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Résumé de l'article

Généralement reconnue comme une étape positive en vue d'assurer la conservation de la nature et de la faune, la création de parcs et de réserves animales a aussi entraîné, pour les Premières Nations, la perte de certains de leurs territoires. Ainsi, en 1925, l'établissement de la réserve animale de Chapleau a eu pour conséquence le déplacement de deux communautés autochtones, celle de New Brunswick House et celle des Ojibwés de Michipicoton. Les efforts pour garder ou récupérer ces territoires, les protestations, n'aboutirent à rien, et ces deux communautés furent déplacées. Dans l'histoire de la conservation de la faune au Canada, cet aspect a été le plus souvent ignoré par les historiens.

The Dispossession of the Northern Ojibwa and Cree:

The Case of the Chapleau Game Preserve*

By David Calverley

In the final years of the nineteenth century the Ontario government embarked on a policy of wildlife conservation. While this was not entirely novel—wildlife conservation laws existed previously in Upper Canada and have heritage in England and Europe (and elsewhere)—these revised laws impacted severely on First Nations in Ontario. In 1892 Ontario's Legislature passed *An Act to amend the Act for the Protection of Game and Fur-bearing animals*.¹ This new Act heralded the beginning of decades of stringent enforcement against First Nations in Ontario regardless of any treaty hunting rights they possessed. In the 1920s, Ontario's Department of Game prepared to embark on a new policy: the creation of game preserves. These game preserves set aside thousands of square kilometers of land within which all hunting and trapping was banned to facilitate the propagation of desired animal species (i.e. game animals or fur-bearing animals). Created in 1925, the Chapleau Game Preserve was one such preserve. What this preserve also did, however, was engulf the New Brunswick House (NBH) Reserve of Treaty Nine, the traditional

Abstract

Park and game preserve creation, while usually lauded as a step towards the conservation of nature and wildlife, served to dispossess First Nations of traditional harvesting territories. In 1925 the Chapleau Game Preserve caused the removal of two First Nations communities: the New Brunswick House Reserve and the Michipicoten Ojibwa. Despite protests and efforts to reclaim this land, both communities were removed from the region. Historians have largely ignored this element of Canada's wildlife conservation history.

Résumé: *Généralement reconnue comme une étape positive en vue d'assurer la conservation de la nature et de la faune, la création de parcs et de réserves animales a aussi entraîné, pour les Premières Nations, la perte de certains de leurs territoires. Ainsi, en 1925, l'établissement de la réserve animale de Chapleau a eu pour conséquence le déplacement de deux communautés autochtones, celle de New Brunswick House et celle des Ojibwés de Michipicoton. Les efforts pour garder ou récupérer ces territoires, les protestations, n'aboutirent à rien, et ces deux communautés furent déplacées. Dans l'histoire de la conservation de la faune au Canada, cet aspect a été le plus souvent ignoré par les historiens.*

hunting territories of its band members, and also part of the traditional harvesting territories of the Michipicoten Ojibwa of the Robinson-Superior Treaty.

Within months of its creation First

*The author wants to thank Ontario History's reviewers for their comments. He also wants to thank Angelien Slater of Crescent School for developing the map included in this article

¹ *Statutes of the Province of Ontario* (Toronto: L.K. Cameron, 1892).

Nations' leaders and those people in the north who empathized with them wrote to Indian Affairs to complain of the injustice being perpetrated against both communities by the new game preserve. At the basis of these complaints lay two treaties: Treaty Nine and the Robinson-Superior Treaty. Both treaties, Aboriginal and non-Aboriginal opponents of the preserve argued, protected First Nations' harvesting rights. Indian Affairs officials agreed that the preserve was unfair to the NBH Band since their reserve was at the centre of it. Officials, however, expressed no concern over the loss of either their hunting territories or harvesting rights.² Indian Affairs only sought to compensate the NBH band for the loss of their reserve. Michipicoten Ojibwa received no compensation or understanding whatsoever from Indian Affairs. Since their hunting territories lay beyond the northern boundary of the Robinson-Superior Treaty, Indian Affairs

officials believed they had no cause for complaint under the terms of the Robinson-Superior Treaty.

