

## Executive Summary

### The Acquisition of Kahnawake Lands for the Mercier Bridge and Approaches, 1928-1933

In March 1928, the Quebec Legislature enacted legislation in order to create the Lake St. Louis Bridge Corporation (RSQ 1928, chap. 110). This corporation was mandated to build a bridge connecting the south and north shores of the St. Lawrence River "opposite Caughnawaga Reserve." The act's preamble noted that building such a bridge would be in the interest of the cities, towns and villages in the electoral districts of Beauharnois, Chateauguay, Huntingdon and Napierville-Laprairie on the south shore of the St. Lawrence River, as well as the Island of Montreal, and the whole province in general. The newly formed corporation would be charged with constructing and operating the bridge, as well as the approaches and roads providing access thereto. The corporation could acquire any lands or rights required for the project "by agreement or by expropriation"; expropriations would be subject to the Quebec Railways Act (RSQ 1925, chap. 230). The expense of constructing and operating the bridge was expected to be recovered by tolls.

In January of 1930, J. D. Chéné, Engineer for the Department of Indian Affairs (DIA), met with the Chief Engineer for the Quebec Department of Roads to discuss a number of matters, including the construction of the planned bridge over the St. Lawrence River. Chéné advised DIA's Deputy Superintendent General (DSGIA) that he had seen plans of the proposed bridge, which would be located a few hundred feet below the railway bridge on the Caughnawaga Reserve. The bridge, said Chéné, would cause "a boom for the Indians of Caughnawaga"; further, changes to the highway to be made in connection with the new bridge would greatly improve traffic conditions between Montreal and Caughnawaga.

There is a gap in the historical records following the January 1930 meeting, until the appearance of a March 1932 legal description of the lands required on the reserve for the bridge. The legal description, prepared by the bridge corporation, indicates that about 13.9 acres of Caughnawaga land "remains to be purchased" for the south approach of the proposed bridge. Although later correspondence states that the bridge corporation applied to the Department of Indian Affairs and then met with the Band Council in April 1932, the historical records do not record any formal application prior to the council meeting.

In April of 1932 Olivier Lefebvre, Chief Engineer of the Lake St. Louis Bridge Corp., and Honoré Mercier, the Minister of Lands and Forests for Quebec, conferred with the Caughnawaga Band Council about the reserve lands which would be required in connection with the construction of the bridge and bridge approaches. The council unanimously passed a resolution (BCR No. 572A dated April 16, 1932), that the land and stone required for the project would be given freely under seven conditions which can be summarized as follows:

- 1) free passage over bridge for Band members;
- 2) free passage over bridge for Band members' vehicles;
- 3) all stone required for building bridge and approaches to be taken from reserve to provide employment;
- 4) "Indians to be employed in a major proportion to non-Indians" in building of bridge and approaches, and "especially so on the reserve";
- 5) "Property owners" (i.e., band members holding location tickets for reserve lands) would deal directly with corporation in expropriation and compensation;
- 6) Band council would not be liable or responsible for compensation to those "property owners";

- 7) Indians would be eligible for employment in repaving and painting bridge in future.

According to an internal DIA memo from the 1950s, the April BCR was neither satisfactory to the bridge corporation or DIA and "a number of meetings" were held to redraft the conditions. A BCR (No. 583) of September 23, 1932, contained some significant revisions. The land for the bridge and approaches would be given free, and the stone required would be free from royalties, subject to certain conditions. The exercise of the conditions, or privileges as they were called, "were subject to the rules to be adopted from time to time by the Corporation"; and were as follows:

- 1) a) free passage over bridge for Band members;  
b) free passage over bridge for Band members' vehicles, except for those used temporarily or permanently for any commercial purposes;
- 2) all stone required for building bridge and approaches on reserve, to be taken from reserve, to provide employment; said stone to be of acceptable quality and sold at prices not exceeding those normally paid;
- 3) Indian labour given preference on part of bridge located within reserve, and to be eligible for other parts of bridge, as long as it is satisfactory and available at rates not exceeding those normally paid
- 4) "Property owners" (i.e., band members holding location tickets for reserve lands) would deal directly with corporation in expropriation and compensation;
- 5) Band council not responsible for compensation to the "property owners";
- 6) Indian labour to be given preference for repairing and painting portion of bridge on reserve and to be eligible for such maintenance work on remainder of bridge, provided said labour is satisfactory and available at rates not exceeding those normally paid.

A further significant change was that the Corporation would have the right, after the year 1947, to "acquire said territory" at the rate of \$200 per acre, "the presents [conditions] to be null and void after such acquisition".

Apparently there was "a great deal of discord" in the council at the time these BCRs were passed and the chief councillor and some of his followers were ultimately "deposed". Unfortunately, aside from a reference to this situation, no records were found regarding the nature of the conflict. Records do show that for a period around 1934 there was no elected Band Council at Caughnawaga.

In October a new description was drawn up of the lands required for the south approach to the bridge. In total, 15.19 acres of Caughnawaga land would be "acquired".

