

Article

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Resisting Regulation: Conservation, Control, and Controversy over Aboriginal Land and Resource Rights in Eastern Canada, 1880–1930

Abstract

During the turn of the twentieth century, the land continued to provide the practical, historical, and spiritual basis of distinct cultural practices for Aboriginal peoples in eastern Canada. This was also a time of direct and often intense cultural assaults on Indigenous traditions by state conservation practices and discourses on game preservation. An analysis of historic Aboriginal assertions of sovereignty and effective control in eastern Canada during this period provides an important context that links the current day neo-liberal discourse on “minority rights” and the resulting paradigm of domestication with the Canadian state’s historic policies of aggressive civilization. This analysis ultimately argues that the historic and ongoing project of nation building in Canada is grounded in a complex nation-to-nation framework, with a long history of international diplomacy and good-governance practices that include the involvement of Aboriginal peoples in seeking positive and practical resolutions to their struggles with the state over their land and resource rights.

Résumé

Au tournant du vingtième siècle, le territoire est demeuré pour les Autochtones le socle concret, historique et spirituel de leurs pratiques culturelles distinctes dans l'Est du Canada. Cette période a également été celle où les traditions autochtones ont été attaquées directement et souvent très durement par les pratiques de conservation préconisées par l'État et les discours relatifs à la préservation du gibier. L'analyse des affirmations historiques de souveraineté et de maîtrise effective des Autochtones dans l'Est du Canada au cours de cette période fournit un éclairage important sur le contexte reliant le discours néolibéral actuel relatif aux « droits des minorités » et le paradigme qui en résulte : la domination par des politiques classiques de l'État canadien axées sur une stratégie agressive de civilisation. Finalement, l'auteure soutient que le projet historique d'édification de la nation qui se poursuit au Canada se fonde sur un cadre complexe de relations de nation à nation. Ce cadre repose sur une longue histoire de diplomatie internationale et de pratiques de bonne gouvernance qui comprend la participation des Autochtones à la recherche de solutions favorables et concrètes aux luttes qu'ils ont menées contre l'État pour leurs droits relatifs aux terres et aux ressources.

Introduction

This article focuses on historic disputes between Aboriginal peoples in eastern Canada and the Canadian state over the regulation of traditional land use practices. I provide a broad context regarding this issue, with particular attention paid to examining the specific tensions regarding access, use, and regulation of Aboriginal territories in eastern Canada. My analysis examines specific incidents of disputes regarding the uses and regulation of game resources and traditional Aboriginal harvesting and subsistence patterns among the Hudson's Bay Company (HBC), the Department of Indian Affairs (DIA), provincial governments in Ontario, Quebec, Nova Scotia, New Brunswick, and Newfoundland, and Aboriginal peoples across these jurisdictions. In particular, I highlight the active engagement of Aboriginal peoples in reinforcing their "nation-to-nation" understandings of treaty relations as an attempt to mitigate ongoing political struggles over territory and resource use with the Canadian state. An examination of these tensions helps to unveil the inherent power relations related to the "unilateral extension of state or federal legislative power over Indigenous peoples and communities" in Canada during the late nineteenth century (Schulte-Tenckhoff 247). Working to unveil these power relations is one step towards recognizing "the fundamental misunderstanding between Indigenous and state parties to treaties." It also helps to move the discourse on Aboriginal and treaty rights away from a "paradigm of domestication" with its focus on "minority rights" back to the historic spirit and intent of treaty diplomacy as international negotiations between sovereign nations, with all the legal implications inherent in international law (Schulte-Tenckhoff 260–61).

Understanding Aboriginal Title

The analysis and recognition of colonial processes involved in the historical dispossession of Aboriginal peoples from their traditional territories provides greater insight into the relations of ruling and stories of resistance associated with the reconciliation of Crown sovereignty and Aboriginal title. In certain instances, the pervasive discipline imparted by Crown sovereignty in Canada, including the differential allocation of land in the provinces, backed up by laws, courts, and jails, directly opposed the mobile fishing, hunting, and gathering activities that helped to define the livelihoods and life ways of many Aboriginal peoples. The imposition of Crown sovereignty on Aboriginal peoples historically imparted a land-system that attempted to define where Aboriginal peoples could and could not go, while neglecting the articulation of Aboriginal peoples' unique geographic knowledge and multiple and distinct land use practices across Canada. In many instances, these relations of ruling, in turn, worked to construct Aboriginal peoples as trespassers within their own traditional territories (Harris 271; Slattery 735).¹

While historic and present-day legislative and judicial mechanisms have attempted to facilitate and acknowledge that Aboriginal peoples' relationships

with the land are particularly worthy of understanding and respect, the courts have consistently failed to address the question of Aboriginal jurisdictional sovereignty. This failure presents a significant impediment to reconciling issues of Aboriginal title with Crown sovereignty, as Aboriginal title forms the basis or foundation of all other Aboriginal rights (Slattery 783; Kulchyski 10).

Over the last thirty years, the Supreme Court of Canada (SCC) has struggled with redefining the nineteenth century legal legacy associated with this representation of Aboriginal title. The pattern of all these recent decisions² reflects the SCC's continued encouragement for the development of lasting and meaningful negotiations between Aboriginal peoples and the provincial and federal governments to facilitate claims to Aboriginal title outside the context of litigation. In order for these sorts of negotiations to be effective and meaningful, however, Aboriginal relations to the land and the history of dispossession incurred through colonial processes of settlement and effective control need to be acknowledged. Ideally, working partnerships between Aboriginal peoples and the Crown would provide a framework for the development of a lasting political relationship based on equality and a commitment to address outstanding Aboriginal title issues, including the question of Aboriginal sovereignty and self-government. This is particularly important for those Aboriginal communities still struggling with Canada for recognition of their Aboriginal and title rights (Asch and Zlotkin 225–29; Culhane 356).

“An Exceedingly Harsh Measure”

After Confederation in 1867, Canada became responsible, under Section 91(24) of the *British North America (BNA) Act*, for “Indians and lands reserved for Indians.” Treaties between the federal government and First Nations in Canada became one of the official and principal means of addressing the question of Aboriginal title and provided the means to open up land for colonial settlement. The *Indian Act* became the legislative means by which the federal government maintained jurisdiction over Aboriginal peoples and their lands. Treaties routinely reserved large tracts of land and recognized the rights of Aboriginal peoples to continue their traditional activities. Among other things, treaties guaranteed that Aboriginal peoples would retain the full and free privilege to hunt within their territories not ceded to the Crown and to fish in the waters as they were accustomed to doing, except in those portions sold to private individuals or set aside by the government for specific uses (Dickason 254).

Because of the 1886 decision in *R. v. Robertson*,³ however, the provinces gained responsibility for the administration and regulation of fish and game resources. The Judicial Committee of the Privy Council (JCPC) decided that since some game was not migratory and did not intersect other areas of federal control, such as the inland and coastal fisheries, provincial authorities maintained the right of exclusive control.⁴ While the decision in *R v Robertson* spelled out the jurisdictional parameters between the federal and provincial

governments, it did not adequately address the regulation of Aboriginal treaty rights, and more specifically, those Aboriginal hunting or fishing rights in British Columbia and eastern Canada not recognized by treaties (Pulla 138–40).