Historians usually present the history of Canada's national and provincial parks as a success story: environmentally unique parts of Canada were set aside and preserved, and animal species were protected. These histories usually explore one of several themes: government conservation policy, the intellectual rationale behind conservation, or how Euro-Canadians perceived wilderness.³ How these parks dispossessed First Nations and broke treaty rights remains unexplored by Canadian historians. While there is a small but growing literature concerned with how wildlife conservation laws restricted First Nations' harvesting rights little exists about Aboriginal dispossession as an element of wildlife conservation.⁴ In fact, environmental historians in Canada in some instances have portrayed it as incon-

² While it lay beyond the purview of this paper, Indian Affairs was ineffective in its efforts to safeguard treaty hunting rights in Ontario. See David Calverley, "Who Controls the Hunt? Ontario's *Game Act*, the Canadian Government and the Ojibwa, 1800-1940." Ph.D. Thesis, University of Ottawa (1999).

³ Regarding parks and Canadian conservation see for example Robert Craig Brown, "The Doctrine of Usefulness: Natural Resources and National Park Policy in Canada, 1887-1914." *Canadian Parks in Perspective*, J.G. Nelson ed. (Montreal: Harvest House, 1970). Janet Foster's work is one of the first full-length examinations of wildlife conservation. See *Working for Wildlife: The Beginning of Preservation in Canada* (Toronto: University of Toronto Press, 1978). George Colpitt, *Game in the Garden: A Human History of Wildlife in Western Canada to 1940* (Vancouver: University of British Columbia Press, 2002). Gerald Killam, *Protected Places: A History of Ontario's Parks System* (Toronto: Dundurn Press, 1993). Patricia Jasen, *Wild Things: Nature, Culture and Tourism in Ontario, 1790-1914* (Toronto: University of Toronto Press, 1995). Colpitt does give some attention to First Nations' hunting as regards increasingly restrictive game laws due to growing scarcity. See Colpitt, *Game in the Garden*, 84-102. He does not, however, explore game preserves within this context. George Warecki in *Protecting Ontario's Wilderness: A History of Changing Ideas and Preservation Politics, 1927-1973* (New York: Peter Lang, 2000) and Alan MacEachern *Natural Selections: National Parks in Atlantic Canada* (Montreal: McGill-Queen's, 2001): 8 have both provided new studies of park creation. Obviously a monograph cannot handle all topics, but the Aboriginal interest in these park lands is treated cavalierly by parks historians.

⁴ There is a small literature concerned with game laws in Ontario and elsewhere in Canada. See Bruce Hodgins and Jamie Benidickson, *The Temagami Experience: Recreation, Resources, and Aboriginal Rights in the Northern Ontario Wilderness* (Toronto: University of Toronto Press, 1989). Peggy Blair, "Take for 'Grant-

sequential. George Warecki, for example, notes in *Protecting Ontario's Wilderness* that "aside from periodic attempts by provincial officials to placate or remove native populations, the archival record unfortunately indicates little concern about the impact of a major public policy on one of Canada's founding cultures."⁵ While Warecki acknowledges that 'something' happened, there is no effort to analyze, or even integrate, documents that are readily available in the archives. Alan MacEachern dismisses Aboriginal concerns about park creation in *Natural Selections: National Parks in Atlantic Canada* stating that his study is not meant to be a history of the land "since time immemorial."⁶ With this statement MacEachern dismisses Aboriginal concerns that extended well into the

parks' era and the present day. Mark David Spence has addressed the historical amnesia that surrounds the history of parks in the United States. As Spence notes there is a "widespread cultural myopia that allows late-twentieth-century Americans to ignore the fact that national parks enshrine recently dispossessed [First Nations'] landscapes."⁷

