail the losses arising from the respondent's breaches of its legal and fiduciary obligations", they nevertheless maintain that [TRANSLATION] "each of the respondent's breaches is likely to have resulted in a loss" (Memorandum of the Innu of Uashat at paras 618–19).

B. Analysis and decision

[672] The issue of Canada's share of liability for the loss suffered by the Innu of Uashat brings to mind the question about the chicken and the egg, to use a familiar expression.

[673] This is a complex causality issue for which there is no easy answer.

[674] To claim, as Canada does, that the loss suffered by the Innu is attributable solely to Quebec's wrongful conduct when, in the Tribunal's view, Canada committed clear violations of

its fiduciary duty constitutes a simplistic and erroneous response.

[675] In reality, the wrongful conduct of both Canada and Quebec was interdependent, and the consequences of the acts of one created the conditions for the acts of the other. In other words, the DIA's breaches of its fiduciary duty and Quebec's wrongful conduct are too intertwined and complementary to be disentangled.

1. Quebec's wrongful conduct

[676] A reading of the record makes it very clear that the Government of Quebec acted wrongfully on several occasions even prior to the creation of the reserve in 1906.

[677] Following the survey of the [TRANSLATION] "village of Seven Islands and surrounding land" in 1896, a survey that failed to respect the Innu occupation of the site (with a few exceptions), the Quebec Department of Crown Lands sold the surveyed lots without regard for the Innu who were already living there and had built houses there (Exhibit P-18, Tab 38, index of sales of Crown lands, Letellier Township, 1899–1904; Exhibit P-63, Tab 100, index of sales of Crown lands, Letellier Township, 1899–1904; Exhibit P-31, opposing expert opinion of Jean-Pierre Garneau, at p 65).

[678] Furthermore, agents of the Government of Quebec acted in an openly discriminatory manner against the Innu, in favour of the Euro-Canadians. The policy involving the refusal to sell lots to the Innu, even when they occupied the lands sought, was based on an erroneous understanding of the law, the racist foundation of which can be read in the statements of Agent Caron of January 24, 1905 (Exhibit P-65, Tab 154, letter from Agent Caron of Quebec Crown Lands to Deputy Minister Taché, January 24, 1905 (see paragraph 126)).

[679] While the Quebec agents acted indifferently to the rights of the Innu, they showed a great deal of concern for the feelings of the Euro-Canadian community of Seven Islands, as was apparent from the letter from Agent Caron dated March 23, 1905, stating that the granting of lots to white settlers should not be nullified for the benefit of the Innu. In his view, Quebec's indifference to the Innu was justified by the fact that the whites were [TRANSLATION] "not willing to let the Indians live in their midst" (Exhibit P-65, Tab 170, report by Agent Caron of Quebec Crown Lands to Quebec's Minister of Lands, Mines and Fisheries, March 23, 1905).

[680] This wrongful conduct continued after the creation of the reserve in 1906, conduct rightfully raised by Canada. Quebec acted negligently in maintaining its records, by registering the reserve proposed in 1903 rather than the 1906 reserve (Exhibit P-27, Tab 588, land terrier of the township of Letellier, North Shore Agency, ranges I & II, Seven Islands). This erroneous registration led to the illegal sale of lots of the 1906 reserve during the period of its existence, as the Government of Quebec itself admits in an internal report from 1924 (Exhibit P-24, Tab 390, report by C. E. Bernier, Deputy Superintendent, to H. Mercier, November 3, 1924).

[681] Even after learning that these sales in 1919 were illegal, following an intervention by the DIA, Quebec took no action to rectify the situation and continued to sell lots that were part of the 1906 reserve (Exhibit P-27, Tab 588, land terrier of the township of Letellier, North Shore Agency, ranges I & II, Seven Islands, at pp 52–53, 56–58; Exhibit P-75, Tab 4, examination of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at p 12).

2. Canada's wrongful conduct

[682] On the other hand, Canada's breaches of its fiduciary obligation had just as much of an impact on the fate of the 1906 reserve.

[683] As is the case for the wrongful conduct of Quebec, the Tribunal notes that these breaches predate the creation of the reserve in 1906. In particular, the DIA actively participated in the selection of a clearly inadequate reserve in 1904. In this matter, the DIA appeared to be much more concerned with settling the creation of the reserve quickly than with seeking a solution that was in the best interests of the Innu of Seven Islands.

[684] For example, the DIA refused several times Agent Gagnon's requests to travel to Seven Islands in order to have a DIA representative on location to participate in the selection of a site for the reserve (Exhibit P-63, Tab 87, telegram from the DIA to Agent Gagnon, August 26, 1903; Exhibit P-20, Tab 128, letter from Secretary McLean to Agent Gagnon, June 15, 1904; Exhibit P-64, Tab 128, letter from Secretary McLean to Agent Gagnon, August 11, 1904).

[685] Moreover, the Secretary of the DIA, J. D. McLean, wrote to the Deputy Minister of Lands, Forests and Fisheries of Quebec on May 30, 1904, to confirm the location of the proposed reserve, without asking the Innu for their position (Exhibit P-64, Tab 112, letter from Secretary McLean to

Deputy Minister Taché), despite the fact that the site had been chosen by Quebec and a third party, Mr. Ross of the Hudson's Bay Company (Exhibit P-63, Tab 89, letter (with plans) to Deputy Minister Taché of the DIA, September 21, 1903; Exhibit P-63, Tab 93, letter from Jean-Baptiste Picard to Agent Gagnon, November 15, 1903). Not a single member of the DIA investigated the complaints of the Innu regarding the abuses allegedly committed by Agent Scott at around the same time.