R v Robertson permitted the provincial governments to pass legislation to regulate hunting and trapping, including Aboriginal hunting and trapping activities. Provincial game laws typically emphasized sport hunting rather than hunting for food; and government regulations permitted the taking of limited numbers of animals in short seasons. Furthermore, provincial authorities required that Aboriginal peoples, like white settlers, pay for the privilege of hunting. In response to this new jurisdictional relationship, the Department of Indian Affairs (DIA) stressed to the provinces that Canada's treaty obligations to Aboriginal peoples needed to be recognized and that the provinces needed to guarantee Aboriginal peoples' access to game for their livelihood.

The enforcement of the Manitoba game laws against Aboriginal peoples during the late 1880s, for example, brought an immediate response from the DIA. While the DIA requested that Manitoba allow Aboriginal people certain rights to kill game out of season, the province refused to make any special exceptions in favour of Aboriginal peoples. On 19 March 1890, Manitoba Minister of Agriculture T. Greenway remarked to Deputy Superintendent General of Indian Affairs L. Vankoughnet, that the province introduced its game laws in direct response to concerns from settlers and government guardians regarding the wanton slaughter of wildlife by Aboriginal peoples. Greenway noted that, while the province did not intend to disregard treaty hunting rights, it could regulate these rights in the spirit of conservation.⁵

In response to this situation, Vankoughnet assured the Superintendent General of Indian Affairs, Sir John A. MacDonald, that the policy of the Manitoba Government was exceptional and "in every other Province all Indians [were] allowed to kill game at any season of the year and anywhere for sustenance, but they are not permitted to kill game in the close seasons for market." He further stressed that if Manitoba strictly enforced its position, a very serious situation could develop.⁶

Manitoba, however, was not the only province in which provincial game laws prevented Aboriginal peoples from continuing to pursue their traditional harvesting activities. In sections of eastern Canada, where provincial and federal authorities did not recognize treaties, the situation was much more difficult. The governments of Quebec, Nova Scotia, New Brunswick, and Newfoundland did not recognize Aboriginal peoples' title to their traditional territories. Unlike British Columbia, these provinces did not include special provisions in their legislation that recognized Aboriginal traditional harvesting practices. Nor did they establish joint provincial–federal commissions to investigate and settle Aboriginal title claims. In 1896, for example, Quebec amended its *Game Act*,

making it mandatory for every hunter to purchase a licence. The legislation also restricted the hunting of moose, deer, and caribou out of season. Section 2 of the act had the most impact, however, as it restricted the trapping of beaver and muskrat for four years and established a closed season, between April and November, to limit the harvest.⁷ Unique to Quebec during this period, Section 10-1417a of the legislation provided for the recognition and establishment of “hunting territories” by provincial Order in Council (OiC). It stated:

From and out of the public lands remote from settlement it shall be lawful for the Lieutenant General in Council upon the recommendation of the Commissioner [of Crown Lands] to erect hunting territories which shall in no case exceed four hundred square miles and provided such lands are not subdivided into lots or are unfit for cultivation.

The Commissioner may lease, either by auctioneer or by private agreement any such hunting territory to one or more persons for a period not exceeding ten years for an annual sum of not less than one dollar per square mile agreed up between him and the lessee.⁸

There was no specific indication, however, that these hunting territories recognized Aboriginal title to a specific area or that Quebec recognized Aboriginal peoples’ rights to continue the traditional activities associated with their livelihood and cultures. In fact, in February 1896 the Mohawks at St Regis requested that Reed interfere in Quebec’s new game laws. They indicated that the legislation’s prohibitions on hunting and trapping “out of season” and the establishment of a closed season on beaver until 1900 severely affected their livelihood. In reply to the situation, on 8 March 1896 the Deputy Superintendent General of Indian Affairs, Hayter Reed, informed the Indian Agent at St Regis that he could not interfere with the provincial game laws.

Three months later, on 12 June 1896, HBC Commissioner G. C. Chipman suggested to Reed that Quebec’s new game laws greatly affected the Aboriginal peoples in both the “organized and unorganized portions” of the province. While Chipman inquired whether the provisions of the act could actually be enforced, he never let on that the HBC was directly affected by the restrictions on Aboriginal hunting and trapping activities.⁹ That same month, on 20 June 1896, Reed forwarded Chipman’s request to the Assistant Provincial Secretary, requesting clarification regarding the extent of the application of Quebec’s game laws to Aboriginal peoples.¹⁰ That same day, Reed wrote to the Assistant Commissioner of Crown Lands in Quebec, A. Taché, regarding the application of the provincial game laws to Aboriginal peoples. He stressed to Taché that “the Indians of the province of Quebec who depend upon the chase for support, derive their livelihood mainly from the trapping of beaver and if they be prohibited from taking Beaver until 1900 great destitution will be entailed.”¹¹

By the end of 1896, Taché informed Reed that the provincial government intended to enforce the hunting and trapping regulations against Aboriginal peoples. He noted, however, the possibility of establishing special accommodations for Aboriginal peoples. This included issuing a special permit “to any Indian whose poverty would be well established and who would require hunting the beaver as means of subsistence for himself and family.”¹² While Taché pitched this idea to Reed, Chipman pressed for an official opinion from the Minister of Justice regarding the validity of the legislation. He stressed that the regulations were “*ultra-vires*,” as the provincial government did not maintain the legal power or authority to regulate Aboriginal rights.¹³

Quebec, however, was not the only province in eastern Canada to enforce its game regulations against Aboriginal peoples. As early as 1894 in Nova Scotia, the provincial government was arresting Mi’kmaq for contravening its game laws. On 15 April 1894, Abraham Toney, a Mi’kmaq from Bear River informed the DIA that the provincial government arrested him for killing a moose out of season, giving him the choice of two months in jail or a fine of \$80.50. Toney’s request for assistance, however, was ignored and the DIA informed Toney’s Indian Agent, F. A. McDormand, that “Indians [were] liable under the game act like white men.”¹⁴ Similarly, in New Brunswick, on 3 March 1896, John R. Dominic, a Mi’kmaq from Red Bank complained to the DIA that provincial game wardens were confiscating moose killed by his people. Dominic requested the DIA to clarify whether the Mi’kmaq were subject to provincial game laws. In reply, McLean informed Dominic’s Indian Agent, W. D. Carter, that the Mi’kmaq were subject to game laws, stressing the importance of conservation for the Indians.¹⁵

The ad-hoc nature of the distribution and eligibility of the proposed special permits by Quebec further reflected the increasing divide between federal and provincial jurisdiction over issues relating to Aboriginal peoples. The problematic nature of poverty as the main eligibility criterion certainly did not take into consideration the poor living standards many Aboriginal peoples faced on a day-to-day basis. Starvation, in particular, was an increasing reality for many Aboriginal peoples on the north shore of the St Lawrence River (Pulla). While it is unlikely that Taché intended to provide special permits to all Aboriginal peoples in the area, the question remained: who would, or could, distinguish a poor Indian from a relatively self-supporting one, and what criterion would be used in the selection process?