What follows is an examination of both treaties to establish the existence of a treaty right by both bands to hunt within the territory of the Chapleau Game Preserve, how this right was taken from them, and the resulting dispossession that occurred. Establishing a treaty right is more than simply establishing what resources the Ojibwa and Cree used before the treaty. Determining the territorial extent of their

ed." Aboriginal Title and Public Fishing Rights in Upper Canada." *Ontario History*, 62:2 (Spring, 2000): 31-55. Bruce Alden Cox, "Whitemen Servants of Greed: Foreigners, Indians and Canada's Northwest Game Act of 1917." *New Faces of the Fur Trade: Selected Papers of the North American Fur Trade Conference, Halifax, Nova Scotia, 1985*. Jo-Anne Fiske et al eds. (East Lansing: Michigan State University, 1996): 121-35. Bryan Cummins, "Attawapiskat Cree Land Use and State Intervention." *Papers of the Twenty-First Algonquian Conference*, William Cowan ed. (Ottawa: Carleton University Press, 1990): 100-113. Deborah Doxtator and Jean Manore, "Research Report: Administrative History of Access by Native People to Quetico Provincial Park." (Toronto: Ontario Native Affairs Directorate, 1988). Tough, Frank, "Ontario Appropriation of Indian Hunting: Provincial Conservation Policies vs. Aboriginal and Treaty Rights, ca. 1892-1930." Prepared for the Ontario Native Affairs Secretariat (January, 1991). Studies of government wildlife conservation elsewhere in Canada include Brenda Ireland, "'Working a Great Hardship on Us': First Nations People, the State, and Fur-bearer Conservation in British Columbia prior to 1930." *Native Studies Review*, 11:1 (1996): 65-90. Dianne Newell, *Tangled Webs of History: Indians and the Laws in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993). Tough, Frank "Conservation and the Indian: Clifford Sifton's Commission of Conservation 1910-1919." *Native Studies Review*, 8:1 (1992): 61-73. Recent monographs are Ken Coates, *The Marshall Decision and Native Rights* (Montreal: McGill-Queen's University Press, 2001). Toby Morantz outlines the spread of provincial wildlife conservation laws in northern Quebec (and their impact on the Cree) in *The White Man's Gonna Getcha: The Colonial Challenge to the Crees in Quebec* (Montreal: McGill-Queen's University Press, 2002). Donald Smith does examine First Nations loss of land in Upper Canada as a result of general settlement patterns. See Smith, "The Dispossession of the Mississauga Indians: A Missing Chapter in the Early History of Upper Canada." *Historical Essays on Upper Canada: New Perspectives*. J.K. Johnson and Bruce G. Wilson eds. (Ottawa: Carleton University Press, 1989): 23-51.

⁵ Warecki, *Protecting Ontario's Wilderness*, 7.

⁶ MacEachern, *Natural Selections*, 8.

⁷ Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of National Parks*. (Oxford: Oxford University Press, 1999): 5.

resource base is equally important. For the Michipicoten Ojibwa the question of treaty rights portability was an important question. Establishing that their traditional harvesting territories extended north of the height of land (the northern boundary of both Robinson Treaties), therefore, is an important step in establishing their rights. Fur trade records are an excellent source for examining Ojibwa territorial boundaries, and establishing the context within which the Ojibwa understood the treaty. Once verified, the context surrounding the creation of both Treaty Nine and the Robinson Treaties will be examined. Lastly, the creation of the Chapleau Game Preserve and the resulting conflict will be outlined to illustrate the efforts by both bands to protect their treaty rights and territorial resource base, and how they lost access to this portion of their land.