At the end of November 1932, the Superintendent General of Indian Affairs (SGIA) made a submission to the Governor General in Council that the Caughnawaga lands required for the south approaches to the bridge be transferred. "In view of the benefit that will accrue to the reserve by the construction of this bridge and the employment which will be given to the Indians of that reserve", no compensation would be paid to the Band; individuals with improvements on located properties would be compensated. The SGIA made reference to the official survey plan (M2519), and stated that the reserve lands involved were 11.38 acres of reserve lots as well as water lots containing 3.81 acres. A small parcel for the patented right-of-way of the Canadian Light and Power Company was excluded; also, the right of Bell Telephone to operate a telephone line over a specific strip of land was

expressly noted.<sup>1</sup> The submission reiterated the conditions which had been set out in BCR No. 583, although the SGIA added that he would have the power to approve any rules adopted by the corporation regarding the exercise of the privileges demanded by the Band Council. A further variation from the BCR was that the Corporation would have the right to purchase the lands at any time after the bridge had been open for 13 years; said purchase would cancel the first, third and sixth conditions demanded by the band (see above), rather than all of them. It was noted that there was only one affected lot held by an individual Indian, namely village lot 540, and that the compensation was set at \$3500, 5% of said amount to be credited to the band on account of their communal interest. The compensation figure had reportedly been agreed to by the lot holders<sup>2</sup> and deemed fair by the Indian Agent. The SGIA recommended that the "said lands be transferred to the said Corporation du Pont du Lac St. Louis, pursuant to the provisions of Section 48 of the Indian Act." [our emphasis]

Thus, on December 7, 1932, Order-in-Council P.C. 2675 approved the transfer of the reserve lands required for the south approaches to the bridge, subject to the conditions which had been set out in the September 23rd BCR. The text of the O.-in-C. essentially repeated the wording of the terms and conditions which had been set out in the SGIA's submission, and stated that the lands were being transferred pursuant to the provisions of Section 48 of the Indian Act.

Following the passage of the O.C., it was learned that the area which had been transferred encroached onto two previously existing rights-of-way, one being a previously unnoticed encroachment onto a CPR right-of-way, the other being a correction with regard to the encroachment onto the Canadian Light and Power Co.'s right-of-way. In 1934, a new plan reflecting these encroachments was produced (M2519A). No amendment was made to the description to the Order-in-Council.

DIA's records contain correspondence surrounding the lands which were transferred to the Lake St. Louis Bridge Corporation, and then subsequently to the Province of Quebec (1943-44). Of particular interest is discussion pertaining to the fact that the Band allotted location tickets on parcels within the transferred area. Apparently, between 1932 and 1938, the Caughnawaga Band Council made three allotments of land to individual band members within the area which O.C.P.C. 2675 had purportedly transferred to the Lake St. Louis Bridge Corporation. The allotments were within Village Lots 766, 767 and 768 which were surveyed in 1937.<sup>3</sup> In May 1933, the Band Council had passed a resolution (No. 636) stating that any lands remaining vacant following the construction of the approaches to the bridge would be allotted to members of the band. DIA officials discussed the situation but it does not appear that any resolution was reached, although the anxiety of the locatees in question was dealt with by DIA reassurances that the Government

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<sup>1</sup> Altogether 15.8 acres were involved, being 15.19 acres from the reserve and 0.61 acres of the power company right-of-way. The acreage was later amended.

<sup>2</sup> V-Lot 540 was held by the estate of Alphonse Cross-the-River. The four heirs involved participated in arriving at the compensation amount of \$3500 and agreed to accept it, although they originally wanted \$5000. They later objected to the deduction of 5% for band interest but the resolution to their complaint is not known. A statement made by the estate noted that the lot contained 11,436 sq. ft. This would appear to indicate that the calculation was on the rate of approx. 30¢ per sq. ft.; however, it should be borne in mind that the compensation was for the immovable and moveable property on the lot. The building on the property was to be surrendered to the estate after the bridge was built.

<sup>3</sup> In 1955, when arrangements in connection with the St. Lawrence Seaway expropriation and construction were being carried out, the issue of whether the locatees on these lots should be compensated arose. They had reportedly made substantial improvements on the lots.

of Quebec would be "understanding" if they ever required the lands to revise the approaches.

Departmental officials recommended that Letters Patent be issued for the lands covered by the O.C., as doubts were raised about the adequacy of transferring lands solely by an O.C. To enumerate, in 1952 a DIA official from the Reserves and Trusts Division noticed that the description in Order-in-Council P.C. 2675 of December 1932 was incorrect, although the plan showing the lands acquired had been corrected (recall M2519A corrected M2519). He claimed that the proper procedure would have been to issue Letters Patent to the Corporation as he doubted that an O-in-C was sufficient to transfer title. He suggested that the O-in-C be amended and Letters Patent issued. The Surveyor General's office was approached with a view to obtaining a proper description for insertion in a new O-in-C; the description was completed in February of 1954. At the same time that they had asked for the new description, DIA had sought a legal opinion on the issue of the 1932 O-in-C. The comments of L. L. Brown, Superintendent of Reserves and Trusts, to DIA's legal counsel, are an interesting statement of a high-level official's understanding of how an expropriation of this nature should have proceeded:

... the 1932 Order in Council purported to convey the lands to the bridge company. We are of the opinion that the Order should have had the effect of giving the company permission to exercise its powers of expropriation, approved of a sale to them, and authorized the issue of Letters Patent. If this is true, the Order in Council will, in our opinion, have to be further amended to delete the reference to the conveyance and, instead, to insert a form of authority to permit the company to expropriate and direct the issue of Letters Patent. In view of the fact that the lands are situated in the Province of Quebec and the Star Chrome Judgment might have some bearing on the matter, we are concerned whether we can proceed as far as hereinbefore [sic] suggested. ...<sup>4</sup>

No action to issue Letters Patent was taken. Two years later, L. L. Brown asserted that the Bridge Corporation saw the Order-in-Council as their title deed. He again recommended that Letters Patent be issued.

