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January 14, 2021

BY EMAIL TO <registry-greffe@scc-csc.ca>

Registry of the Supreme Court of Canada
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
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Re: Courtesy translation of the factum filed by the Intervener the Assembly of First Nations Quebec-Labrador in *Roger Southwind et al. v. Her Majesty in Right of Canada*, SCC file no. 38795

To Registry Officials of the Supreme Court of Canada,

We are writing as one of the law firms that represented the Intervener the Assembly of First Nations Quebec-Labrador (“AFNQL”) in the above-mentioned file. The purpose of our letter is to transmit to the Court a courtesy English translation of the factum that was filed by the AFNQL in this proceeding. This factum may be of use for posting on the Court’s website, since it will allow parties who do not speak French to review the submissions made by the AFNQL.

Please do not hesitate to contact us if you have any questions with respect to this document.

Sincerely,

DIONNE SCHULZE



Nicholas Dodd

attn.

cc. Benoît Amyot <benoit.amyot@cainlamarre.ca>

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

**ROGER SOUTHWIND, FOR HIMSELF, AND ON BEHALF OF THE MEMBERS OF
THE LAC SEUL BAND OF INDIANS AND LAC SEUL FIRST NATION**

Appellants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA and HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF
MANITOBA**

Respondents

- and -

**ASSEMBLY OF MANITOBA CHIEFS, TSESHAHT FIRST NATION, ATTORNEY
GENERAL OF SASKATCHEWAN, MANITOBA KEEWATINOWI OKIMAKANAK
INC., TREATY LAND ENTITLEMENT COMMITTEE OF MANITOBA INC.,
ANISHINABEK NATION, WAUZHUSHK ONIGUM NATION, BIG GRASSY FIRST
NATION, ONIGAMING FIRST NATION, NAOTKAMEGWANNING FIRST NATION
AND NIISAACHEWAN FIRST NATION, COALITION OF THE UNION OF BRITISH
COLUMBIA INDIAN CHIEFS, PENTICTON INDIAN BAND AND WILLIAMS LAKE
FIRST NATION, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS,
ATIKAMEKSHENENG ANISHINAWBEK FIRST NATION, KWANTLEN FIRST
NATION, ASSEMBLY OF FIRST NATIONS, ASSEMBLY OF FIRST NATIONS
QUEBEC-LABRADOR, GRAND COUNCIL TRATY #3, MOHAWK COUNCIL OF
KANAWA:KE, ELSIPOGTOG FIRST NATION, CHEMAWAWIN CREE NATION,
AND WEST MOBERLY FIRST NATIONS**

Interveners

FACTUM OF THE INTERVENER,
ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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I. Overview of the AFNQL's position

A. The AFNQL's position

1. The AFNQL submits that the trial judge committed a fundamental error by failing to take into account, in assessing equitable compensation, the powers conferred by the *Indian Act* on the Crown to prevent and stop trespass on the reserve of the Appellant Lac Seul First Nation (hereinafter "LSFN"), and to impose appropriate conditions in the event of an expropriation. Contrary to what the lower courts concluded, these powers provided the government with the leverage necessary to negotiate meaningful compensation for the Appellants.

2. The trial judge also erred by applying the existing common law rules on expropriation, without regard taking into account the principles of federal common law that are applicable to the relationship between the Crown and Aboriginal peoples. It should be noted that compensation for breach of fiduciary duty with respect to non-reserve lands is not addressed by this factum.

B. Facts at the origin of the Appellants' action

3. The construction of the Ear Falls Dam-Reservoir in 1929 resulted in the flooding of approximately 17% of the total area of the Lac Seul reserve. The flooding caused significant damage to the community, for which LSFN never received adequate compensation.

4. The Crown did not consult LSFN with respect to the flooding of its lands and never authorized this use under the applicable provisions of the *Indian Act*.¹ To this day, the flooded lands remain part of the Lac Seul reserve.

5. The Appellants assert that the Crown breached its fiduciary duty to them in the context of the construction of the dam, resulting in losses for which they must be compensated in equity. In particular, they claim compensation for the use of the land to store water for the production of hydroelectricity.

C. Decisions of the lower courts

6. At trial,² the Federal Court determined that the Crown had breached its fiduciary obligations to the LSFN by, among other things, failing to take the steps required by the *Indian Act* to reach a surrender, or otherwise appropriate the land, and provide the First Nation with due compensation.³ It concluded that these breaches resulted in numerous losses for the LSFN,

¹ *Indian Act*, RSC, 1927, c 98.

² [*Roger Southwind et. al And Her Majesty the Queen in Right of Canada*](#), 2017 FC 906 [*Southwind*, FC].