The DIA, however, maintained its position that Aboriginal peoples were subject to provincial hunting and fishing regulations. Reed subsequently informed all the Indian Agents within Quebec that they needed to ensure that Aboriginal peoples understood and followed the provincial regulations. He also suggested to the Indian Agents that they help all Aboriginal peoples obtain permits if they qualified. Similarly, Reed requested that Chipman provide him

with a list of all the names of Aboriginal peoples in Quebec that he believed should receive special permits from the provincial government.¹⁶ While Chipman eventually forwarded a detailed list of names to Reed, he stressed that the prospect of issuing permits to Aboriginal peoples for subsistence was ludicrous. According to Chipman, the Aboriginal peoples in Quebec believed that their rights to hunt could not be taken away from them and that they would trap beaver regardless of whether they required it for subsistence.¹⁷

As part of the provincial government's discourse on conservation, Quebec established various reserves or "Parcs Nationaux" throughout the province. The provincial government limited access to the parks and required hunters and fishermen to purchase permits and licenses. Catch limits and quotas were strictly enforced. Any contravention of these regulations was punishable under provincial legislation. One such park was established around the southeast side of Lac St Jean on the north shore of the St Lawrence River. The park encompassed 300 square miles of forest and included portions of the traditional territories used by the Aboriginal peoples in the area. On 4 January 1897, the Indian Agent at Pointe Blue, P. L. Marcotte, informed Reed that Quebec's new park proved very detrimental to the Aboriginal people of the area. According to Marcotte, government game guardians confiscated numerous traps and chased the Montagnais off their hunting grounds, which were now within the confines of the park.¹⁸ In response, Reed requested Taché to issue special permits to the Aboriginal peoples around Lac St Jean. Taché, however, insisted that, although amendments to the *Game Act* provided for the issuing of permits to Indians "whose poverty has been established to his satisfaction of the Game Commissioner," Quebec would not permit Aboriginal, or non-Aboriginal, trapping activities inside a park.¹⁹

Later that same month, Reed informed both Marcotte and Chipman that Quebec intended to enforce its regulations strictly against trapping inside park boundaries.²⁰ In response to Reed, on 4 March 1897, Chipman stated that the HBC considered the state of affairs unbelievable and would "not rest until the Indians are granted their rights to trapping for a livelihood."²¹ While Reed attempted to obtain further clarification from Taché regarding the issuance of special permits, Taché reiterated that Quebec considered the trade of beaver skins completely forbidden and stressed that the government had not issued beaver permits to anybody. Chipman, however, was not impressed with the lack of results by the DIA on this issue. On 23 March 1897, he accused Reed and the DIA of not doing enough for the Aboriginal peoples, suggesting that they should work harder to secure their rights. In response to Chipman's accusations, on 13 April 1897, the DIA's acting secretary indicated that the department considered it was doing all it could for the Indians.²²

Apparently, however, the DIA was not entirely convinced that it had sufficiently exhausted all measures and avenues regarding this issue. A general memo

prepared by the DIA to the Minister of the Interior regarding Quebec's game laws highlighted the fact that the Aboriginal peoples in the province relied on beaver, both as a source of food, and as a trade commodity for clothing, ammunition and other necessities. The memo stressed that Quebec's strict application of its game laws severely limited the livelihood of Aboriginal peoples. The memo also critiqued the special permit system introduced by Quebec. The DIA considered the system inadequate, as it did not address the acute loss of life brought on by starvation and concluded that the enforcement of the game laws ultimately would not provide the desired ends. The memo noted, "as experience has indicated in the more civilized parts of the country, the real cause of the extinction of the beaver has been indiscriminate trapping and hunting by others than the Indians—in areas where the Indians are alone there is little if any domination."²³

During the spring of 1897, this issue found its way into Parliament. Canada debated whether Quebec's game laws applied to the Aboriginal peoples in the province who still maintained a mobile hunting and fishing lifestyle. A confidential brief, prepared for the Minister of the Interior in response to this inquiry, highlighted sections from the 1847 Gesner Report on Indian Affairs regarding the treaty status of Aboriginal peoples in Lower Canada. In his report, Gesner indicated that Aboriginal title in Lower Canada had become circumscribed within defined limits and, in many instances, was held by patents under the French Crown or individual seigniories. Of these reserves, Gesner pointed out that several groups retained possession of their Aboriginal title, "namely on the Ottawa which the Indians have not been dispossessed of their ancient hunting grounds without compensation." The brief to the Minister of the Interior concluded, however, that since reserves were set aside for the Indians, they were therefore subject to provincial game laws.²⁴

A general memo prepared by the DIA reaffirmed the federal government's official position on the status of Aboriginal peoples in Quebec. The DIA confirmed that they were not considered treaty Indians, as there was never any formal extinguishment of Aboriginal title in Quebec. Yet, since reserves were set aside for them by the Government of Canada, they were still subject to the provincial game laws. The memo reiterated, however, that beaver and other fur-bearing animals were the principal means of subsistence for Aboriginal peoples and the DIA feared starvation if the provincial game laws were enforced. The DIA therefore urged that Quebec grant Aboriginal peoples a general exemption from the game laws.²⁵

On 2 June 1897, the DIA requested the Privy Council to issue an official exemption and, on 14 June 1897, Order-in-Council (Oic) P.C. 18788 ordered that "the Indians should be exempt from the game acts so that their means of livelihood and subsistence are not removed."²⁶ The provincial government, however, did not appreciate the federal government interfering with its jurisdiction

over game resources. On 16 July 1897, the Lieutenant Governor of Quebec passed OiC 189248 reaffirming provincial control over game resources. The OiC stated that Quebec considered its game regulations “justly provident and made in the general interests of the Province and that the Indians themselves will be the first to benefit therefrom.”²⁷

Resisting Regulation: Conflict and Contestations

By the turn of the century, Aboriginal peoples in Quebec, as well as in Nova Scotia and New Brunswick, became increasingly vocal to the DIA regarding the effect of the provinces’ strict enforcement of game laws on their Aboriginal and treaty rights. In one letter to Prime Minister Laurier on 7 October 1898, two Abenaki hunters stressed that non-Aboriginal peoples continued to encroach on their hunting territories and that the closed seasons on beaver and caribou severely limited their livelihoods.²⁸ Similarly, on 18 July 1899, Aboriginal hunters at Bersimis petitioned the DIA for permission to hunt and trap on their hunting grounds.²⁹ E. Moureau, a member of the Escoumaine band, requested the DIA to set aside a piece of land for him that he had always occupied as his hunting territory. He stated that the territory had always been his and that it was where he had raised his family and hunted for a living. Contrary to claims by the provincial government, Moureau stressed that he had always protected the beaver and prevented other hunters from killing them. He stated:

I myself have never removed traps and suspended them in the trees with the beasts caught therein—I think it would be just that I should have this piece of hunting land and that no one else should be allowed to hunt thereon—lately Canadian hunters have been there to hunt and I do not know what will happen in the future and I wish that they would cease hunting in this direction, this is not their manner of making a living.³⁰

On 9 February 1897, the Mi’kmaq at Bear River adopted a resolution regarding the strict enforcement of provincial game laws. The resolution confirmed that the Mi’kmaq had always depended on hunting as a means of support, and that the game laws were unjust as they restricted the Mi’kmaq from maintaining their livelihood. The resolution stated that the Mi’kmaq were forced to either break the laws or starve and they called upon the DIA to secure their exclusion from the regulations.³¹ There is no indication that the DIA addressed the appeals from the Mi’kmaq. On 26 February 1902, Elizabeth Paul informed the DIA that provincial officials in New Brunswick arrested her husband, William Paul, for killing a moose out of season. Paul expressed her frustration to the DIA, stressing that the Mi’kmaq looked to Canada for recognition and protection of their rights:

Now we Indians always consider ourselves wards of Canada and are allowed to kill a few animals for our own use and not strictly under

provincial game laws. We Indians think that the said William Paul is unjustly imprisoned and yet are unable to do anything on account of our poverty and obscurity.³²

In response to Paul's claim, the DIA asserted that, as in Quebec, no treaty or Canadian statute law reserved the Mi'kmaq any special hunting or fishing rights, and therefore Aboriginal peoples were subject to provincial game laws. The DIA, however, requested the Attorney General of New Brunswick to release Paul since he was unaware that the provincial game laws applied to the Mi'kmaq.³³

