Summary

In May 1886 the A&NWR sent a plan and book of reference to DIA to acquire lands for a railway through Caughnawaga. They were advised that negotiations for the land would have to be carried out with DIA and that amendments to the plan were required. Further, DIA advised that s. 31 of the 1880 Indian Act provided that compensation had to be paid when a railway traversed or damaged Indian reserve lands.[3]

Notwithstanding DIA's directions, the company appears to have proceeded with construction, for they indicated in February 1887 that they had paid "proprietors" whose lands were damaged. They pointed out that the value of the land had not yet been paid for and asked DIA whether they desired to proceed with arbitration to determine the compensation.

DIA's directives to their arbitrator, one J. P. Dawes of Lachine, Québec, included that the affected lot owners had suffered a "serious loss" by having their recently subdivided lots cut up by the new rail line and that any arrangement made with the company should include a reversionary clause in the event that the land was no longer required for railway purposes.

The arbitrator for the railway company was W. McLea Walbank, a surveyor who worked for DIA in surveying the Caughnawaga Reserve. Dawes and Walbank proceeded with the arbitration and by July 1887 had executed 20 award agreements. None of these were signed by the locatees or approved by the Band Council. The total amount of compensation arrived at was $6,271.75.[4]

A plan certified by the Deputy Minister of Railways and Canals and a book of reference were forwarded to DIA in August 1887, revised, and deemed corrected. In December 1887 the locatees were paid the compensation for damages and the remaining funds went to the Caughnawaga Band.

On February 2, 1888, the SGIA submitted a description and plan of the right-of-way to the Privy Council and recommended that 2,217,480 sq. ft. (about 51 acres) be sold to the A&NWR under s. 35 of the Indian Act, as amended by s. 5 of 1887 (RSC 1886 c. 43 s. 35 amended by SC 1887 c. 33 s. 5). Order-in-Council P.C. 1888-211 authorized the sale on February 17, 1888 according to the SGIA's recommendations, and Letters Patent 8843 were issued to the company on February 23, 1888.

The presence of the CPR railway created some problems on the reserve, including fire damages, accidental death of horses, flooding, and difficulty accessing areas transected by the right-of-way. (Further details on these issues, including band complaints and the measures taken by CPR to remedy these situations, are dealt with briefly in Section L of the report.)

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3 This is the section of the Indian Act now known as s. 35.

4 The total sum of each award was divided equally into a sum covering damages and one covering land values, e.g., a total award of $150 would be divided into $75 for land and $75 for damages. In all, 40.51 arpents (approx. 34.44 acres) of located land were valued at $2,135.87 (average rate approx. $52.72/arpent or $62/acre) and 19.74 arpents (approx. 16.78 acres) of common land (land held communally by the Caughnawaga Band) were valued at $1,000 (average rate approx. $50.66/arpent or $59/acre).

In 1893 CPR's legal counsel applied to DIA to lease land at Caughnawaga for a borrow pit as well as approaches which led from the pit to their rail line.[5] A DIA official met with the Band Council, who agreed to the proposal as long as the ground was left level and fit for cultivation; Council stipulated the compensation should be paid to the locatees, and not the band. No complete documentary record of this transaction appears to exist, although later evidence does indicate that leases were made, so it is not known what compensation was paid. A plan filed at DIA dating from June 1894 indicates that approximately 16.46 arpents or 13.91 acres were involved, and that the boundaries between several of the lots were disputed.[6] Only unexecuted, draft forms of lease have been found and no Order-in-Council appears to have been passed. Correspondence indicates that CPR gave the Indian Agent the compensation monies for payment to those with disputed lot boundaries once they had settled their disputes. DIA later expressed confusion about why the compensation had never been forwarded to headquarters for distribution. Most of the land believed to have been covered by these leases was leased to the Kanawaki Golf Club in ensuing years.

In 1898 four leasing agreements with locatees covering 5.735 acres for another borrow pit and approach were executed, and recommended by the Indian Agent. These lands were west of those leased for the same purpose in 1894. One of the leases was for an eight year term while the others were for five year terms.[7] Order-in-Council P.C. 1765, dated July 4, 1898, approved the leasing agreements under s. 35 of the Indian Act, as amended by s. 5 of SC 1887 c. 33 (50-51 Vic). All four of the lots covered by these leases were subsequently involved in leases to the Kanawaki Golf Club.