³ *Ibid* at par. 322.

including the value of a flowage easement.⁴

7. In determining the compensation to be paid to the LSFN, the trial judge asked the following question: “What likely would have happened if the Crown had not breached its duty, but had carried out its fiduciary duties lawfully?”⁵ The judge concluded that if the Crown had acted in accordance with the law, the government would have discussed the project with the LSFN “to see if a surrender of the Reserve foreshore could be agreed upon”⁶ and that, if such an agreement was not possible, the Governor in Council would have exercised its powers under the *Indian Act* to authorize the taking of the flooded portion of the reserve. The judge concluded that, in any case, the compensation received by the LSFN would have been limited to the fair market value of the land.⁷

8. A majority of the Federal Court of Appeal dismissed the Appellants’ appeal, the Honourable Justice Gleason dissenting.⁸ The majority found that the compensation owed to the Appellants for the loss of the flooded lands should be calculated based on the scenario of an expropriation, excluding any appreciation in value over the fair market value.⁹ Justice Gleason held that the Crown should have pursued a negotiated surrender because, this way, the Appellants could have obtained a much higher compensation than the agricultural value of the land.¹⁰

II. AFNQL’s position on the questions at issue

9. The Intervener AFNQL contends that:

- a. The analysis carried out by the lower courts is flawed because it does not take into account the effect of the provisions of the *Indian Act* which protected reserves from intrusions by the colonizing society;
- b. The principles of equitable compensation are applicable irrespective of the common law of the province in question.

⁴ *Ibid* at para 443.

⁵ *Ibid* at para 290.

⁶ *Ibid* at para 322.

⁷ *Ibid* at para 383.

⁸ *Roger Southwind et al v. Her Majesty the Queen in Right of Canada et al*, 2019 FCA 171 [Southwind, FCA].

⁹ *Ibid.* at paras 78, 108.

¹⁰ *Ibid.* at paras 81-84.

III. Statement of argument

A. The lower courts' analysis did not take into account the *Indian Act*

10. The judge's reasoning in reaching his conclusions about what would have happened in 1929 is tainted by the following fundamental error: the judge erroneously believed that the LSFN "ha[d] little leverage"¹¹ to negotiate an agreement that would have provided the First Nation with a greater compensation than the fair market value of the land. As will be explained below, this conclusion is ill-founded: it completely ignores the express stipulations of the *Indian Act*, the state of the law at the time, and the resulting obligations of the Crown.

1. The government's duty to prevent and stop encroachments on reserves

11. The 1927 *Indian Act* included three stipulations that gave the Superintendent General of Indian Affairs the powers necessary to prevent and stop encroachments on reserves:

a. Section 34, under the heading "Trespassing on Reserves", which stated that "No person [...] shall without the authority of the Superintendent General [...] occupy or use [a reserve]" and "all deeds, leases, contracts, agreements or instruments of whatever kind made" which appeared to "permit persons or Indians other than Indians of the band [...] to occupy or use any portion [of the reserve], shall be void";

b. Section 35, under the same title as section 34, which allowed the Superintendent General to issue warrants to stop any unauthorized use or occupation;

c. Section 39, under the heading "Recovery of Possession of Reserves", which allowed the Superintendent General, in the event that a person illegally occupied the reserve or violated the Band's right of possession, to instruct the Attorney General to file an action in the Exchequer Court to recover possession of the lands for the Indians and to claim damages resulting from such illegal occupation or use.

12. These sections, in combination with the prohibition against any alienation of reserve lands without a prior surrender by the band to the Crown established by section 50, provided a bulwark against intrusion by settlers and colonial authorities on reserve lands.

13. Sections 35 and 39 were in common use at the time of the Ear Falls Project, having been used by the Department of Indian Affairs ("the Department") to evict trespassers on reserve lands

¹¹ [*Southwind*](#), FC, *supra* note 2, at para 318.

in other parts of Canada.¹² These sections allowed the Superintendent General to take concrete action to force Ontario to stop the storage of Lac Seul water on the LSFN reserve.¹³

14. More specifically, as soon as the water level of Lac Seul began to rise and thereby trespass on the LSFN reserve, the Crown had a fiduciary obligation to exercise its powers under sections 35 and 39 of the 1927 *Indian Act* to stop the trespassing.¹⁴ The Crown had a “duty to act in a timely manner to repel and stop trespass in order to protect the interests” of the Band and should have “responded promptly, with any reasonable foresight necessary, in the event of trespass after the creation of a reserve” [our translation].¹⁵

15. The trial judge completely ignored the importance of these stipulations of the *Act* (indeed, he did not even mention them in his judgment) and that Canada’s failure to exercise its powers under these sections also constitutes a breach of its fiduciary obligations. These oversights are critical: having failed to understand the extent and importance of the Department’s powers to protect the reserve, he instead concluded that the Department had no means of defending and advancing the interests of the LSFN, and that, therefore, it had no choice but to capitulate completely before the project.