Contrary to the DIA's supposition that no treaty between the Mi'kmaq and the Crown existed, and that the Mi'kmaq were ignorant of their Aboriginal and treaty rights, in March 1906 Chief Paul and Chief Burnett from King's Cove informed the DIA that a treaty with the British Imperial Government in 1726 recognized and affirmed their Aboriginal rights. Subsequently, Paul and Burnett requested the DIA to clarify its understanding of Mi'kmaq treaty rights. They indicated that the Mi'kmaq understood the treaty as recognizing their rights "to cut what wood they want[ed] to use when they [could] and also to fish and hunt in and out of season."³⁴ The treaty Paul and Burnett referred to was the 1725 Treaty of Annapolis Royal, ratified in 1726 by seventy-seven Mi'kmaq from nine separate villages on mainland Mi'kma'ki, Unimaki and the east coast of New Brunswick as well as John Doucette, Lieutenant Governor of Annapolis Royal and William Sherif, secretary of the Nova Scotia Council. The treaty contained numerous clauses, including the recognition of Mi'kmaq hunting and fishing rights (Wicken). Regarding hunting and fishing rights, the treaty stated:

Saving unto the Penobscot, Naridgwalk and other Tribes within His Majesty's province aforesaid and their natural Descendants respectively all their lands, Liberties and properties not by them convey'd or sold to or possessed by any of the English Subjects as aforesaid. As also the privilege of fishing, hunting, and fowling as formerly.³⁵

On 16 March 1906, the DIA informed the Indian Agent at King's Cove, C. R. Berkwit, that the department was unaware of any treaty between the Mi'kmaq and the Crown conferring the right to cut wood. McLean stressed that if the Mi'kmaq attempted to exercise their treaty rights, they did so at the risk of prosecution and punishment for trespass. With regard to hunting and fishing, McLean stated that the DIA did not support their claims and allegations, and suggested that the only exemption from the laws must be contained in the laws, which, he emphasised, are "as beneficial to the Indians as to any other class of the community." He concluded that any disregard of the laws would be at the Mi'kmaq's own risk as the DIA was powerless to protect them.³⁶

Since the DIA failed to recognize the Mi'kmaq's Aboriginal and treaty rights outlined in the 1726 treaty with the British Imperial Government officially, some Mi'kmaq wrote directly to King Edward VII in England, requesting official recognition. On 14 September 1907, for example, J. Fossie from the New Germany Indian Reserve in Nova Scotia forwarded a letter to the king inquiring whether the rights granted to the Mi'kmaq by the King in 1726 had been repealed. Fossie pointed out that the Government of Canada revoked their rights to hunt and fish and stressed that Mi'kmaq traditional territories were being sold, against their will, to non-Aboriginal settlers.³⁷ In response to Fossie, the British government stressed that the king could not interfere in the matter, but noted that "any representations which he may make to the department of Native Affairs will, no doubt, receive due consideration."³⁸

While there is some indication that the British government recognized the seriousness of the issue, the Mi'kmaq continued to press the DIA to recognize their Aboriginal rights. The federal government, however, repeatedly affirmed its official position that Mi'kmaq were subject to provincial game laws. It even suggested that the provinces dealt very generously with them, refraining from prosecuting Mi'kmaq hunters for killing game to relieve "immediate and pressing necessities," stressing that this occurred as "manner of grace and not as a right of the Indians." Mi'kmaq in Nova Scotia and New Brunswick, however, continued to be prosecuted for violating provincial game regulations. On 2 February 1910, for example, the Nova Scotia game society caused the arrest of two Mi'kmaq for hunting moose contrary to provincial game regulations.³⁹

During the early 1900s, the intensification of non-Aboriginal settlement and industry within Mi'kmaq traditional territories proved increasingly problematic. The tightening of provincial game regulations during the early 1900s led the Mi'kmaq to pursue alternative means of support. This included smoking and drying fish for sale, making baskets, woodworking, guiding, and manufacturing porpoise oil.⁴⁰ Continued access to these resources, however, became increasingly difficult as the Government of Canada leased portions of Mi'kmaq traditional territories to non-Aboriginal peoples. There was also some confusion about the status of Mi'kmaq reserve lands: had the Province of Nova Scotia transferred title to these lands to the federal government in 1867 or was the Aboriginal title never extinguished?⁴¹

On 11 March 1909, Mi'kmaq Grand Chief John Denny questioned the DIA's desire to lease the Fairy Island Reserve to the Kedgemakooge Rod and Gun Club of Nova Scotia. Denny expressed concern to the Minister of the Interior that the club intended to cut the prime stands of timber for their own use, stressing that "to dispose of such lands for such purposes would result in great injustice to the Indians of the Province of Nova Scotia because much of those lands now occupied by those tribes are without timber." According to Denny, timber provided a valuable resource for the Mi'kmaq to earn a livelihood,

“we make pick-handles and shafts for our mines in large quantities. We make butter tubs, axe handles, baskets and various other small articles which help to secure for us the means for providing us our living expenses.” While the market for these items was expanding, Mi’kmaq access to good timber was decreasing, making it difficult for them to continue their industry.⁴² While the Deputy Superintendent-General of Indian Affairs assured Denny that the lease in question did not provide the club with timber rights, Mi’kmaq Chiefs from various other communities around Nova Scotia, including Solomon Morris, John Steaven, and Captain Simon Paul, further petitioned the DIA regarding the proposed lease.⁴³ These concerns were justified. In 1912, the proprietor of the Kedgemakooge Rod and Gun Club established an illegal sawmill on the leased property and illegally removed over a thousand feet of timber (Chute 515). While some may consider this a trivial amount of timber, it was still good wood that the Mi’kmaq could have used for their own industry.

The failure of the DIA to acknowledge Mi’kmaq title made it possible for the continued encroachment of non-Aboriginal peoples onto Mi’kmaq traditional territories. The intensification of non-Aboriginal claims to lands within these territories made it difficult for the Mi’kmaq to maintain access to resources needed for traditional activities, and their growing woodworking industry, as it relied upon a secure land base. The situation during the early 1900s at Sheet Harbour, a Mi’kmaq community in northeastern Nova Scotia, further illustrates the increasing tensions related to government efforts to reconcile Aboriginal title and land use practices with the demands of non-Aboriginal industrial development.

On 24 August 1908, the local Indian Agent for Sheet Harbour, Daniel Chisholm, informed the DIA that, while in 1904 he and William Tupper secured from the province a twenty-year lease for 6800 acres of timber land at Sheet Harbour, the Mi’kmaq continued to live on and use the land. Chisholm expressed surprise “to find a large amount of cutting and damage done by the Indians, peeling birch trees for torching purposes, cutting spruce for making oars (an industry getting to be popular), timber for boats, houses, axe handles etc. (not counting fire wood).” According to Chisholm, six “practically self-supporting” families resided on his land, which provided “good hunting grounds, fishing, trapping, also easy access to market, wood, timber and bark for the various purposes.” Chisholm informed the DIA that he would only allow the Mi’kmaq to stay at Sheet Harbour in exchange for exclusive title to harvest the 500 acres of timber reserved for the Mi’kmaq at Ship Harbour.⁴⁴

In response, the DIA informed Chisholm that he could not evict the Mi’kmaq and that “the provincial authorities should have been advised of [their presence] in order to conserve their rights, whatever they may be.”⁴⁵ As an afterthought, the DIA also contacted provincial officials regarding the status of the land at Sheet Harbour and requested the province to set aside

a reasonable quantity of wooded land there for the Mi'kmaq.⁴⁶ Apparently, however, in 1773, the province granted the land in question to Henry Newton, a United Empire Loyalist, and Chisholm and Tupper acquired a lease from the province to a portion of this land in 1904.⁴⁷ On 20 October 1908, Chisholm reiterated his offer to the DIA, further stressing the beneficial aspects of the land for the Mi'kmaq, noting the extent to which they already utilized and “damaged” the resources, including the 270 cords of firewood already cut. According to Chisholm, the firewood was

a mere trifle as compared to other damages such as peeling birch trees for torches, spruce for oars, boat timber, houses, axe handles etc. The excellent situation□hunting of all kinds of game including moose, splendid inland fisheries as well as bordering on the harbour and deep sea fishing has made it famous for the Indians, hence few calls on the department for support.