In November 1897 CPR applied to DIA to lay a water pipe through Reserve Lot 214 and the Caughnawaga Common to transport water from the St. Lawrence River to Adirondack Junction Station. An agreement was made with the locatee involved whereby, for a one-time payment of $50, CPR could have a right-of-way across his lot to install and repair the pipe. Apparently the Indian Agent was not involved in or present at the signing, although he later informed DIA that he thought the sum paid to the locatee was quite reasonable. Although DIA advised CPR that the agreement with the locatee was invalid under the Indian Act because an Indian had no power to alienate his land, no evidence that the agreement with the locatee was modified has been found.

Correspondence indicates that CPR had filed a plan of the water pipe with DIA. An Order-in-Council was passed on February 28, 1898 deeming the pipe a necessity for the railway and granting CPR the right to lay the pipe and repair it under s. 35 of the Indian Act. DIA later asked that $3 per year be paid to the band for the use of the common lands involved, acting on the recommendation of the Indian Agent.[8]

Also in 1898, the CPR informed DIA that they wished to construct a road adjacent to the rail line, connecting Laprairie Road and Adirondack Junction (this road became known as

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5 A borrow pit is a pit or ditch from which earth is taken for use as fill, especially in road or railway construction.

6 Reserve lots involved (according to plan filed): 220 (J. Daillebout); 213 (J. Skye, M. Daillebout); 209 (L. Perthuis), 208 (W. Meloche); 202, 205, 206, pt. 209 (disputed); 207 (C. Giasson); 200 (N. Giasson); 202A, 195.

7 Reserve lots involved were 97, 195, 202 and 203. Compensation paid: M. Delorimier, 0.831 of an acre, $20/year, five years; J. Parthius, 0.10 of an acre $10/year, five years; F. Hemlock, 0.804 of an acre, $30/year, five years; P. Ticaire, 4.0 acres, one-time payment of $400 for eight years.

8 The agent reported that the damages would be slight and the pipe would improve the growth of grass. No evidence was found that the band was consulted or agreed to the laying of the pipe or the amount of compensation.

Adirondack Road). A total of nearly three acres in four located reserve lots and common lands were involved.[9] CPR made written agreements with the locatees. The CPR had also drafted a document to be signed by Band Council, which stated that the road would be "dedicated" to the band, which would be responsible for maintaining it and any fences and ditches, however, there was no council in place to consent to this agreement. The Indian Agent recommended the road, saying it would give band members access to the train station.

Order-in-Council P.C. 2203, passed September 17, 1898, authorized the taking of the land (3.5274 arpents or approx. 2.98 acres) and stated that CPR could construct and maintain the road, and that consent for the taking for road purposes was under s. 35 of the Indian Act, as amended by s. 5 of SC 1887 c. 33 (50-51 Vic). CPR told DIA they considered the land for the roadway to still form part of the reserve proper as common land, and that it would not be in the charge of the company, nor would CPR be bound to maintain the road or its fences. DIA agreed, stating that CPR would only be responsible for building, grading, and fencing the road. No letters patent covering the lands occupied by the road were issued. (Interestingly, after the SLSA had expropriated a portion of the road in 1956, they returned it to the CPR, rather than to Indian Affairs for reversion to reserve status.)

In the fall of 1898 two locatees signed agreements consenting to the A&NWR having perpetual use of part of their land to dig and maintain a drainage ditch for a one-time payment.[10] The Indian Agent reported that the drain would benefit the Indians. A plan and legal descriptions were prepared and on January 13, 1899, Order-in-Council P.C. 24 authorized the CPR to open up a drain alongside the right-of-way on the Caughnawaga Reserve for as long as it was required for drainage purposes. The O.C. did not make reference to the Indian Act, although DIA did state in their correspondence that the consent had been given under s. 35.