Summary of 1932 takings:

Common land	10.68 acres
Common water lots	3.72 acres
Located land V-Lot 540	.26 acres
Canadian Light and Power (land)	.03 acres
" (water)	.66 acres
Bell Telephone	<u>.18 acres</u>
	15.53 acres

Compensation of \$3,500 was paid for the loss of land and improvements on located village lot 540. It is unclear if 5% was deducted and paid to the band for its interest in Lot 540. No compensation was paid for the loss of 14.40 acres of common land or 0.18 acres of land over which Bell had a right-of-way. Compensation to the band was primarily in the form of toll free access to members, which lasted from July 1934 to the summer of 1940

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<sup>4</sup> Document No. 1953/03/23. The reply to this request for a legal opinion was not found. Presumably it was either not on the files concerning the Mercier Bridge or it was removed prior to microfilming by the National Archives.

when tolls were no longer charged. One band member was known to have been employed as a toll keeper.

Events surrounding the taking of further reserve land for improved bridge approaches, 1933-1936

In November 1933, DIA was advised that improvements to the highway leading to the planned Mercier Bridge approaches were required and that further reserve land, both common and located, would be needed by the Quebec Department of Roads. DIA instructed the local Indian Agent, Lorenzo Letourneau, to arrange a meeting between Marquette, the Quebec Department of Roads' Provincial Engineer and Land Buying Agent; the Band Council; and the locatees to arrange the compensation that would be paid for the lands in question. At the same time, the Provincial Land Surveyor was advised that a formal application and survey plan on tracing linen would need to be filed with DIA. Once valuations had been arrived at, agreed to, and approved by DIA and payments made, DIA would seek that Governor General in Council's authority for the transfer.

In March 1934, the Dept. of Roads informed Indian Agent Letourneau that they were prepared to offer the rate of \$200 per acre for 1.75 acres of Caughnawaga Band land. Marquette's letter and a plan were sent to DIA by the Agent, who noted that the lands were required to improve the approaches to the bridge and prevent accidents at the narrow tunnel passing under the CPR line, at the junction of the Malone Provincial Hwy. and the Laprairie Road. Letourneau recommended that the proposal be approved in full and asked for instructions on how to obtain surrenders of the three individual parcels of common lands which had been identified. DIA replied that no surrender was necessary, but rather:

... regarding land applied for by the Provincial Government for road to the revised railway tunnel in Caughnawaga Indian reserve, the Province may acquire the lands under Section 48 of the Indian Act without a surrender, provided satisfactory compensation is paid for the lands acquired and Indian improvements affected.

...

Agent Letourneau was instructed by DIA that he should approve and recommend a valuation of the land and, if possible, get a concurring BCR from the Caughnawaga Council. A deduction of 5% of the land valuation of located lands would need to be made on account of band interest.

An official plan of survey showing the lands required was received at DIA at the beginning of April 1934 and recorded as No. Rd. 2596.

Soon thereafter, Charles Marquette, Provincial Engineer and Land Buying Agent, Quebec Roads Dept., wrote DIA stating that the bridge construction was completed and that new roadways in the Caughnawaga Reserve were required to link the bridge with existing highways. Marquette stated that he had "met the people in Caughnawaga and tried to adjust indemnities which would be paid for the land required and the damages caused"; however, there was no Band Council to deal with in regard to the common land and, further, the individual land holders refused to "accept reasonable offers". Marquette asked that the Minister of Roads be authorized to commence construction, as the bridge was to open to traffic on July 1, 1934. Marquette included a statement of the properties required, including the names of individual lot holders and the lots involved (parts of R-Lots 216, 217, and V-Lots 754, 755 and 756), as well as the common lands, valued at \$350 on the basis of \$200 per acre. The compensation breakdown was for land value and for affected

improvements: land values were calculated on the basis of .05¢ per foot for village lands and \$200 per acre for both reserve lots and common lands. Contemporaneously, Agent Letourneau warned DIA that a delegation from Caughnawaga protesting the province's attempt to acquire the land might be going to Ottawa, though he thought he might have successfully dissuaded the party.

W. R. White, a surveyor from the DIA Surveys Branch, advised DIA's Chief surveyor in April 1934 that the sums offered to the locatees for their holdings, as reported by Marquette, were fair but that he considered the valuation of the common lands too low. He recommended that the rate for the common lands should be \$400 per acre rather than \$200, and that if Quebec forwarded a deposit of \$2002.43, they could be authorized to commence construction on the reserve. White also noted that the new road would be safer than the existing road, which had a dangerous curve entering the tunnel passing under the CPR line.<sup>5</sup>

Subsequently, the DSGIA brought the matter to the attention of the SGIA, repeating that the valuation for the located lands was reasonable, that the common land valuation should be higher, that the road improvement would benefit the Indians, and that construction should be allowed to commence upon deposit of \$2000, which should be adequate to cover the costs of the lands and improvements. DSGIA McGill opined:

...  
As the Indians have an exaggerated idea of the value of the land at this point, it is unlikely that they will agree to accept the valuation offered by the Province or even one which would be made by the Department and it will no doubt ultimately be necessary to expropriate the land required for this purpose. I do not think, however, that it would be advisable to take this action at the present time as the Indians no doubt would subsequently complain that the Department had taken advantage of the fact that there was no Council to which the matter could be submitted for discussion.<sup>6</sup>  
...