The context of Chisholm's offer to the DIA, however, rested on the assumption that the Mi'kmaq maintained no title to the land and therefore no specific rights to use the available resources. This situation reflected the increasing lack of clarity regarding Mi'kmaq title to lands in Nova Scotia. When Nova Scotia transferred responsibility for “Indians and lands reserved for Indians” to Canada in 1867, the province did not provide all the details relating to the specific tracts of land set aside for the Mi'kmaq by the colonial government prior to Confederation. The DIA therefore struggled to identify the location and size of the specific land tracts. Specific information was also necessary regarding which families occupied certain traditional territories. Sheet Harbour and Ship Harbour, in particular, fell into this ambiguous category.

In considering his offer, the DIA recognized that the *Indian Act* made no provisions for the type of land transfer suggested by Chisholm, which would have required that the Mi'kmaq receive some form of compensation through an official land surrender. Due to the lack of clarity regarding Mi'kmaq title in Nova Scotia, however, the DIA doubted the success of such a surrender. In particular, the DIA was concerned that such a surrender required obtaining the full consent of the Mi'kmaq Grand Council.⁴⁸ While the DIA informed Chisholm of its decision, Chisholm pressed the issue and expressed doubt that the Mi'kmaq would “fuss over the issue of the 500 acres.” He warned the DIA that if the federal government could not satisfy his wishes, the DIA would have to pay for the “damages” to his land and arrange for the Mi'kmaq families to remain.⁴⁹

Chisholm continued to press the DIA over the question of the land transfer and the federal government continued to deliberate over the nature and extent of Mi'kmaq title in Nova Scotia. Department officials noted that at no time

during the fifty years since the provincial government of Nova Scotia signed the *British North America Act*, were any objections raised relating to the granting of land patents to non-Aboriginal settlers by the federal government. According to DIA officials, it appeared that the provincial government recognized the rights of the Dominion to grant these titles, which suggested that Mi'kmaq title to the lands had been already extinguished. The DIA believed that the lack of prior objection by the province justified the transfer of the title of the Ship Harbour Indian Reserve to Chisholm without an official surrender by the Mi'kmaq because their title had already been extinguished. Under the pretense that the transfer would be in the best interests of the Mi'kmaq at Ship Harbour, DIA officials further suggested that the 500-acre woodlot was of no use to the Mi'kmaq because they lacked the means to harvest the resource.⁵⁰ A. Boyd, the local inspector of Indian Reserves in the area, stated:

while of considerable value, [the timber] is of no earthly use to the Indians at Sheet Harbour or at any other point in Nova Scotia on account of inaccessibility under ordinary circumstances. Only people of means who can afford to engage in lumber operations in Winter and to stream-drive the logs in spring to saw-mills can ever reap any benefit from the wood on this reserve. Therefore by the proposed exchange the Indians would be acquiring a desirable property for a consideration which otherwise would never be of any value to them.⁵¹

This statement, however, totally contradicted the position expressed to the Minister of the Interior by Mi'kmaq Grand Chief Denny, who stressed that access to timber resources played an integral role in the Mi'kmaq economy.

By 1911, the lack of any direct action by the DIA regarding the Ship Harbour lease began to frustrate Chisholm. On 20 May 1911, Chisholm informed the DIA that, from a financial standpoint, he and Tupper wanted the Mi'kmaq off their land. Chisholm stressed that he and Tupper were claiming trespass over the last eight years and that they would not allow any more planting or clearing of land by the Mi'kmaq at Sheet Harbour. These threats motivated the DIA to find a solution to the issue and, by the end of 1913, it secured \$800 to purchase the lands in question from Chisholm and Tupper.⁵² The Mi'kmaq at Sheet Harbour, however, notified the DIA that they did not want to move onto Chisholm and Tupper's land. On 2 February 1914, George McLeod, a Mi'kmaq from Sheet Harbour, requested that the DIA set aside a reserve for the four Mi'kmaq families but indicated that the "tucker land" was too exposed and no good for farming, "it is all rocks," and suggested a parcel further south.⁵³

In Newfoundland, the Mi'kmaq faced similar difficulties. The greatest threat to their traditional harvesting practices and encroachment on their traditional territories came with the opening of the railway and the accessibility it provided

for non-Aboriginal hunters, settlers, sportsman, and industry. Towns, pulp mills, and mines quickly grew along the railway lines and, during the first decade of the 1900s, non-Aboriginal mining and logging activities, as well as sport hunting and fishing increased substantially. In 1905, for example, the Anglo-Newfoundland Development Company (ANDC) received a ninety-nine-year timber and mineral lease to lands drained by the Exploits River. By 1908, the ANDC had built dams and reservoirs, as well as a pulp and paper mill at Grand Falls on the Exploits River (Anger 73).

While the Newfoundland Government surveyed a reserve for the Mi'kmaq at Conne River in 1870, the reserve was not officially established by Canada until 25 June 1987. In 1908, Governor William MacGregor visited the settlement at Conne River and commented on the effects of increasing non-Aboriginal settlement on the Mi'kmaq. He stated:

It is not possible to regard the present condition of this settlement of Indians as being bright. Game, their principal food, is manifestly becoming more difficult to procure; their trapping lands are being encroached upon by Europeans; they are not seamen; and they do not understand agriculture. In the middle of their reservation a saw-mill has been in operation some years, apparently on the allotment of Bernard John, but without his sanction or permission, and it seems, in spite of the protests of the community... the saw-mill is an eyesore to them as it is on what they regard as their land and in defiance of them.⁵⁴

MacGregor recommended that Newfoundland officially establish a reserve for the Mi'kmaq at Conne River, and encouraged them to continue hunting and trapping, as well as farming. He noted that “each man regards his rights to his trapping area as unimpeachable. They are recognized at present among themselves, but they have no official sanction for their trapping lands either as a community or as individuals.” MacGregor stressed the danger of not recognizing the Mi'kmaq's title, stating that “[the situation] clearly require[ed] attention and treatment at the hands of the administration, for the Reservation families have claims on Newfoundland by light of a century of Micmac occupation, and by virtue of the European blood that probably each one of them has inherited.”⁵⁵

On the north shore of the St Lawrence and the Saguenay District of Quebec, the issue of Montagnais hunting rights was compounded by increasing pressure from non-Aboriginal settlers to open up reserve lands for farming and the development of the James Bay and Eastern Railway. In 1908, for example, non-Aboriginal farmers petitioned the DIA for ten lots on the Pointe Blue Indian Reserve, stressing that they lacked good farming land close to their families and that the Aboriginal peoples underutilized their reserve land. The farmers stated:

We are all sons of farmers unable to set up for ourselves near our parents and obliged to go far away to earn our living in a new place while we have at our doors the finest lands of Lac St. Jean which are in the possession of these poor Indians having no taste for agriculture and not willing to apply themselves to the clearing on these lands which they have held for 10 years without making the least improvement.⁵⁶