[686] The breaches committed by Canada during the existence of the 1906 reserve have been covered extensively in the preceding sections, but they are worth reiterating here. The DIA never performed a survey of the 1906 reserve, despite the urgent need for clearly defined boundaries raised by those on location in Seven Islands and despite the allocation of amounts by Parliament to address this need.

[687] The DIA also produced inaccurate descriptions of the reserve on several occasions: all of Agent MacDougal's annual reports from 1913 to 1925, for example, indicate that the reserve was 6 acres, when in fact it was 94.57 acres. An in-depth review of Dr. MacDougal's actions between 1911 and 1922 support a finding that the obligations he owed to the Innu of Uashat were performed rather cavalierly.

[688] The result of this lack of oversight was utter confusion regarding the location, the extent and sometimes even the very existence of the reserve. The Tribunal therefore does not find it surprising that this confusion resulted in the sale of reserve lots by Quebec.

[689] The climate of uncertainty may also explain Canada's slow reaction to encroachments on the reserve. On this point, Canada's flagrant lack of diligence in no way supports its theory that Quebec's wrongful conduct was the sole [TRANSLATION] "trigger" leading to the surrender-exchange in 1925.

[690] Even though the first reserve lots were sold by Quebec in 1917, it was not until 1919 that the DIA became aware of it, and even then it was because it was alerted to the fact by a third party, Father Pétel, rather than by Agent MacDougal (Exhibit P-67, Tab 299, letter from Reverend Pétel to the DIA, September 26, 1919; Exhibit P-75, Tab 4, testimony of Jean-Pierre Garneau, transcript of hearing, April 12, 2018, at pp 6–7).

[691] The DIA sent a series of letters that year, but did not follow up, even while Quebec continued to sell reserve lots. The DIA did not pick up the ball again until 1924—five years later and seven years after the initial lots had been sold—by writing to Quebec to suggest the surrender-exchange as a solution to the encroachments (Exhibit P-68, Tab 346, letter from the Assistant Deputy Minister of the DIA, A. F. MacKenzie, to Minister Perrault, August 25, 1924).

[692] This was a crisis that Canada, given its fiduciary relationship with the Innu of Uashat, should have done its best to avoid. Accordingly, Canada must accept a share of the liability for the situation that existed in 1925.

[693] Finally, Canada's breaches of its legal and fiduciary duties with respect to the 1925 surrender-exchange, breaches discussed in detail in Part 6 of these reasons, clearly establish that Canada bears a significant share of the liability.

[694] The Innu were in a vulnerable situation at the time of the 1925 meeting, which placed enormous pressure on the community. In particular, the DIA appears to have proceeded with the relocation of 15 houses without having obtained the consent of the Innu.

[695] It is also unlikely that all of the information had been fully disclosed to the Innu when their consent to the surrender was requested, meaning that their decision to proceed with the surrender cannot be characterized as "informed". This lack of information regarding, among other things, the other remedies available under the *Indian Act* and the opportunity to purchase certain lots is attributable to Canada's breaches.

[696] The directness of the link between these breaches and the losses suffered by the Innu is indisputable: the 1925 surrender, the final act in the saga of the 1906 reserve, is the event that crystallized the loss of the centrally situated lands near the chapel, which the Innu had occupied for several generations.

C. Conclusion

[697] In conclusion, it is important to repeat that a comprehensive overview of the events surrounding the creation, maintenance and surrender of the 1906 reserve is required in this case.

[698] The losses suffered by the Innu are not solely attributable to the wrongful conduct of the

Government of Quebec.

[699] We are not dealing with an isolated case of inattention on Canada's part, but rather repeated breaches of its obligation to ensure that the best interests of the Innu were served.

IX. FOR THESE REASONS, THE TRIBUNAL:

[700] **ALLOWS** the statement of claim of the Innu of Uashat mak Mani-Utenam at the validity stage;

[701] **DECLARES** that Canada breached its duties to the Innu of Uashat mak Mani-Utenam, thereby causing them losses that qualify for compensation under the *SCTA*;

[702] **DECLARES** that these breaches include the following:

- a. having failed to take the necessary steps to prevent encroachments on the claimant's reserve as created in 1906;
- b. having failed to take the necessary steps to stop the encroachments on the claimant's reserve as created in 1906; and
- c. having authorized an illegal surrender in 1925.

[703] **DECLARES** that these losses comprise the following:

- a. the current unimproved market value of the surrendered lands; and
- b. equitable damages to compensate the Innu of Uashat mak Mani-Utenam for their losses, including:
 - i. compensation for the loss of use of the lots of Range 2 that were part of the 1906 reserve and sold illegally, between the year of sale and 1925; and
 - ii. compensation equivalent to the loss of use of and revenues from the lands surrendered between 1925 and the date of this judgment.

[704] **WITH COSTS.**

PAUL MAYER

Honourable Paul Mayer

Certified translation
Johanna Kratz, Reviser

**SPECIFIC CLAIMS TRIBUNAL
TRIBUNAL DES REVENDICATIONS PARTICULIÈRES**

Date: 20200221

File No.: SCT-2003-13

OTTAWA, ONTARIO, February 21, 2020

PRESENT: Honourable Paul Mayer

BETWEEN:

THE INNU OF UASHAT MAK MANI-UTENAM

Claimant

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations**

Respondent

COUNSEL SHEET

TO: Counsel for the Claimant THE INNU OF UASHAT MAK MANI-UTENAM
As represented by Jameela Jeeroburkhan and Charlotte Chicoine-Wilson
Dionne Schulze LLP

AND TO: Counsel for the Respondent
As represented by Stéphanie Dépeault and Josianne Philippe
Department of Justice

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