The SGIA approved granting Quebec permission to enter the Caughnawaga reserve upon depositing \$2000., "provided that expropriation proceedings are commenced forthwith." C. Marquette, Provincial Engineer and Land Buying Agent, Quebec Dept. of Roads was then told that if he made a formal application to expropriate the lands required, in accordance with the provisions of Sec. 48 of the Indian Act, and sent the deposit, they could enter the reserve.

The Quebec Minister of Roads subsequently forwarded an application to the SGIA which outlined the lands required to build the new roadways connecting the newly constructed bridge with existing roadways. The Minister asserted that he had "decided to use certain lands in the Indian Reserve" and he had the authority to do so under the Roads Act (RSQ ch. 91). The Minister stated that he would pay:

... a just indemnity for the value of those lands and for all the damages which may be caused to the owners, as will be determined by decisions

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<sup>5</sup> The plans showing that it was intended to widen the CPR tunnel and change the angle of the road approaching the tunnel; however, no changes to the tunnel were made. The safety concerns expressed by band members on this issue are referred to in the report.

<sup>6</sup> Document No. 1934/04/24.

of the Quebec Public Service Commission in conformity with the dispositions of the Quebec Roads Act, should it not be possible to agree with the interested parties. ... <sup>7</sup>

Later in May 1934, a large number of men from Caughnawaga protested when roadwork commenced on the common lands "without agreement with us and without surrender." Legal Counsel was retained and their petition was forwarded to DIA.<sup>8</sup> Also, two locatees had stopped the contractors from working on their property. DIA informed the law firm representing the band members that the province's Department of Roads was doing the work and that DIA could expropriate lands required for highways without surrender under the terms of Sec. 48 of the Indian Act.

In June 1934 arrangements were made to have DIA Surveyor W. R. White go to Caughnawaga to meet with C. Marquette, Provincial Engineer and Land Buying Agent, Quebec Dept. of Roads, regarding the valuation of the lands which the province required and to try to reach agreements with the individual property holders. DIA noted to White that if the Indians did not agree, then the compensation would be fixed by the Quebec Public Service Commission; however, the cost incurred in having the amount decided upon by the Commission would reduce the compensation amount, resulting in the claimants actually receiving less than had been offered.<sup>9</sup>

White later reported on his meeting with Marquette. White indicated that he was satisfied with the increased offer of \$650 total for the 1.75 acres of common land (approx. \$372 per acre). The compensation for the located property and improvements thereon, as per a statement by DIA, was \$1202.40.<sup>10</sup>

On July 11, 1934 the Honore Mercier Bridge opened, linking Lasalle and Caughnawaga.

On July 21, 1934, Agent Letourneau informed DIA of his meeting with individuals whose lands had been selected by the Quebec Dept. of Roads for road approaches, none of whom were willing to accept the compensation which had been offered. Reasons put forward for the offers being inadequate included that the areas of land were miscalculated, that more had been offered in other instances of expropriation, that the new road caused inconveniences (i.e. access to water source cut off; province ultimately paid for a new well), etc. One locatee retained legal counsel to assist in negotiating the compensation (Mrs. Diabo aka Seymour or Simard, Res. Lot 216).

In the fall of 1934, DIA decided to put off the matter of deciding the compensation by arbitration until a new Band council had been "installed".

In early 1935, DIA briefed the new Indian Agent at Caughnawaga, François Brisebois, on the settlement negotiations, including the location of the lands and the province's offers of

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<sup>7</sup> Document No. 1934/05/08.

<sup>8</sup> Another area of protest was that a fence was being built which would cut off a large area from the Band's use. The correspondence later indicates that it was agreed that a gate would be put into the fence and that this had satisfied the Indians' concerns.

<sup>9</sup> This statement was repeated a number of times subsequently as difficulties continued over reaching settlements with the locatees.

<sup>10</sup> The locatees, lots affected and compensation offered were as follows according to said statement: Delvido Meloche, Pt. Reserve Lot No. 217 - \$1 (minimum payment); Joseph Goodleaf, Pt. Res. Lot No. 217 - \$17.32; Estate of Kanataka Diabo, Res. Lot 216 - \$8.97; John Canadien Village Lot 754, wood, fence and cabins to be moved - \$176.65; John Mailloux, Village Lot No. 755, Lot 756, apple trees lost, moving of several buildings - \$1002.46.

compensation. Brisebois was instructed to discuss the valuation of the common lands involved with the Band Council and the located lands with the appropriate individuals. DIA Secretary Mackenzie told Agent Brisebois that the lot holders risked getting less compensation if they chose to have the amounts fixed by arbitration.