16. In fact, the opposite was true: the legal powers available to the Department meant that it had significant negotiating powers vis-à-vis the project promoters. The Specific Claims Tribunal (“SCT”) even described these powers as a “legal arsenal”¹⁶ to which the Crown had access to protect reserve lands.

17. In a very similar situation, the SCT stated that, in the event that a provincial entity refused to compensate a First Nation for the encroachment of its reservoir on the reserve, the Crown could simply file an information in Exchequer Court in order to force the provincial entity either to cease

¹² *Canada v McMaster*, [1926] Ex CR 68; *Canada (Attorney General) v Weremy*, [1943] Ex CR 44.

¹³ [*Atikamekw d'Opitciwan First Nation v. Her Majesty the Queen in Right of Canada*](#), 2016 SCTC 9, at paras 278-279 [*Opitciwan*]. Pour la confirmation que l’emmagasiner des eaux sur une réserve constitue un « *trespass* », see : [*Peter Ballantyne Cree Nation v Canada \(Attorney General\)*](#), 2016 SKCA 124, at paras 112-143.

¹⁴ [*Lac La Ronge Band and Montreal Lake Cree Nation v. Her Majesty the Queen in Right of Canada*](#), 2014 SCTC 8, at paras 93-121; [*Les Innus de Uashat mak Mani-Utenam c Sa Majesté la Reine du chef du Canada*](#), 2020 SCTC 3, at paras. 502-536 [*Uashat*] [In French only].

¹⁵ [*Uashat*](#), *supra* note 14 at paras 503, 504.

¹⁶ [*Opitciwan*](#), *supra* note 13, at para 285.

its occupation or to enter into an agreement to pay compensation for its use of the reserve.¹⁷

18. In this case, the dam was built and the water from the reservoir began to infiltrate the reserve without any compensation being paid to the LSFN, a situation that lasted for years. Had the Crown at that time filed (or threatened to file) an information under section 39 of the *Indian Act* against the Province of Ontario, it would have had significant leverage to negotiate an indemnity for the LSFN that would reflect, at least in part, the value of the land to the party that illegally occupied it.

19. The judge noted that Ontario played “hard ball” during the negotiation of the compensation for the LSFN,¹⁸ but he never considered the possibility that the Department could have played “hard ball” as well. On the contrary, he presumed a docile and submissive department that had no choice but to submit to the priorities and preferences of others.¹⁹

20. The trial judge made a fundamental error in failing to consider such a scenario: faced with the likely expropriation of his land, a prudent person would seek the highest possible compensation and would use any advantage the law gave him to do so; he would not turn his back on the possibility of increased bargaining power.²⁰

21. More fundamentally, the judge failed to understand that the lack of evidence that more meaningful compensation was possible was not a reflection of legal reality, but the direct result of the Department’s failure to deploy the legal arsenal at its disposal to defend the interests of the LSFN. Without evidence that the Department attempted to deploy its best tools, it was not open to the judge to conclude that nothing would have changed the situation.²¹ By proceeding as he did, the judge allowed Canada to take advantage of “an inefficient administration, a lack of professionalism, a culture of complacency, inaction, contradiction, forgetfulness and delay”²² that characterized the administration of Aboriginal affairs at the time.

¹⁷ *Ibid*, at para. 284.

¹⁸ *Southwind*, FC, *supra* note 2, at para. 353.

¹⁹ *Ibid*, at paras 292 et 299, amongst others.

²⁰ *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344, at para. 104.

²¹ *Ibid*, at para. 283.

²² *Uashat*, *supra* note 14 at para. 536 [our translation].

2. The Importance of Section 48(2) of the *Indian Act*

22. Furthermore, the trial judge erred in failing to consider the second paragraph of section 48 of the *Indian Act* of 1927, which provided that, when making a decision to authorize the taking of reserve lands, the Governor in Council had the power to determine, of its own accord, the compensation that would be paid by the authority taking the lands.

23. Because of the need for the Governor in Council's consent and his responsibility to issue terms and conditions for compensation that reflected, among other factors, the special nature of reserve lands and the nature of the proposed project, the taking of reserve lands is very different from a regular expropriation procedure. This fact has been recognized by tribunals responsible for assessing the compensation to be paid to non-Aboriginal people in cases of expropriation:

*The absence of an expropriation power put the Piikani Reserve in a bargaining position which is vastly different from the relationship between private landowners in Alberta and an "operator" as that term is used in the Act [...] The land within the Reserve is not deeded but rather held by the Crown in a trust relationship for the Piikani. The lack of similarity between that situation and the freehold title of the Landowners is obvious.*²³

24. The taking of reserve land differs all the more from ordinary expropriation procedures in that the Governor in Council's exercise of its powers to consent to the taking of reserve land presumes that the First Nation was consulted with respect to both the taking and the compensation to be paid.²⁴

25. The increased negotiating power resulting from the *Act* is recognized by Canada: in its *Land Management Manual*, it recognizes not only that the First Nation must consent to the taking of its lands for public purposes under section 35 of the *Indian Act* (equivalent to section 48 of the 1927 *Act*),²⁵ but also that fair and reasonable compensation means in most cases "ensuring that at least present day Fair Market Value is paid".²⁶ For Canada, such compensation is the bare minimum.