The Montagnais, however, expressed extreme opposition to the idea and informed the DIA that they were going to put a delegation together to voice their concerns to Governor General, Sir Wilfrid Laurier, to ask that they be able to retain their lands. Some Montagnais even went as far as to notify the DIA that they would buy the land if necessary. J. Launiere, for example, requested that the DIA first recognize his rights to the land, noting that he would “buy it and pay [the DIA] for it on the same conditions as the white people.”⁵⁷ Subsequently, the local superintendent of Indian Reserves, P. L. Marcoux, emphasized to the DIA that the Montagnais “[had] a great fear that the department will take the reserve from them to give it to the white men in spite of them.” In light of these growing tensions, the DIA requested Marcoux assure the Montagnais that the DIA would not take their lands without a due surrender as per the terms of the *Indian Act*.⁵⁸

At other areas within northeastern Quebec, the DIA struggled with similar issues regarding the settlement of Aboriginal peoples and the administration of their lands. In 1910, for example, the parish priest of St Anne de Chicoutimi, J. Lemieux, complained to the DIA that, for the last twelve years, fifteen Montagnais families settled at St Anne during the summer, after the hunting season was over, causing great distress to the non-Aboriginal residents. According to Lemieux, “the presence of these Indians is a plague and a scandal. Most of them daily give themselves up to excess of drunkenness and consequently to fights and scandalous conduct.” He further expressed his frustration with the situation, pointing out that there was neither a “priest knowing their language to teach them nor agent authorized by the Government to watch over them and punish them if need be, as on the reserve.”⁵⁹ The DIA acknowledged Lemieux’s frustrations and agreed with him that it would be beneficial to make the “Indians live where they would be under proper surveillance and restraint.” The department noted, however, that there currently was no legislation to confine Indians to their reserves, suggesting instead that Lemieux determine who the owners of the land were and take steps to eject them as trespassers. The DIA went so far as to suggest the possibility of classifying the Montagnais as vagrants under the vagrancy clause of the *Criminal Code* and employing a police detective to determine the extent of their behaviors.⁶⁰

While it is unclear whether Lemieux was successful in expelling the Montagnais families from St Anne de Chicoutimi back to their reserve at Lac St Jean, the James Bay and Eastern Railway Company requested portions of

the reserve to extend its line north to Mistassini. According to the local Indian Agent, A. Tessier, the Montagnais did not object to the surrender because they profited from the construction of the railway. The new line provided cheaper transportation to “portage a l’Ours where four-fifths of the Indians leave to hunt—renting cars to get there.” On 26 May 1911, the Montagnais officially surrendered a portion of their reserve to the DIA and construction of the railway commenced during the summer of 1912. Being a responsible Indian Agent, Tessier appointed himself constable to ensure that “the Indians and the outsiders—Bulgarians, Poles, Italians and Finlanders—[did] not mingle.”⁶¹

In parts of central Quebec, the situation was very similar. On 8 March 1909, “Huron Warrior” Alfred Sioui, requested the DIA provide him with an original copy of the 1830 Treaty between Governor Aylmer and the Huron Nation. Sioui stated that provincial game officials arrested one of his brothers and one of his nephews for hunting and he wished to defend them.⁶² Three days later, on 11 March 1909, a lawyer hired by the Hurons of Lorette indicated to the local Indian Agent, O. P. Bastses, that the Hurons charged for hunting in the Quebec National Park wanted to make a claim for their hunting rights based on the 1830 treaty made by Governor Aylmer. According to the lawyer, the treaty permitted the Huron to hunt at all times on the lands between the St Maurice and the Saguenay rivers.

Between 1829 and 1831, the Aboriginal peoples of Three Rivers, St Francis, and Lorette petitioned the colonial government in Lower Canada to allow them to hunt on certain lands north of the St Lawrence. The petition stressed that the Algonquians of Lake of Two Mountains claimed exclusive access. A council held between the Six Nations in 1830 at Caughnawaga, Lower Canada, determined that the hunting privileges north of the St Lawrence did not belong exclusively to the Algonquian. The limits of the hunting grounds, however, were never determined by the council and, in 1831, the Lorette Band submitted to Governor Lord Aylmer the necessity of regulating among the Indians the limits of these hunting grounds. Alymer assured the Hurons that their hunting grounds were the Crown’s domain and that the provincial legislature could not limit their boundaries.⁶³

Over seventy years later, on 15 March 1909, the Chief of the Hurons of Lorette, Stanislaw Sioui, wrote to King Edward VII, requesting a formal investigation into the Government of Canada’s failure to recognize the Hurons’ claims. Sioui suggested that the government manufactured an “Indian Industry,” taking away their rights to earn a living and enforcing strict regulations against them. He stated:

What are we going to do? Allow ourselves to die of hunger or fly from our native country so very dear to our hearts. Our lands have been robbed from us by the whites, our industries have also passed into

the hands of the whites. Hunting is forbidden to us. Once more what are we going to do? It seems to us that the Treaty of Paris of the 10th February 1763 did not reduce us to this point. A strict inquiry ordered by your Majesty is much desired by the Indians of this locality, by doing so you will much oblige your very devoted subjects.⁶⁴

The DIA, however, refused to recognize the validity of the Hurons' claim and informed the provincial government of Quebec that it would not take on the responsibility of defending Aboriginal people who violated provincial game laws. That spring, however, on 6 May 1909, the Deputy Superintendent-General of Indian Affairs, Francis Pedley, informed the Minister of the Interior, F. Oliver, that the DIA endeavoured "to work out a solution with Quebec to allow the Indians some leniency with regard to the application of the game laws."⁶⁵

While the DIA indicated that it was working to secure an agreement with the provincial government regarding Aboriginal rights to hunt for subsistence, two years later the situation had not changed. On 2 November 1911, the law firm of Meredith, MacPherson, Hague, and Holden, representing the HBC, contacted the DIA regarding the application of provincial game laws to Aboriginal peoples. In particular, the lawyers questioned whether the Aboriginal peoples in Quebec, as in Ontario, maintained specific treaty rights to hunt.⁶⁶ In reply, the DIA informed the lawyers that Aboriginal peoples in Quebec did not enjoy any specific treaty rights and stressed that, in Ontario, Aboriginal peoples could only exercise their treaty rights on their reserves, hunting grounds, or territories specifically set apart for them.⁶⁷

In parts of Quebec, the situation regarding Aboriginal access to hunting territories continued to deteriorate. On 9 December 1912, the District Magistrate for Escoumins informed the local Indian Agent that a French Canadian had destroyed the hunting road and a beaver lodge within the hunting territory of Leon Dominique, a Montagnais from the Escoumins band. The situation was so tense that the Magistrate warned, "the two persons will come to violence if some one does not intervene and this may have serious results."⁶⁸ The DIA, however, reiterated that it maintained no jurisdiction over provincial hunting regulations and indicated that it therefore could not substantiate Dominique's claim for exclusive access to his hunting territory.⁶⁹

A few weeks later, on 20 December 1913, the Indian Agent for the Lac St Jean region, A. Tessier, published an article in *L'Action Sociale* regarding the provincial government's amendment to its game regulations. The new regulation instituted a four-year moratorium on beaver trapping and Tessier questioned whether the government's conservation measures justified depriving the Aboriginal peoples of their right to eat. In defence of Aboriginal peoples, he stressed that there was no evidence that Aboriginal harvesting practices and traditional activities caused the decline in beaver stocks.⁷⁰ A few days later, on