Agent Brisebois reported to DIA in early March 1935 that the Council had been divided on the compensation issue and had deferred making a decision until they either met with C. Marquette, Provincial Engineer and Land Buying Agent, Quebec Dépt. of Roads, or could discuss the matter at the next council meeting (some thought the amount was adequate, some thought the land should be rented for a limited number of years, and others thought a reversionary clause was required). Brisebois then reported that one of the locatees, John Myiow, was unhappy with the offer of \$1002.46.<sup>11</sup> If he could not get a partial advance, then he would accept the offer. Brisebois recommended paying Myiow what Quebec had offered from the \$2000 deposit and getting him to sign a "quit claim deed". By the end of April, Myiow had signed an agreement form stating that he had accepted the sum of \$1002.46 "in full compensation for damages, land and improvements taken in connection with land taken for the bridge approaches". Brisebois' success in getting Myiow to agree prompted the Quebec Department of Roads to urge DIA to have him reach settlements with the other locatees; DIA subsequently did so.

On May 7, 1935 the Caughnawaga Band Council passed a BCR to accept \$650 for the common land,<sup>12</sup> stipulating that the land should revert back to the Band if it was ever abandoned by Quebec.

Then, later in May 1935, two additional property holders agreed to accept the compensation which Quebec had offered for the portions of their lots used in connection with the road approaching the bridge.<sup>13</sup> Both men signed agreement forms soon thereafter to accept the sums offered "in full compensation for damages, land and improvements in connection with land taken for the bridge approaches."

Agent Brisebois noticed in July 1935 that the official plan of survey showing the lands required for the improved approach to the bridge had some errors with regard to the ownership of Reserve Lots 216 and 217 and that one locatee (J. Goodleaf) had erroneously received compensation, the affected lot belonging to someone else (Mrs. Diabo-Simard). The parcel previously believed to belong to one estate (estate of John Kanatakta Diabo) belonged to another locatee (Delvida Meloche).<sup>14</sup>

After negotiation with the legal firm representing Mrs. Diabo, the sum of \$17.32 for part of Reserve Lot 216 was increased to \$75 (she had asked for \$113.19). The other outstanding locatee, Delvido Meloche, wanted \$72.10 (province's offer \$8.97) but was willing to accept \$65. The province was informed of these demands in October 1935 by DIA. Some further correspondence was exchanged and in November Delvida Meloche signed an agreement form identical to those which had previously been signed by the affected locatees; Mrs. Diabo gave her lawyers authority execute an agreement on her behalf in

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<sup>11</sup> Mailloux's compensation was substantially larger than what was offered to the locatees. As noted above, in footnote \_\_, he had a significant number of improvements.

<sup>12</sup> This is approximately \$371. per acre.

<sup>13</sup> John Canadian (Village Lot 754, \$176.65), Jos. Good Leaf (pt. Reserve Lot 217, \$17.32). As noted below, Goodleaf's cheque was returned it was discovered that he did not hold the lot in question.

<sup>14</sup> RD2596 was not replaced by another plan; DIA's copy of the plan contains these corrections however. Again, see Plan No. \_\_ RD2596.



December 1935. Both locatees received the sums which they had indicated they were willing to accept, being more than the original offer but less than what they had asked for.

A statement dating from December 1935 indicated that the band had been paid \$33.48 for its interest in the located lands affected.<sup>15</sup> Altogether, once the sums of \$65 and \$75 were forwarded for payment to the two outstanding locatees (paid over in February 1936), the Quebec Department of Roads had paid \$2,244.89 for the common lands, located lands, and a new well.

On February 18, 1936 the SGIA made a submission to the Governor General in Council recommending that the 2.11 acres of Caughnawaga Land, "required for the purpose of widening an existing road and providing an improved approach to the Honore Mercier Bridge, be transferred to the Province of Quebec."<sup>16</sup> Order-in-Council P.C. 534 was passed on March 9, 1936, authorizing the transfer of the lands under Sec. 48 of the Indian Act. The O.C. made reference to survey plan RD2596.

Summary of land taken 1933-36

Common land	1.75 acres	\$650.00
located land	<u>0.36 acres</u>	\$1,319.11
	2.11 acres	
5% on located land paid to Band		\$33.48
Cost of well		\$242.30

Approximately 5% of the value of compensation paid to the locatees was paid to the Band for their interest. This sum was not deducted from the locatees, rather it was paid in addition to their compensation. The province also paid for the construction of a well as the revised roads had cut-off access to water.

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<sup>15</sup> The origin of this exact amount is not clear, but was arrived at before the last two locatees settled, as the sum of \$33.48 figure appears in a July 1935 letter. Note that 5% of the total amounts of compensation which had been paid or offered to locatees for land solely, without improvements, is \$31.68. It would therefore appear that the band did not receive 5% of the amounts later paid to Diabo and Meloche (said share would be less than \$10, however).

<sup>16</sup> The 2.11 acres is comprised of 1.75 acres of common land and 0.36 acres of located land.

## The Effect of the St. Lawrence Seaway Expropriations on the Mercier Bridge Approaches

Three individual expropriations of Caughnawaga IR land purportedly required for Seaway construction were made by Order-in-Council. The first, O.C.P.C. 1955-1416, passed September 16, 1955, involved roughly 1,262 acres for the construction of the navigation canal and encompassed all of the lands which had been alienated in 1932 and 1936 in connection with the Mercier Bridge approaches. Temporary bridge approaches, and then permanent bridge approaches, as well as the raising of the bridge, were also elements of the SLSA construction in this particular land area. The third expropriation, effected by O.C.P.C. 1956-1538, passed October 11, 1956, involved about 90 acres of land for the purpose of constructing new Mercier bridge approaches and relocating a portion of the Malone Highway to facilitate access to the bridge.