26. By imposing a fictitious expropriation scenario and the payment of compensation based on

²³ [Sproule v. Altalink Management Ltd](#), 2015 ABQB 153, at para. 32, quoting the administrative board.

²⁴ [Fairford First Nation v. Canada \(Attorney General\)](#), [1999] 2 FC 48; [Osoyoos Indian Band v. Oliver \(Town\)](#), [2001] 3 SCR 746, at para. 6 [*Osoyoos*].

²⁵ Canada, Indian and Northern Affairs Canada, "[Land Management Manual, Directive 9-1 – transactions Under Section 35](#)", 2002, 6.1.

²⁶ *Ibid*, au para 9.4.7 (b).

the historic fair market value, the trial courts legitimized an illegal land grab without considering the legal tools that outlined the Crown's powers. These tools prevent section 48 of the *Act* from being read as a given and from presuming that an expropriation would have taken place and under which conditions.

27. It is clear, therefore, that the trial judge's conclusion that the department "ha[d] little leverage" to negotiate compensation greater than fair market value is ill-founded. As it happens, this conclusion is the cornerstone of his analysis of the amount of compensation to be paid to the LSFN.²⁷ The issue must be returned to him, with the clarifications of this Honourable Court as to the importance for his analysis of the protections for reserves contained in the *Indian Act*.

B. The application of the principles of equitable compensation in a bijural context

28. As part of their analysis, the lower courts confirmed that Canada breached its fiduciary duties to the LSFN by failing to meet the standard of care required in respect to reserve lands and accepted an award of equitable compensation.²⁸ Despite this fact, the Federal Court of Appeal calculated compensation in accordance with the common law rules on expropriation that were in force in 1929.²⁹

29. The compensation sought by the LSFN though is not intended to compensate for an expropriation of land, but rather to provide financial compensation for a breach of the Crown's fiduciary obligations that cannot be remedied in specie.³⁰

30. The compensation regime applicable to breaches of fiduciary duty cannot vary according to the legislation of the province or territory in which the Aboriginal peoples concerned reside.³¹ In this sense, the Federal Court of Appeal should have referred to the rules of the federal common

²⁷ *Southwind*, FC, *supra* note 2, at para 318.

²⁸ *Southwind*, FCA, *supra* note 8 at paras 47-49.

²⁹ *Ibid.* at para 65.

³⁰ *Guerin v. The Queen*, [1984] 2 RCS 335 at pp. 360, 361, Justice Wilson, quoting *Re Dawson; Union Fidelity Trustee Co v Perpetual Trust Co.* (1966), 84 W.N. (Pt. 1) (NSW) 399, at pp 404-406.

³¹ Robert Mainville, *Compensation in cases of Infringement to Aboriginal and Treaty Rights*, MA Thesis, Faculty of Law, McGill University, Montreal, November 1999, at pp. 4-5, [Mainville, *Compensation*]; Mainville, *An Overview of Aboriginal and Treaty Rights and Compensation for their Breach*, Saskatoon, Purich Publishing Ltd., 2001 at p 115, [Mainville, *Overview*] referring to *R v. Côté*, [1996] 3 SCR 139 at pp. 170, 172-175 (paras 45,46, 49-54) [*R v. Côté*]; *R v. Adams*, [1996] 3 SCR 101 at pp 120-22 (paras 31-33); *Roberts v. Canada*, [1989] 1 SCR 322.

law to calculate the compensation owed to the LSFN, as opposed to the English common law.

31. Indeed, the judgment under appeal applies the rule of English case law that prohibits the expropriated party from sharing in the benefits of the enhanced value given to property as a result of the carrying out of the project for which the expropriation was made.³² This rule is recognized as a source of unfairness that calls for arbitrary calculations.³³

32. For reserve lands, as with irreparable environmental damage on land excluded from the market, “[a]dherence to the market value technique [...] seriously undervalues the true worth of the environmental resource, results in a low assessment of damages, and leaves injuries largely uncompensated”.³⁴

33. In any event, these methods of compensation cannot be reconciled with the honour of the Crown and the fiduciary duty to obtain the highest possible amount for the beneficiary. In this case, the rule penalizes the Appellants because the reserve land is unsuitable for agricultural purposes, and yet it does not give them any compensation to reflect the fact that their land was very valuable to the expropriator.