The Michipicoten Ojibwa Before 1850

References to Ojibwa hunting in the Hudson's Bay Company's Michipicoten Post journal and district reports create a picture, albeit sketchy, of the areas used by the Ojibwa in the region. While post managers did not compose their entries with any thought to either posterity or historians, what emerges from the documents is evidence of a number of hunters using lands around Dog Lake, Manitowik Lake, and Brunswick Lake, all later encompassed by the

Chapleau Game Preserve. General district reports further indicate that the Michipicoten Ojibwa traveled inland in the winter to hunt and trap. Assuredly some of these hunters, and their families, eventually signed on to the Robinson Superior Treaty.

Although Michipicoten post records start in 1797, there are few references to Ojibwa or geographical locations in the post journal or correspondence—a reflection perhaps of the early post managers' ignorance of the local territory and people. HBC employees had little experience in the interior of northern Ontario, a by-product of Company policy to entice First Nations trappers to come to posts on Hudson's and James' Bay. Independent traders took advantage of this, and built their own inland posts to divert furs headed for Hudson's Bay.⁸ Michipicoten Post was one of many posts constructed in the interior by the HBC to deal with this problem. Situated where the Missinaibi River drains into Lake Superior the early post factors contended with a North West Company fur trading post located on the opposite side of the river.

The first reference to a geographic location in the post journal is in the summer of 1800 when "four canoes of New Brunswick Indians" arrived to trade their furs at the Northwest Company post.⁹ The following month another three canoes of hunters from New Brunswick traded at the NWC post.¹⁰ This is likely a reference

⁸ Douglas Baldwin makes this point in *The Fur Trade in the Moose-Missinaibi River Valley, 1770-1917* (Toronto: Ministry of Culture and Recreation, Historical Planning and Research Branch, 1979): 16.

⁹ HBCA, B.129/a/2. Michipicoten Post Journal, 1799-1800, 6 June 1800.

¹⁰ *Ibid.* 6 July 1800.



Lake Missinaibi, 1905, looking out from the dock in front of New Brunswick House Post. Twenty years later the New Brunswick House Band lost their reserve and hunting territories to clear the way for the Chapleau Game Preserve. AO, C 275-3-0-14 (S 7603).

to Brunswick Lake northeast of Michipicoten. Later Michipicoten Post journal entries provide further detail of where local Ojibwa hunted and fished during the 1830s. Manitowik Lake and Dog Lake were also favoured hunting grounds for the Ojibwa. In the winter of 1830 “two Indians...arrived from Manitouwick [sic.] Lake bring 1 Beaver skin, 2 Otter, 20 Martens, and 6 Mink.”¹¹ Two hunters came from Dog Lake to the post in the fall of 1831 with otter skins to trade for winter supplies.¹²

Eventually the Michipicoten Post began to file annual reports to Company directors. A standard opening statement in these reports, dating from the early 1830s, is an explanation of the limits of the HBC’s Lake Superior District (which comprised Michipicoten Post, Fort Wil-

liam, Pic and Lake Nipigon as well as two smaller outposts at Long Lake and Batchewana Bay). The eastern and western boundaries of the district extended generally from the Kaministiquia River near Fort William (present day Thunder Bay) to Sault Ste. Marie. The northern boundary, however, was vaguely defined in the reports. As regards the region around Michipicoten, the report noted in 1833 that it encompassed “New Brunswick and other sections of the Moose River District to the north eastward.” The breadth of the HBC’s Lake Superior District from the lakeshore into the interior was, in the manager’s opinion, approximately 80 miles (128 km). In 1830, Michipicoten Post manager George Keith, in a letter to Governor Simpson of the HBC, estimated that the northern limit of the District was

¹¹ HBCA. B.129/a/15. Michipicoten Post Journal, 1830-1831. 24 December 1830.

¹² *Ibid.* 19 October 1831.