As a result of requests from the Caughnawaga Band Council for larger station grounds at Adirondack Junction, the CPR applied for 0.22 acres of additional lands to construct a residence for the station's agent. The land was valued by the Indian Agent at $150 and CPR forwarded this sum to DIA, along with a certified plan. The compensation was divided between the affected locatee ($100) and the band ($50). Order-in-Council P.C. 1193, passed June 7, 1910, authorized the transfer of the parcel to CPR for an extension of their station grounds under s. 46 of the Indian Act. The parcel was patented to CPR on April 24, 1911. (When the CPR no longer required this property they sold it to one of their employees. The Band Council later purchased the land with some assistance from Indian Affairs. These transactions are discussed below.)

In November 1910 the CPR applied for 2.73 acres of reserve land to double track part of the rail line. At the same time, they made application to lease 5.21 acres[11] of common lands to be used as a storage yard during the reconstruction of their bridge across the St. Lawrence. At DIA's request, a $500 deposit was made and certified copies of a plan and a description were forwarded. The Band Council indicated their approval of both requests, asking $150 per year for the lands to be leased and $300 an acre for the 2.73 acres.[12] The

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9 W. Meloche (Lots 201 and 208, $35), F. Cross the River (Lot 214, $125) and L. T. Giasson (Lot 199, $50).

10 J. Jacobs (Lot 223, $70) and J. Daillebout (Lot 220, $50).

11 Also said to be 5.19 acres in other documents.

12 The Band stated that they would be willing to grant the 2.73 acres for free if CPR would build a station near the LaPrairie Road. Prior to the construction of the station at Adirondack Junction, there had been a train station near the requested location.

locatee whose lands would be affected by the lease stated that he wanted $100 for the use of his land.[13] Order-in-Council P.C. 117, passed January 24, 1911, approved the acquisition of the 2.73 acre strip under s. 46 of the Indian Act upon whatever terms were agreed on.

During 1911 CPR and DIA communicated regarding the proposed diversion of LaPrairie Road in connection with the double tracking. At first their plans involved relocating band member Joe Cross-the-River's house but by the summer of 1912 CPR had decided to make only a minor change to the course of the road. The locatee was paid $164.25 compensation for the use of a portion of his lot and for the moving of his shed. He signed a written agreement but DIA made it clear that no grant of the land had been made to the CPR.

In the spring of 1912 compensation for the 2.73 acre strip for double tracking remained outstanding, as did the matter of the 5.21 acres to be leased during the reconstruction of the CPR bridge. As they had done in 1910, the Band Council asked $300 per acre for the former and $150/year for the latter. The Agent opined that the figures were reasonable. By June 1912, however, the CPR advised that they wished to acquire additional lands for double tracking, being a total of 8.01 arpents or 6.79 acres (said figure included 2.69 of the 2.73 acres CPR had previously been authorized to acquire). A plan certified by the Board of Railway Commissioners was forwarded. Order-in-Council P.C. 2629, passed September 30, 1912, authorized the disposal of an additional 4.79 arpents (slightly more than 4 acres) to the CPR for double-tracking under s. 46 of the Indian Act upon such terms as would be agreed on.

CPR also applied for 18.03 arpents (about 15.23 acres) for a borrow pit in 1912. They were initially unsure whether they wanted to purchase the land. Three of the affected locatees were against the use of their lands; they retained legal counsel and made demands regarding compensation. Their lands were considered very valuable for farming and contained numerous apple trees. CPR provided a plan of the lands to DIA, deposited $5000, and were advised they could enter the land and remove material pending final arrangements. Order-in-Council P.C. 1530 of June 6, 1912 authorized the sale of the land to the CPR upon whatever terms were agreed to.

In the fall of 1912 arbitration proceedings were commenced to determine the compensation to be paid by CPR for both the borrow pit and double tracking. Three arbitrators were appointed under the Railway Act, one of whom was a band member and had reportedly been approved by the interested locatees as well as the Band Council. The settlement arrived at was that the CPR would pay $325 per acre for the lands, a total of $200 for destruction of fruit trees, and cover legal costs. The compensation was reported to have been agreed to by all of the locatees, seven of whom signed their names to a document indicating their acceptance. At this time it was stated that a total of 19.264 acres, being 16.574 acres of located land and 2.69 acres of common land, were involved and that the band was to receive $5 per acre for the located land as a "reversionary revenue." CPR paid the full amount ,which was credited to Caughnawaga's trust account, and cheques were then forwarded to the locatees in December 1912.