34. The law pertaining to Aboriginal rights and to matters of Aboriginal law generally is governed by federal common law.³⁵ It is a body of law that includes “elements of international law and imperial policy, as well as various rules and principles found in or derived from the common law relating to Aboriginal and treaty rights, Aboriginal treaties, the *Royal Proclamation, 1763*, the provisions of sections 91(24) and 109 of the *Constitution Act, 1867*.”³⁶

35. The rules governing the fiduciary relationship and duties between the federal Crown and Aboriginal peoples are part of this federal common law and apply uniformly across Canada within the federal sphere of authority.³⁷ The “principles governing compensation in cases of infringement to [these Aboriginal rights] are themselves *sui generis* and governed exclusively by the federal

³² Law Commission of England and Wales, [Towards a Compulsory Purchase Code: \(1\) Compensation: Final Report](#) (Law Com. No. 286, 2003), at para. 7.3, D.21 to D.22, D.77(4).

³³ [Waters & Ors v. Welsh Development Agency](#) 2004 UKHL 19, at paras. 55, 56.

³⁴ [British Columbia v. Canadian Forest Products Ltd.](#), 2004 SCC 38, at para. 135. See also paras. 121-124.

³⁵ Mainville, *Overview*, *supra* note 31, at p. 61; [Roberts v. Canada](#), *supra* note 31, at p. 340.

³⁶ *Ibid*, at p. 61;

³⁷ *Ibid*, at p. 62, quoting [Roberts c Canada](#), *supra* note 31.

common law.”³⁸

36. The effect of such a uniform approach is to avoid an approach based on the law applicable to each province, particularly with respect to expropriation, which “would create an awkward patchwork of constitutional protection for Aboriginal rights across the nation.”³⁹ In fact, this Honourable Court recently rejected the idea “that the later establishment of provincial boundaries should be permitted to deprive or impede the right of Aboriginal peoples to effective remedies for alleged violations of these pre-existing rights.”⁴⁰

37. It is important to note that the federal common law also includes the right and interest of First Nations in their lands.⁴¹ Whether or not the lands are subject to s. 35(1) rights under the *Constitution Act, 1982*, the Band acquires a “legal interest” in a reserve at the time of its creation.⁴² This interest, marked by the inalienable and irreplaceable nature of the land⁴³ and the objective of guarding against the erosion of the Aboriginal land base,⁴⁴ cannot be eroded by the application of concepts of expropriation law in English common law or provincial legislation.⁴⁵

38. Consequently, instead of relying on the common law rules of expropriation to calculate the compensation owed to the appellant LSFN,⁴⁶ the lower courts should have applied the federal common law and adopted the principles of equitable compensation. Such a compensation regime for fiduciary breaches by the Crown, based on federal common law, applies to all First Nations, regardless whether the applicable jurisdiction is governed by English common law or French civil

³⁸ Mainville, *Compensation*, *supra* note 31 at p. 5.

³⁹ *R v. Côté*, *supra*, note 31 at para. 53.

⁴⁰ *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 CSC 4 at para. 49, referring to *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at para. 114.

⁴¹ *Calder et al. v. Attorney-General of British Columbia*, [1973] RCS 313, quoted in *Wewaykum Indian Band v. Canada*, 2002 CSC 79, [2002] 4 SCR 245 at para. 75 [*Wewaykum*].

⁴² *Wewaykum*, *supra* note 41 au para 98.

⁴³ *St. Mary's Indian Band v. Cranbrook (City)*, [1997] 2 SCR 657 at para. 15 [*St. Mary's*]; *Osoyoos*, *supra* note 24 at para. 54.

⁴⁴ *Opetchesah Indian Band v. Canada*, [1997] 2 SCR 119 at para. 52.

⁴⁵ *Ibid.* at para. 52; *St. Mary's*, *supra* note 43 at paras. 15-16.

⁴⁶ *Southwind*, CAF, *supra* note 8 at para. 65.

law.⁴⁷

IV. Costs submission

39. The AFNQL does not claim any costs for this appeal and asks that no costs be ordered against it.

The whole respectfully submitted.

Montreal, November 18, 2020

(s) original signed

(s) original signed

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⁴⁷ Royal Commission on Aboriginal Peoples, [*Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution*](#), Minister of Supply and Services Canada, 1993, at p. 20.

V. Table of Authorities

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Mainville, Robert. <i>An Overview of Aboriginal and Treaty Rights and Compensation for their Breach</i> , Saskatoon, Purich Publishing Ltd., 2001		30, 34, 35
Mainville, Robert. Compensation in cases of Infringement to Aboriginal and Treaty Rights , MA Thesis, Faculté de droit, Université McGill, Montréal, Novembre 1999		30, 35
Royal Commission on Aboriginal Peoples, Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution , Minister of Supply and Services Canada, 1993		38

VI. Statutes***Loi des Indiens, LRC 1927, c 98******Indian Act, RCS 1927, c 98***

...

...