6 January 1914, Tessier informed the DIA that he circulated petitions around Chicoutimi and Lac St Jean asking the provincial government to comply with the requests of Aboriginal peoples to pursue their traditional activities within their hunting territories. He noted that over three thousand people signed the petition and expressed hopes that he did not overstep his bounds as Indian Agent. Tessier stated:

No person in any parish has refused to sign these petitions which are rapidly being covered by names. I have good reason to believe that between now and a fortnight hence I shall be able to send to the government concerned petitions signed by about three thousand persons, including members of the clergy, the mayors and councillors of various localities as well as the names of all the principal citizens. I am assured of the support of the members for Chicoutimi and Lake St John.⁷¹

The DIA fully supported Tessier's actions and, on 10 July 1914, Tessier indicated to the DIA that he had come to an agreement with the province to allow Aboriginal peoples to sell the beaver they trapped in order to pay for the provisions advanced to them by the HBC.⁷² Further south, however, Aboriginal peoples continued to solicit the DIA for clarification regarding the application of provincial game laws. During the summer of 1914, Chief Mitchell Commanda from Maniwaki and Chief Francis Mingiki from Oka, questioned whether Aboriginal peoples were restricted to hunt in parks and territories leased by non-Aboriginal game-clubs. Commanda clarified that, "We just want to get enough to eat we don't expect riches from these parks." In response, however, the DIA maintained its position with regard to jurisdiction over provincial hunting regulations, informing Commanda that when the province issued a license to a club to hunt, the club maintained exclusive access to the park.⁷³

By 1916, the application of provincial regulations on beaver trapping in Quebec took a dramatic twist. As in an earlier case in North Bay, Ontario,⁷⁴ in February 1916 provincial game officials arrested and charged Sutherland Walker, assistant manager of the HBC's Montreal warehouse, for having beaver skins in his possession. In response to these charges, the HBC claimed they maintained an exclusive right to trade for the furs under the Royal Charter of 1670. More importantly, however, the HBC claimed that since the furs were caught on an Indian reserve and that the federal government maintained sole jurisdiction over Indians under Section 91(24) of the *BNA Act*, the provincial regulations were *ultra-vires*. The lawyers for the HBC argued that Aboriginal peoples maintained an inherent right to hunt and that the animals and their skins became their absolute property. Their lawyers argued:

If the skins in question were taken from animals caught in the close seasons—which is not admitted—the same were hunted and killed by Indians in the wilds of Canada in all of which the Indians have an

inherent right to hunt and kill such animals and retain or deal with them as their own absolute property.⁷⁵

In response to the HBC's legal action, on 5 February 1916, Special Commissioner to British Columbia, J. M. McKenna, suggested to the Superintendent-General of Indian Affairs, Duncan Campbell Scott, that Canada co-operate with the Aboriginal peoples with regard to the issue of hunting in Quebec. He indicated that if the HBC's action were successful in Quebec, the federal government would have to determine the extent to which the decision applied to other provinces. In particular, McKenna stressed that since Quebec was not covered by Indian treaties, the situation could have a very large impact on the Aboriginal peoples and the overall "land question" in British Columbia because there were no numbered treaties in BC at that time, and the land issue was not resolved.⁷⁶

While the final decision of the unreported cases of *Plante v Walker* and *Walker v St. Cyr et al.* is unclear, by 1917 Aboriginal peoples were still subject to provincial game regulations in eastern Canada. In fact, on 17 April 1917, Scott circulated instructions to Indian Agents and missionaries in Quebec asking them to help enforce game regulations by stressing to the Aboriginal peoples the importance of conservation.⁷⁷ With respect to the rest of Canada, the DIA maintained that even treaties did not protect Aboriginal peoples from provincial game regulations. In a letter to the Minister of the Interior, A. Meighan, dated 21 November 1918, Scott indicated that while the DIA endeavoured to obtain lenient treatment for Aboriginal peoples, the treaties did not render them immune to provincial regulations or provide them with exclusive rights to hunting and fishing in the "surrendered districts." Scott believed that the federal government should use its power to assist the provinces in enforcing game regulations and by obtaining legislative exclusion for Aboriginal peoples to continue their traditional land use activities.⁷⁸

The Advisory Board for Wildlife Conservation's 1918 *Report of the Commission of Conservation* further stressed co-operation between the federal and provincial governments in the regulation of game resources, recommending that both levels of government continue the strict enforcement of game regulations. The report stated that the relaxation of provincial game laws was detrimental to the overall welfare of game mammals and birds and completely contrary to the strenuous efforts of the federal and provincial governments to secure better protection of game resources (Hewitt 8).

While the DIA decided to encourage Aboriginal peoples to respect provincial game laws, Aboriginal peoples protested that such enforcement violated their Aboriginal and treaty rights, and continued to press the DIA for the recognition of these rights. The Hurons of Lorette, for example, frustrated by the DIA's lack of effort in securing them a hunting territory, directed

their request to Canada's official representative to the British government, Governor-General Lord Cavendish, the Duke of Devonshire. In their petition, they stressed that the enforcement of provincial game regulations had effectively deprived them of a hunting territory:

Today the Hurons of Lorette have no hunting or fishing grounds all their hunting roads having been closed to be leased to clubs. Moreover they cannot hunt without exposing themselves to the most severe penalties for infraction of those laws which are pitilessly pressed against them. For this reason and in these circumstances they ask thee to grant them a hunting and fishing ground where they can go without being disturbed in season and thus provide food for their families.⁷⁹

On 2 November 1918, the DIA informed Albert Tschievenou, Chief of the Hurons of Lorette, that nothing could be done as Quebec controlled the application of hunting licenses.

One year later, at the 1919 National Conference on Conservation of Game, Fur-Bearing Animals and Other Wildlife, Scott further outlined the DIA's position regarding the application of provincial game regulations to Aboriginal peoples. In his address, *Relation of Indians to Wildlife Conservation*, Scott noted that the DIA endeavoured to induce Aboriginal peoples to obey the provincial game laws. He stated:

so far as the Department of Indian Affairs is concerned, our fixed policy is to endeavour to induce the Indians to obey the laws passed by the Provincial authorities for the conservation of wild life and the preservation of game, and to endeavour also to mitigate the laws to meet any special conditions that surround the present mode of life of the natives.⁸⁰

Provincial authorities attending the conference, however, were not satisfied with the DIA's efforts. Saskatchewan Game Commissioner, F. Bradshaw, for example, indicated that while the provinces made all attempts to seek out the DIA's assistance in the application of game laws to the Aboriginal peoples, the conservation of game had not improved. He stated:

I may be wrong, but the attitude of the Indian Department seems to be, that, while they are extremely sorry that such things are happening—the poor Indian must be fed, and, presumably, in the cheapest possible manner. I venture to say, that the average Indian agent encourages, rather than discourages, the illegal killing of big game.⁸¹

In order to address the growing tensions between the provinces and the DIA, in 1920, the Minister of the Interior outlined the DIA's official position

regarding the application of provincial game regulations to Parliament. He pointed out that, outside their reserves, Aboriginal peoples were required to comply with provincial regulations regarding the preservation of game.⁸²

Aboriginal peoples, however, were not content with the DIA's official position. On 31 October 1921, the Mi'kmaq Grand Council, for example, issued a formal request to King George V for a hearing on their treaty rights as outlined in the 1752 Peace and Friendship Treaty. The petition urged the king to ensure that the terms of the treaty were respected as "England never made a treaty to be broken don't let this one be broken, the one you gave us when we gave you our heart and hand and we would like to have that which we think is ours." The Mi'kmaq requested recognition of their Aboriginal rights outlined in the treaty, including "the right to get meat of the forest for our families at any time or fish in the streams, creeks or coves and the fowl of the air which we were always used to before taken away."⁸³