### 1. The Navigation Canal Expropriation

#### *A. The Status of Lands taken in 1932 and 1936*

As already noted, three parcels within the area taken in 1932, which remained unused following completion of the original bridge and approaches, were allotted to locatees by Caughnawaga Band Council. Plans to include these lands in the area to be expropriated for seaway purposes forced Indian Affairs to consider whether the locatees, who had made considerable improvements to their holdings (Lots 766, 767, 768), would be compensated. Legal advice to IAB recommended recognizing the occupants' entitlement and treating them in the same manner as Indian owners in 'lawful possession'. Consequently, the three lots were added to the SLSA appraisals and in May 1956 the locatees on the three lots signed agreement forms accepting compensation for their improvements and interest in their holdings. Figured into the compensation calculations was an additional 10% for forcible taking.<sup>17</sup> The agreement forms stated that the compensation was accepted "in full and final compensation of my interest in said land and for any claim that I have or may have with respect to an expropriation pursuant to section 35 of the Indian Act made by" SLSA in accordance with O.C.P.C.s 1955-1416 or 1956-231 [unrelated OC, passed Feb. 1956]. The agreement forms also stipulated that the signing locatee would remove from his land upon receipt of compensation.

It is not clear if the Caughnawaga Band as a whole ever received any further compensation for their interest in the common lands which had been taken in 1932 and 1936 in connection with the Mercier bridge construction (regardless of whether it had actually been used in the construction); it would appear, however, that the SLSA had no intention of doing so, likely considering that the lands did not form part of the reserve.<sup>18</sup>

#### *B. Compensation, Negotiation and Settlement, 1955-1963*

From essentially the beginning of the compensation negotiation process, Indian Affairs, anticipating low values being assigned to Caughnawaga lands by the Department of Transport<sup>19</sup>, had suggested two measures, both of which were carried out: the formation

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<sup>17</sup> The amounts the locatees received are outlined in a spreadsheet attached to the report (Appendix A). In the calculations of the compensation the rate per acre was 6¢ per sq. ft. or about \$2613 per acre. It should be noted though that the amounts paid to the locatees do not correspond to this formula; in one case the payment is higher, in one case it is lower, and in another case it is not possible to determine as the locatee's compensation involved additional properties.

<sup>18</sup> Time consuming, detailed calculations would be required to determine the actual amount of common land which had been taken in 1932 or 1936 that was not used for construction: the area would not be more than a few acres.

<sup>19</sup> The SLSA, established in 1954 is a proprietary corporation, and reports to Parliament through the Minister of Transport.

of an advisory committee<sup>20</sup> to assist locatees in determining the adequacy of compensation amounts and the appointment of an independent valuator.

DT had submitted the first appraisal of the lands which had been expropriated by OCPC 1955-1416 in mid-January 1956 and, as expected, IAB felt that the values were low. Of the total 1,262 acres expropriated in September 1955, they had valued 952.45 acres. The resulting total valuation was \$1,708,356 (including 10% for forcible taking, applied in this case to village lots and reserve lots and buildings and improvements thereon<sup>21</sup>). Calculations of the band's communal interest in individual holdings (also at 10%, over and above valuation) were also made.

SLSA paid a lump sum of \$2,560,961 to IAB which was intended to wholly cover the payment of compensation for the first two expropriations. IAB was responsible for obtaining acceptance of offers from locatees and paying out the compensation, purportedly using the formula of: reserve lots - \$1000 per acre, plus compensation for improvements, plus 10% for forcible taking calculated on improvements; village lots - \$2613 per acre or 6¢ sq. ft., plus compensation for improvements, plus 10% for forcible taking on land, buildings and improvements. However, as is discussed in the report, the compensation payments which were ultimately made to locatees do not correspond to this formula -- some locatees received less money and some received more.

Certain locatees objected to the offered amounts and retained legal counsel. As a result, the independent appraiser was required to make additional valuations of the improvements of those who were disputing the compensation offers; at this time IAB questioned the consistency and completeness of some DT improvement valuations.

In May 1956 IAB and about 40 affected locatees were advised that a large portion of the area which had been expropriated for the navigation canal would soon need to be vacated in order for construction to proceed. The existing and planned Mercier Bridge approaches were within these two areas.

By the second week of June 1956 it was reported that agreements had been reached with about 60% of village property holders and 70% of reserve property holders within the entire area expropriated for navigation canal purposes (PC 1955-1416). The locatees who had refused to settle had obtained legal counsel and hired a real estate appraiser. Locatees in the areas required for construction, again including the vicinity of the bridge approaches, continued to refuse to vacate.

Concurrently, the Caughnawaga Band had taken steps to launch a court injunction, challenging the SLSA's authority to expropriate the reserve lands. This injunction was dismissed in October 1956 and a subsequent appeal in 1957 was unsuccessful.