Violation du droit de propriété dans les réserves**Trespassing on Reserves**

34. Nul individu, ou Indien autre qu'un Indien de la bande ne peut, sans l'autorisation du surintendant général, résider ou chasser sur une terre ou sur un marais, ni l'occuper non plus qu'en faire usage, ni résider sur un chemin ou une réserve de chemin, ni l'occuper, dans les limites d'une réserve appartenant à cette bande ou occupée par elle.

34. No person, or Indian other than an Indian of the band, shall without the authority of the Superintendent General, reside or hunt upon, occupy or use any land or marsh, or reside upon or occupy any road, or allowance for road, running through any reserve belonging to or occupied by such band.

2. Tous actes, baux, contrats, conventions ou titres quelconques passés ou consentis par un Indien, et paraissant permettre à des personnes ou à des Indiens autres que ceux de la bande, de résider ou de chasser dans la réserve, ou d'en occuper quelque portion ou d'en avoir usage, sont nuls et non avenue.

2. All deeds, leases, contracts, agreements or instruments of whatsoever kind made, entered into, or consented to by any Indian, purporting to permit persons or Indians other than Indians of the band to reside or hunt upon such reserve, or to occupy or use any portion thereof, shall be void.

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35. Si un Indien est illégalement en possession d'une terre située dans une réserve, ou si, sans l'autorisation du surintendant général, un individu ou Indien autre qu'un Indien de la bande

35. If any Indian is illegally in possession of any land on a reserve, or if any person, or Indian other than an Indian of the band, without the license of the Superintendent General,

- a) s'établit, réside ou chasse sur quelque terrain ou marais, ou l'occupe, ou en fait usage, ou y fait pénétrer ou permet d'y faire pénétrer des bestiaux ou d'autres animaux lui appartenant ou confiés à sa garde; (a) settles, resides or hunts upon, occupies, uses, or causes or permits any cattle or other animals owned by him, or in his charge, to trespass on any such land or marsh;
- b) pêche dans un marais, une rivière, un cours d'eau ou ruisseau situé dans une réserve ou la traversant; ou (b) fishes in any marsh, river, stream or creek on or running through a reserve; or
- c) s'établit ou réside sur quelque chemin ou réserve de chemin, ou l'occupe, dans les limites de la réserve; (c) settles, resides upon or occupies any road, or allowance for road, on such reserve;

le surintendant général, ou le fonctionnaire ou la personne qu'il délègue et autorise à cet effet, émet, sur plainte à lui faite, et sur preuve des faits à sa satisfaction, un mandat sous ses seing et sceau, adressé à toute personne sachant lire et écrire qui consent à agir en l'espèce et lui enjoignant, selon le cas, the Superintendent General or such other officer or person as he thereunto deposes and authorizes, shall, on complaint made to him, and on proof of the fact to his satisfaction, issue his warrant, signed and sealed, directed to any literate person willing to act in the premises, commanding him forthwith as the case may be,

- a) D'expulser immédiatement du terrain ou du marais, du chemin ou de la réserve de chemin, tout tel individu ou indien et sa famille ainsi établis, ou y résidant ou y chassant, ou l'occupant ou étant illégalement en sa possession; (a) to remove from the said land, marsh or road, or allowance for road, every such person or Indian and his family, so settled, or who is residing or hunting upon, or occupying, or is illegally in possession of the same;
- b) De faire sortir immédiatement ces bestiaux ou autres animaux de ce terrain ou marais; (b) to remove such cattle or other animals from such land or marsh;
- c) De faire immédiatement cesser cet individu ou cet Indien de pêcher dans tout marais, rivière, cours d'eau ou ruisseau, ainsi qu'il est dit plus haut; ou (c) to cause such person or Indian to cease fishing in any marsh, river, stream or creek, as aforesaid; or