120 miles (192 km) from the shoreline of Lake Superior.¹³ Keith, however, offered no appraisal of Ojibwa hunting territories writing in 1835, “as to the limits of Native range or hunting grounds it would not be an easy task correctly to define.”¹⁴

District reports provide other evidence of the Michipicoten Ojibwa’s link with more northern territories, specifically their mixed linguistic heritage. Keith believed that they were a “mixture of the Ojibway and Maskigon...or Swampy Cree.”¹⁵ Keith made similar observations in his 1833 report referring specifically to the local dialect. Writing to Simpson, he observed, “The language spoken in this District is the genuine Ojibwa and a corruption or mixture of the Ojibwa and Swampy Cree Tribe.”¹⁶ Considering earlier post journal entries of “New Brunswick Indians” trading at the North West Company post in 1800 there was likely some connection between the Ojibwa who resided closer to the lake shore and those who dwelt further inland.

Inter-marriage between Ojibwa and Cree was common. Duncan Cameron, a trader with the Northwest Company’s Nipigon Department (which extended

over a larger area than the HBC’s district), estimated that his district contained approximately 820 Ojibwa and Cree.¹⁷ He said that the Ojibwa around Lake Nipigon were an amalgamation of Ojibwa families from Lake Superior and Cree from Hudson’s Bay who migrated to the Lake Nipigon area one hundred and fifty years previous in search of better hunting grounds. He based this assumption on the language spoken around Lake Nipigon which he claimed was a combination of both dialects, and after speaking to “every old man with whom I conversed and from whom I made some enquiries [sic.] on this subject.” Cameron’s marriage to an Ojibwa woman from the area likely provided him with greater insight into much of the local history compared to other traders.¹⁸

Such sparse references seem, at first glance, to carry little weight. However, where families hunted and trapped carried significant cultural weight for the Ojibwa. Previous work by Charles Bishop and Edward Rogers outlines how, at least by the nineteenth century, family-harvesting territories were a facet of Ojibwa life.¹⁹ Michipicoten Ojibwa were no exception to this phenomenon. In Novem-

¹³ HBCA, Michipicoten Correspondence, B.129/b/15. George Keith to Governor Simpson, 29 July 1830.

¹⁴ HBCA, Michipicoten Report on District (Report of Lake Superior District, Outfit 1833), B.129/e/9.

¹⁵ HBCA, B.129/b/15. George Keith to Governor Simpson, 29 July 1830.

¹⁶ HBCA, Michipicoten Report on District (Report of Lake Superior District, Outfit 1833), B.129/e/9.

¹⁷ Archives of Ontario (AO), MU 2200, Box 5-5c. D. Cameron, “The Nipigon Country: A Sketch of the Customs, Manners and Way of Living of the Natives of the barren country around Nipigon.” The Nipigon Department extended as far north as Hayes River; therefore, Cameron was also referring to Cree.

¹⁸ Jennifer Brown, “Duncan Cameron.” *Dictionary of Canadian Biography Online*. Ramsay Cook and Réal Bélanger eds. <http://www.biographi.ca/EN/ShowBio.asp?Bioid=37410&query=cameron>. Accessed 20 November 2007.

¹⁹ The standard reference work for this issue is Charles Bishop *The Northern Ojibwa and the Fur Trade* (Toronto: Holt, Rinehart and Winston, 1974). There is a debate regarding when these territories emerged, but it is not relevant here as these territories are generally considered to have existed by the nine-

ber 1839, after trading a quantity of furs at the post a hunter complained to the post manager that “an Indian belonging to the Pic Post...poached upon his hunting grounds and killed some beaver...”²⁰ An earlier reference in the Michipicoten journal explains that families had clear territorial divisions even though they were not always respected by others:

...altho family territorial divisions seem to be long established and cherished they are very prone to poach upon anothers [sic.] hunting grounds and the Beaver...often falls prey to such depredation which sometimes occasions dangerous feuds between families.²¹

Prior to the Vidal-Anderson Commission or William Robinson’s trip north, Michipicoten Ojibwa clearly engaged in traditional harvesting activity within the future boundaries of the Chapleau Game Preserve, and had links with more northerly hunters. Furthermore, those Michipicoten Ojibwa who possessed territories north of the height of land had a strong connection to their hunting territories. Strong territorial boundaries strengthened in the minds of Ojibwa

families that they possessed a proprietary interest in these lands insofar as no one else was allowed to hunt or trap on them without their permission. This system of territorial division was not altered by the Robinson Treaties, but was, at least in the minds of the Ojibwa, confirmed.