Efforts to settle the outstanding compensation claims continued through the fall of 1956. Within the subject area, only compensation agreements for village lands remained outstanding. IAB wanted to refrain from increasing the compensation offers for land, retaining the formula of 6¢ per sq. foot for village land, which would total \$93,000. According to IAB, the WH appraisal had used an average rate of 17¢ per sq. foot resulting

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<sup>20</sup> The composition of the committee is described in the report, but note that it included representatives from the Band, as well as IAB and an expert valuator. The absence of records on the committee leave unanswered the question of the role they actually played and any impact they may have had on compensation negotiations.

<sup>21</sup> As will be seen below, with regard to reserve lots, it was later decided to apply the percentage for forcible taking to just the buildings and improvements, not the reserve lot land values. It was applied to both village lots and any improvements thereon.

in total compensation of \$297,000. IAB's Minister wanted to show that the amount being paid to the locatees, when added to the benefits to accrue to the Band as a whole, would equal or exceed \$297,000.

On March 7, 1956 the locatees were evicted; the Band had attempted to assist the locatees through legal action but IAB would not approve the expenditure of Band funds on the stated grounds that the majority of the Band did not support it.

The locatees in the area of the navigation canal expropriation continued to refuse to settle and this forced IAB to press the SLSA for additional funds so that offers could be raised: the sum of \$100,000 was provided. Settlements were reached in some cases; however, in 1960, the year after the Seaway's official ceremonial opening, certain individual property holders -- some of whom had held properties in the vicinity of the bridge approaches -- continued to hold out. IAB informed SLSA and the outstanding claimants that SLSA would have to take over the matter of obtaining settlement. By 1961 several settlements were still outstanding and although there was some mention of referring the matter to the Exchequer Court, this does not appear to have taken place. All locatees in the vicinity of the Mercier Bridge negotiated directly with SLSA. Details on the amounts which locatees accepted in compensation are presented in the spreadsheet appended to the report.

During this period, the Caughnawaga Band Council would not consider or accept compensation for the band lands involved in the navigation canal expropriation or for their communal interest in the located lands (consistently set by IAB and SLSA at 10%). Their claim to compensation and damages in connection with these lands remained unsettled for several years. The global settlement in connection with the entire SLSA expropriation reached with the Band Council in 1969, finalized in 1973, is summarized below.

## 2. The Malone Highway Relocation and Revised Approaches to the Bridge

As mentioned, the third expropriation of land by the SLSA occurred in October of 1956, and involved lands needed to build new approaches to the Mercier Bridge and to relocate the Malone Highway to facilitate access to the bridge. Caughnawaga Band Council was informed of the intention to relocate the highway in July 1956. IAB correspondence indicates that the Caughnawaga Band protested against the proposed new highway. Plans were subsequently forwarded to IAB showing the lands to be expropriated; the expropriation also entailed a servitude of non-access, which would prohibit access to the new highway from lands bordering on it.

IAB delayed making a submission to the Privy Council in order to await the decision in the petition for an injunction against the SLSA; however, the submission was finally placed before the Privy Council on October 11, 1956 and approved the same day. The Order-in-Council, P.C. 1956-1538, stated that the land being taken totalled 106.1 square arpents (or about 90 acres). The approval was made pursuant to Sec. 18 of the SLSA Act and Sec. 35 of the Indian Act. The O.C. authorized SLSA to take and establish a servitude of non-access to the land. SLSA could exercise their statutory powers in relation to the lands and, further, authority was given for the issuance of Letters Patent to SLSA, subject to the payment of compensation pursuant to subsec. 4 of Sec. 35 of the Indian Act.<sup>22</sup> The O.C. made reference to SLSA having filed formal expropriation documents in accordance with

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<sup>22</sup> No evidence was found that Letters Patent were issued.

statutory provisions; these consisted of a plan, a technical description and a "Notice of Expropriation".<sup>23</sup>

Nearly a month after the passage of the Order-in-Council, IAB officials, including the Deputy Minister, met to consider who should inform the Caughnawaga Band Council of the highway relocation expropriation. The expropriation documents and plan were forwarded to the Caughnawaga Agency Superintendent with instructions to produce them to the Band Council. The Band, via their legal counsel, subsequently challenged the validity of the expropriation and wanted a Band referendum on the matter, taking the position that the lands should have been taken under the surrender provisions of the Indian Act. IAB's reply to the Band's counsel was that the expropriation was complete, a referendum would be ineffective, and there was no guarantee that there would not be any future expropriations.

Steps to determine the compensation payable for both located and unlocated lands within the newly expropriated area were then taken. In February 1957 SLSA wrote to IAB to discuss the decisions which had earlier been made at a meeting of the appraiser, IAB and SLSA. It was noted that there were 10 acres of Band-owned lands involved which would be valued at a rate of \$1900 per acre, a figure arrived at by WH and considered acceptable by SLSA, so work would begin. IAB correspondence confirms that they too considered this compensation "fair and satisfactory". Supt. Brisebois at Caughnawaga was told that if the Band accepted the compensation by way of a BCR, that a cheque would be forwarded. If the council wished, an official and a valuator could be sent to discuss the matter. The council did not respond to the offer.