- d) De notifier immédiatement à cet individu ou à cet Indien de cesser de faire usage, ainsi qu'il est dit plus haut, de ce terrain, cette rivière, ce cours d'eau, ruisseau ou marais, ce chemin ou cette réserve de chemin.
- (d) to notify such person or Indian to cease using, as aforesaid, the said land, river, stream, creek or marsh, road or allowances for road.
2. La personne à qui le mandat est adressé doit l'exécuter, et elle possède, à cette fin, les mêmes pouvoirs que ceux exercés pour l'exécution de mandats en matière pénale.
2. The person to whom such warrant is directed, shall execute the same, and, for that purpose, shall have the same powers as in the execution of criminal process.
3. Les frais occasionnés par cette expulsion ou notification, ou par le fait de la cessation de cette pêche, sont supportés par l'individu expulsé ou notifié, ou qui possède les bestiaux ou autres animaux ainsi expulsés, ou à la garde de qui ils sont confiés, et ils peuvent être recouverts de lui comme peuvent l'être les frais de toute instance ou poursuite ordinaire; ou, si le contrevenant est un Indien, ces frais peuvent être déduits de sa part d'annuité et d'intérêt, s'il lui est dû.
3. The expenses incurred in any such removal or notification, or causing to cease fishing, shall be borne, as the case may be, by the person removed or notified, or caused to cease fishing, or who owns the cattle or other animals removed, or who has them in charge, and may be recovered from him as the costs in any ordinary action or suit, or if the trespasser is an Indian, such expenses may be deducted from his share of annuity and interest money, if any such are due to him.
4. Tout individu ou Indien autre qu'un Indien de la bande peut être requis, verbalement ou par écrit, par un agent des Indiens, par un chef de la bande qui occupe la réserve, ou par un constable, selon le cas,
4. Any such person or Indian other than an Indian of the band may be required orally or in writing by an Indian agent, a chief of the band occupying the reserve, or a constable, as the case may be,
- a) De sortir avec sa famille, s'il en a une, du terrain, marais ou chemin, ou de la réserve de chemin, sur lequel ou sur laquelle il est ou s'est ainsi établi, ou sur lequel ou sur laquelle il réside ou chasse, ou qu'il occupe;
- (a) to remove with his family, if any, from the land, marsh or road, or allowance for road, upon which he is or has so settled, or is residing or hunting, or which he so occupies;
- b) De faire sortir ses bestiaux de ce terrain ou marais;
- (b) to remove his cattle from such land or marsh;

- c) De cesser de pêcher dans ce marais, cette rivière, ce cours d'eau ou ruisseau; ou (c) to cease fishing in any such marsh, river, stream or creek as aforesaid; or
- d) De cesser de faire usage, ainsi qu'il est dit plus haut, de ce terrain, cette rivière, ce cours d'eau, ruisseau, marais, chemin ou cette réserve de chemin. (d) to cease using as aforesaid any such land, river, stream, creek, marsh, road or allowance for road.

...

...

Recouvrement de la possession des réserves

Recovery of Possession of Reserves

39. Si quelque personne retient la possession de terres réservées ou prétendues réservées pour les Indiens, ou de terres dont les Indiens ou un Indien ou une bande ou tribu d'Indiens réclame la possession ou un droit de possession, ou si quelqu'un occupe ou revendique l'une de ces terres, ou qu'il ait violation du droit de propriété, la possession peut en être recouvrée pour les Indiens, ou pour quelque Indien ou bande ou tribu d'Indiens, ou les revendications des parties adverses peuvent être jugées et déterminées, ou les dommages être recouverts, au moyen d'une instance formée par Sa Majesté au nom des Indiens, ou de l'Indien ou de la bande ou tribu d'Indiens qui y ont droit ou qui en revendiquent la possession ou le droit de possession, ou qui sont fondés, dans la déclaration, la réparation ou les dommages qu'ils réclament.

39. 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.

2. La cour compétente pour connaître de cette action et statuer sur l'espèce est la cour de l'Échiquier du Canada.

2. The Exchequer Court of Canada shall have jurisdiction to hear and determine any such action.

3. Cette instance peut être formée par voie de dénonciations faites par le procureur général du Canada d'après les instructions du surintendant général des affaires indiennes.

3. Any such action may be instituted by information of the Attorney General of Canada upon the instructions of the Superintendent General of Indian Affairs.

4. Rien dans le présent article ne doit atténuer, restreindre, ni en aucune façon affecter un recours existant ou un mode de procédure prévu pour les espèces, ou l'une d'entre elles, auxquelles s'applique le présent article.

4. Nothing in this section shall impair, abridge or in anywise affect any existing remedy or mode of procedure provided for cases, or any of them, to which this section applies.

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Terres expropriées pour cause d'utilité publique

Lands taken for Public Purposes

48. Nulle partie d'une réserve ne peut être expropriée pour les besoins d'un chemin de fer, d'une route, d'un ouvrage public ou d'un ouvrage destiné à quelque utilité publique sans le consentement du gouverneur en conseil, mais toute compagnie ou autorité municipale ou locale possédant le pouvoir conféré par une loi, soit fédérale soit provinciale, d'exproprier ou utiliser des terrains ou quelque intérêt dans des terres, sans le consentement du propriétaire, peut, avec le consentement du gouverneur en son conseil comme susdit, et subordonnément aux termes et conditions imposés par ce consentement, exercer ce pouvoir conféré par une loi à l'égard de toute réserve ou partie d'une réserve.

48. No portion of any reserve shall be taken for the purpose of any railway, road, public work, or work designed for any public utility without the consent of the Governor in Council, but any company or municipal or local authority having statutory power, either Dominion or provincial, for taking or using lands or any interest in lands without the consent of the owner may, with the consent of the Governor in Council as aforesaid, and subject to the terms and conditions imposed by such consent, exercise such statutory power with respect to any reserve or portion of a reserve.