In response to a similar issue, on 5 February 1922, Scott reiterated the DIA's position to Lieutenant-Governor Sir J. Aikins. He informed Aikins that while it was the DIA's duty to ensure that the Indians secured "the fullest enjoyment of privilege provided for [them] in the Treaties," the federal government also maintained the authority, under Section 91(24) of the *Constitution Act*, to regulate Aboriginal hunting, trapping, and fishing activities. According to Scott, if the DIA established legislation, it would follow very closely the principles embodied in the game laws of the provinces. He stated:

that the interests of the Indians can be properly safeguarded by conforming to the Provincial Regulations, with such modifications as the Provincial Authorities may be disposed to make in favour of the Indian bands on representations which may be made by the Department of Indian Affairs from time to time.⁸⁴

The position of the Department was further clarified four years later. On 26 April 1926, McLean circulated a letter to Indian Agents, stressing the importance that Aboriginal hunters understand they were subject to provincial game laws. He stated:

At the recent conference of the Chief Federal and Provincial Game Officials held at Ottawa, attention was drawn to the fact that many of the Indians do not seem to understand that they are required to respect close seasons for hunting and trapping and other Provincial regulations for the protection of game and fish. Will you please explain to the Indians of your Agency that they must strictly comply with the Game Laws and that failing to do so they render themselves subject to the penalties provided therein.⁸⁵

By 1930, both the DIA and provincial officials stressed that legislation to regulate game resources was in the best interests of the Aboriginal peoples. They believed that conservation would ensure that Aboriginal peoples maintained an adequate supply of fish and game resources far into the future—a position echoed sixty years later by the Supreme Court of Canada’s 1990 decision in *R v Sparrow*.⁸⁶

Conclusion

The dynamic interactions surrounding issues of Aboriginal land and resource use in eastern Canada during the turn of the twentieth century reflects the significance of territoriality for Aboriginal peoples during this period. The land continued to provide the practical, historical, and spiritual basis of distinct cultural practices in a time of direct and often intense cultural assaults on Indigenous traditions. The tensions inherent in these specific assertions of Aboriginal sovereignty and effective control also provide an important context that links the current day discourse on “minority rights” and the paradigm of domestication with the Canadian state’s historic assertion of policies of aggressive civilization. The historic and continuing involvement of Aboriginal peoples in seeking positive and practical resolutions to their struggles over land and resource rights helps to unveil these power relations and recognize that treaty and Aboriginal rights, and the project of nation building in Canada, are ultimately grounded in a complex nation-to-nation framework, with a long history of international diplomacy and good-governance practices.

Notes

1. Harris 271; Slattery 735.
2. Cases such as *Calder v The Attorney General of British Columbia* (1973); *R v Sparrow* (1990); *Delgamuukw v The Queen* (1997); *Haida Nation v British Columbia (Minister of Forests)* (2004); *Taku River Tlingit First Nation v Tulsequah Chief Mine Project* (2004); and *Mikisew Cree Nation v Canada (Minister of Canadian Heritage)* (2005).
3. See *R. v. Robertson* (1886), 3 Man.L.R. 613 (Man.C.A.)
4. In 1916, Canada and the United States signed the *Migratory Birds Convention*, and the following year the federal government passed its *Migratory Birds Convention Act* (Canada 1917). The legislation provided the federal government with the responsibility for the management of certain species of migratory birds.
5. T. Greenway to L. Vankoughnet, 19 March 1890. NAC, RG10, vol. 3692, file 14069.
6. Deputy Minister of Justice to L. Vankoughnet, 18 April 1885. NAC, RG10, vol. 3692, file 14069.
7. *Quebec Game Act*, 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
8. *Ibid.*
9. G. C. Chipman to H. Reed, 12 June 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.

10. H. Reed to Provincial Secretary, Department of Crown Lands, Quebec, 20 June 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
11. H. Reed to A. A. Taché, 20 June 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
12. A. A. Taché to H. Reed, 5 December 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
13. G. C. Chipman to H. Reed, 7 December 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
14. A. Toney to DIA, 15 August 1894; F. McDormand to H. Reed, 15 August 1894; H. Reed to F. McDormand, 27 September 1894. NAC, RG10, Vol. 6743, File 420-7, Reel C-8101.
15. W. D. Carter to J. D. McLean, 3 March 1896; J. D. McLean to W. D. Carter, 12 March 1896. NAC, RG10, Vol. 8862, File 1/18-11-5, Reel C-9742.
16. H. Reed to G. C. Chipman, 15 December 1896; H. R. to Indian Agents in Quebec, 22 December 1896. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
17. G. C. Chipman to H. Reed, 7 January 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
18. P. L. Marcotte to H. Reed, 4 January 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
19. A. Taché to H. Reed, 11 January 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
20. H. Reed to P. L. Marcotte, 14 January 1897; H. Reed to G. C. Chipman, 14 January 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
21. G. C. Chipman to H. Reed, 4 March 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
22. A. A. Taché to H. Reed, 13 March 1897; G. C. Chipman to H. Reed 23 March 1897; H. Reed to A. A. Taché, 27 March 1897; Deputy Secretary DIA to G. C. Chipman, 13 April 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
23. General Memo to the Minister of the Interior, no date. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
24. Confidential Memo to the Minister of the Interior, May 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
25. DIA General Memo, 19 May 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
26. Deputy Superintendent of Indian Affairs to the Governor General in Council, 2 June 1897; OiC P.C. 18788, 14 June 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
27. Province of Quebec, OiC P.C.189248, 16 July 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
28. Noel St. Aubin and Abanakis from Becancourt to Sir Wilfrid Laurier, 7 October 1898. NAC, RG10, Vol. 6750, File 420-10, Reel C8106.
29. Adolphe Giagnou to DIA, 18 July 1899. NAC, RG10, Vol. 6750, File 420-10, Reel C8106.
30. E. Moureau to the DIA 5 Nov 1905. NAC, RG10, Vol. 6750, File 420-10, Reel C8106.
31. Mi'kmaq of Bear River to DIA, 9 February 1897. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.

32. E. Paul to DIA, 26 February 1902. NAC, RG10, Vol. 8862, File 1/18-11-5, Reel C-9742.
33. J. D. McLean to Attorney General of New Brunswick, 27 February 1902; Law Clerk to the DIA, 28 February 1902. NAC, RG10, Vol. 8862, File 1/18-11-5, Reel C-9742.
34. Chief Paul and Chief Burnett to DIA, March 1906; C. R. Berkwitt to DIA, 5 March 1906; NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
35. 1725 Treaty of Annapolis Royal (Wicken 27).
36. J. D. McLean to C. R. Berkwitt, 16 March 1906. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
37. J. Fossie to His Majesty the King of England, 14 September 1907. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
38. Lord Elgin to Lord Grey, 19 September 1907. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
39. J. D. McLean to J. Fossie 5 October 1907; Chief Joseph Knockwood to DIA, March 1908; J. D. McLean to J. Knockwood, 20 March 1908; DIA General Memo, 2 February 1910. NAC, RG10, Vol. 6750, File 420-10, Reel C-8106.
40. Chute 507.
41. Timber Inspector to Deputy Minister, 6 April 1909. NAC, RG10, Vol. 3113, File 320,110-1, Reel C-11326.
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