Warnock-Hersey's valuation of the expropriated lands located east of the St. Isidore Rd., filed in May 1957, indicated that there actually over 17 acres of Band lands affected, but the valuation of \$1900 per acre was unchanged. Other lands involved were reserve lots (\$1900-2000 per acre), village subdivision lots (\$4356 per acre), a village lot, a portion of Adirondack Junction Rd., and part of a Hydro Quebec right-of-way. Ten percent was applied for forcible taking to both land and improvements, except in the case of Band lands. Compensation agreements were reached almost immediately for three located properties, at the initiation of IAB. In June 1957 the Caughnawaga Band Council was offered \$32317 for 17.0067 acres of land; the offer was not accepted.

A revised appraisal report was submitted by Warnock-Hersey in which the calculation of 10% for forcible taking was added into the land values only instead of being applied as a percentage of both land and improvements. However, the 10% allowance continued to be added to the improvements as well. Band land values remained unchanged as no such amount was applied. WH explained this change as a "benefit to the band to have the presentation in this fashion as it means the Band's 10% interest is somewhat higher."

In July 1957 WH was asked to value three additional parcels to the east of St. Isidore Rd. as well as all expropriated lands located to the west of that road. Sometime in November or December, M. Rowe of WH submitted his appraisal report (not found) and IAB indicated that negotiations with land owners would open as soon as Treasury Board approval to expend the required funds was given.

In February 1958 locatees with properties located in the expropriated area west of St. Isidore Rd. began signing agreements to "Accept and Release"; the compensation offers made by SLSA were based on the WH valuations. All locatees settled at this time, except

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<sup>23</sup> A servitude of non-access was established against 5.5 acres patented to Hydro-Quebec (Line 4).

for two owners, who settled later (again, refer to the spreadsheet showing payments to individuals appended to report for further details).

In November 1958 IAB gave Supt. Brisebois an explanation of why the compensation paid for reserve lots in the highway relocation expropriation was higher than the two previous expropriations. His reasons were: the first two expropriations had not included 10% for forcible taking on reserve lots (it had only been applied to buildings and improvements); compensation for the lands had been based "on the straight \$1,000.00 per acre which amount ... was insisted on by the Band"<sup>24</sup>; and finally, the value of the lands involved in the third expropriation been increased as a result of the construction of the navigation canal.

The issue of compensation for the Band lands affected by this expropriation is discussed below.

### 3. Band Compensation for both Expropriations (1955-1416 and 1956-1538)

The initial approach toward calculating compensation to be paid to the band for their interest in the lands expropriated by the SLSA was that they should receive the bare value for unlocated land and 10% of the value of located lands. This was not, however, the formula ultimately used in the final settlement.

Serious settlement discussions and negotiations commenced in 1968, at which time there was substantial consideration of the matter of Band interest in located lands, the Band asserting that they had not agreed to the formula of 10%. Initial overtures by the SLSA for a total compensation figure included their offers for the value of land (Band owned land, Band share in land taken from individuals, plus interest) and damages. The breakdown of the Band's counter offer at this time, the total amount of which was far above that of the SLSA, indicated that they wanted \$3000 per acre for the 90.7067 acres taken for the revised Mercier Bridge approach (OCPC 1956-1538), a total of \$272,020.10.

When a settlement was reached in 1969, the rate paid for the 90.7067 acres (called Area 6) was \$1800 per acre, \$163,272.00. Instead of paying the Band for their 10% interest in these and the other expropriated lands, the total calculated value of the lands taken, less the payments that had been made to individuals, was the assessed compensation. The value of the 545 acres to be returned was said to be \$1,142,969.95; the total cash payment to be made to the band was \$950,819.31 (when finally paid, this figure had been increased by accrued interest). The agreement was approved by Band Council, the Minister of Transport, the Minister of Indian Affairs and Northern Development and the Treasury Board in 1973.

It is clear that new bridge approaches were constructed in the area expropriated for the navigation canal by OCPC 1955-1416, and it is also known there had been existing bridge approaches expropriated in 1932 and 1936 in the area. The precise component of the settlement applying to the lands expropriated for the navigation canal but ultimately occupied by revised bridge approaches cannot be isolated in terms of acreage and compensation. The difficulties encountered in our efforts in this direction were described in the report. Further, it is not clear whether the Band was compensated for any lands which were within the original bridge approaches (1932 and 1936 expropriations) but there is some indication in the early phases of the compensation negotiation process that SLSA did not intend to include these lands in their calculations.

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<sup>24</sup> We have been unable to verify this assertion.

The lands to be returned were transferred by OCPC on 28 October 1976 (1976-2662). These, along with some additional lands which had been transferred to Indian Affairs by OCPC in 1966 (1966-1824), a total of 805.002 acres, were set aside as additions to the Caughnawaga IR by OCPC of 12 October 1978 (1978-3105). Examination of the survey plans referred to in the schedules enumerating the returned parcels indicate that returned SLS Lots 14, 16, 17, 19 and 20 contained lands in the vicinity of the original bridge approaches, but a technical examination of the various survey plans and descriptions would be required to ascertain with certainty whether any portions of these parcels overlapped onto lands originally expropriated in the 1930s for bridge approaches. One parcel (SLS 26, 15.237 acres) of the land expropriated by the Seaway for the changes to the approach to the Mercier Bridge and highway relocation (O.C. 1956-1538) was amongst the land reconveyed to the Band and returned to reserve status. It does not appear that any of the lands within the area expropriated for the navigation canal used specifically to relocate the bridge approaches have ever been returned to reserve status.