2. En ce cas, une indemnité doit être versée aux Indiens de la bande, et l'exercice de ce pouvoir et l'expropriation des terres ou l'acquisition d'un intérêt dans ces terres, ainsi que la fixation et le versement de l'indemnité doivent, à moins de dispositions contraires dans l'arrêté en conseil qui fait preuve du consentement du gouverneur en son conseil, être régis par les prescriptions applicables à des procédures similaires prises par cette compagnie, ou cette autorité municipale ou locale dans des cas ordinaires.

3. Chaque fois qu'un arbitrage a lieu, le surintendant général nomme l'arbitre de la part des Indiens et agit pour eux en toute chose relative au règlement de cette indemnité.

4. La somme adjugée dans chaque cas est versée au ministre des Finances pour l'usage de la bande d'Indiens au profit de laquelle la réserve est affectée, et au profit de tout Indien qui y a fait des améliorations, ou lésé.

...

2. In any such case compensation shall be made therefor to the Indians of the band, and the exercise of such power, and the taking of the lands or interest therein and the determination and payment of the compensation shall, unless otherwise provided by the order in council evidencing the consent of the Governor in Council, be governed by the requirements applicable to the like proceedings by such company, municipal or local authority in ordinary cases.

3. The Superintendent General shall, in any case in which an arbitration is had, name the arbitrator on behalf of the Indians, and shall act for them in any matter relating to the settlement of such compensation.

4. The amount awarded in any case shall be paid to the Minister of Finance for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian who has improvements taken or injured.

...

50. Sauf dispositions contraires de la présente Partie, nulle réserve ou portion de réserve ne peut être vendue, aliénée ni affermée avant d'avoir été cédée ou rétrocédée à la Couronne pour les objets de la présente Partie; mais le surintendant général peut donner à bail, au profit de quelque Indien, sur sa demande, la terre à laquelle celui-ci a droit, sans cession ni abandon, et il peut, sans qu'il y ait eu abandon, disposer de la manière la plus avantageuse possible pour les Indiens des graminées sauvages et du bois mort sur pied ou du chablis.

2. Le gouverneur en son conseil peut établir des règlements autorisant le surintendant général, sans qu'il y ait abandon, à donner à bail les droits de surface dans une réserve indienne, aux termes et conditions qui peuvent être jugés convenables dans l'intérêt des Indiens, seulement pour l'étendue qui peut être nécessaire à l'exploitation minière des métaux précieux par tout individu par ailleurs autorisé à extraire ces métaux, lesdits termes devant assurer à un occupant de terre une indemnité pour tout dommage qui peut y être causé, suivant que le surintendant général le décide. S.R., c. 81, art. 48; 1919, c. 56, art. 1.

...

Rétrocession et confiscation des terres dans les réserves

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50. Except as in this Part otherwise provided, no reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown for the purposes of this Part; but the Superintendent General may lease, for the benefit of any Indian, upon his application for that purpose, the land to which he is entitled without such land being released or surrendered, and may, without surrender, dispose to the best advantage, in the interests of the Indians, of wild grass and dead or fallen timber.

2. The Governor in Council may make regulations enabling the Superintendent General without surrender to issue leases for surface rights on Indian reserve, upon such terms and conditions as may be considered proper in the interest of the Indians covering such area only as may be necessary for the mining of the precious metals by any one otherwise authorized to mine such metals, said terms to include provision of compensating any occupant of land for any damage that may be caused thereon as determined by the Superintendent General. R.S., c. 81, s. 48; 1919, c. 56, s. 1.

...

Surrender and Forfeiture of Lands in Reserve

...

51. Sauf dispositions contraires de la présente Partie, nulle cession ou rétrocession d'une réserve ou d'une partie de réserve à l'usage d'une bande, ou d'un Indien en particulier, n'est valide ni obligatoire, à moins que la cession ou rétrocession ne soit ratifiée par la majorité des hommes de la bande qui ont vingt et un an révolu, et ce à une assemblée ou à un conseil de la bande convoquée pour en délibérer conformément aux usages de la bande, et tenu en présence du surintendant général, ou d'un fonctionnaire régulièrement autorisé par le gouverneur en son conseil ou par le surintendant général à y assister .

...

3. Le fait que la cession ou rétrocession a été consentie par la bande, à ce conseil ou à cette assemblée, doit être attesté sous serment par le surintendant par le surintendant général ou par le fonctionnaire qu'il a autorisé à assister à ce conseil ou à cette assemblée, et par l'un des chefs ou des anciens qui y a assisté [...]

4. Après que ce consentement a été ainsi attesté, comme susdit, la cession ou rétrocession est soumise au gouverneur en son conseil pour qu'il l'accepte ou la refuse.

51. 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 any officer duly authorized to attend such council, by the Governor in Council or by the Superintendent General.

...

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 . . .

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.