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13 The last reference to this proposed lease was in June 1912, when the band inquired after the compensation money. No formal lease with either the band or the locatee has been found, nor was any evidence found that the locatee was compensated. Since both DIA and CPR appear to have forgotten the $500 deposit made in 1910 for both the proposed lease and the 2.73 acres for double tracking, it appears that the Band effectively received what amounted to about 3.5 years rental.

Letters Patent 16847 covering 12.42 acres for borrow pits was issued to the CPR on March 14, 1913. Letters Patent 16848 covering 8.010 arpents or 6.767 acres for double tracking was issued in the name of the CPR on March 18, 1913.[14]

Some of the lands expropriated in 1955 and 1956 by the St. Lawrence Seaway within the boundaries of the Caughnawaga Reserve belonged to CPR. The construction necessitated the raising of the CPR's bridge and relocation of part of the track. In 1961 SLSA abandoned (through a notice of abandonment) about half an acre of land to the CPR which had formed part of the Adirondack Road. (Recall, however, that the lands for the road had never been transferred to the CPR.)

In 1962 the SLSA sold CPR seven pieces of land totalling just over 14 acres which they had expropriated in 1955. Four of these had belonged to CPR at the time of the expropriation, however, three others, with a combined area of about 7.68 acres, had formed part of the reserve when the expropriation took place.[15]

On September 23, 1963, an agreement was made between the Caughnawaga Band Council and CPR permitting the company to place and maintain a telecommunication line (8 poles) alongside the St. Isidore Road. The agreement was for a ten year period with an option to renew. The rental was $50 per year.

In 1964, the CPR solicited IAB's opinion on whether they could sell the property they had acquired in 1911 to build a section house. IAB replied in the affirmative. In 1965 a notary employed by one Martial Plante, a CPR employee who wished to purchase the property, also sought IAB's assurance that CPR had outright title to the property. IAB then asked the Caughnawaga Band Council whether they would like to purchase the property; Council stated that the property should be returned to the band. When Chief Andrew Delisle contacted CPR he was told that the transaction with Martial Plante was nearly completed – just the signing and release of the deed remained. IAB told Delisle that they would attempt to recover the property but that the CPR might not be able to refuse completion of the sale. Later, the band was advised that if they wanted the property, they would have to buy it from Plante.

Chief Delisle's position was that the land should have reverted to the band and he objected to the precedent of non-Indians becoming owners of property within the reserve. Plante offered to sell the land but apparently the band did not reply and in February 1966 Delisle stated that Plante wanted $6,500 when he had only paid $1,500. More communications on the matter were exchanged but no action was taken and Plante proceeded to improve the property.

In 1969 a valuation of the property was carried out. Council passed a BCR authorizing the expenditure of $16,000 of their capital funds and Plante agreed to sell at that price. IAB contributed $1,200 to the purchase and stated that they would also contribute $8,500 when

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14 In 1914 CPR wished to exchange a parcel of land that was part of a road allowance erroneously included in the sale and patent of lands for the double tracking (Letters Patent 16848) for a portion of land within Reserve Lot 215. The locatee agreed to the exchange without compensation as he had previously been compensated for the lands sold in error, which did not belong to him. O.C.P.C. 1405, dated June 5, 1914, authorized the exchange of two parcels of land containing 2,100 square feet (about 0.048 of an acre) [Doc. No. 371]; Letters Patent No. 17410 were issued to CPR on January 20, 1915 [Doc. No. 373].

15 It appears that the CPR intended to transfer lands to SLSA which had not been expropriated, but it is not clear whether this transfer ever took place. In addition, it is unclear whether parcels which SLSA had expropriated from CPR, but intended to keep, were actually retained by SLSA.

housing appropriations became available so that the house could go to a needy family. (It is not known if this was done.) The sale took place on October 29, 1969. There is no record of the property being returned to reserve status.