The Vidal-Anderson Commission, William Robinson, and the Robinson-Superior Treaty

It has been noted succinctly that the “impetus to seek...a land surrender in the northwestern portion of Canada West was provided by the mining industry.”²² Through the 1840s the government of Governor Sir Charles Metcalfe leased mining properties along the north shores of Lakes Superior and Huron before securing a proper land cession treaty. Letters from colonial officials in Sault Ste. Marie between 1845 and 1849 detail increasing Ojibwa frustration with government indifference to the negative impact mining development had on their hunting, trapping and fishing.²³ However, it

teenth century.

²⁰ HBCA, B.129/a/20. Michipicoten Post Journal, 1839-1840. 30 November 1839.

²¹ Cited in Lise C. Hansen, “The Anishnabek Land Claim and the Participation of the Indian People Living on the North shore of Lake Superior in the Robinson Superior Treaty, 1850.” (Toronto: Ministry of Natural Resources): 14.

²² Robert J. Surtees, *Treaty Research Report: The Robinson Treaties*. (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Centre, 1984): 3. Referred to from now on as DIAND and T&HRC. James Morrison makes the same observation in *The Robinson Treaties: A Case Study*. Prepared for the Royal Commission on Aboriginal Peoples (1996): 34. Janet Chute provides a more focused study of the Ojibwa reaction to the mining industry in “Pursuing the Great Spirit’s Plan: Nineteenth Century Ojibwa Attitudes towards the future of Logging and Mining on Unsurrendered Indian Lands north of Lakes Huron and Superior.” *Social Relations in Resource Hinterlands. Papers from the 27th Annual Meeting of the Western Association of Sociology and Anthropology*. Thomas W. Dunk ed. (Thunder Bay: Lakehead University, Centre for Northern Studies, 1991): 173-204.

²³ Surtees and Morrison outline the events that led to the Robinson Treaties. See also Chute, *The Legacy of Shingwaukonse: A Century of Native Leadership* (Toronto: University of Toronto Press, 1998).

required a new governor, Lord Elgin, for this situation to change. Disgusted by the previous administration's handling of the situation,²⁴ Elgin turned to two men to survey the situation. One was Thomas Anderson, the former Indian Superintendent of Manitoulin Island. Alexander Vidal, a provincial land surveyor with experience in the Sault Ste. Marie region, completed the duo. Elgin directed both men to determine the territorial extent of Ojibwa lands, what compensation the bands wanted for a treaty, and assess the mineral and timber value of the land.²⁵

The Vidal-Anderson report should constitute an adjunct of the Robinson Treaties as regards First Nations' harvesting activity. Ojibwa chiefs and headmen saw the commissioners' work not only as a prelude to the treaty, but as part of the negotiating process. Vidal's and Anderson's questions to the Ojibwa reinforced the idea that a treaty would respect not only the physical acts of hunting and fishing, but also the existing territorial divisions and familial hunting territories that supported these practices.²⁶ During their trip along the Upper Great Lakes from Fort William to Sault Ste. Marie, Vidal and Anderson consistently inquired about the land, the extent of Ojibwa territories, and

what compensation the chiefs expected. When they arrived at Michipicoten Post on 9 October, the men spoke "with the Chief and three others in the evening" to learn about their lands.²⁷ More than once during their investigation, the chiefs told Vidal and Anderson that any future treaty could not limit their hunting territories and practices.

To convey this information to the government a chart and map accompanied the commissioners' report. This map provides general information about the territorial extent of a number of Ojibwa territories: Fort William, Lake Nipigon, Pic, Michipicoten, Batchewana, Garden River, Thessalon and other bands along the North Channel of Georgian Bay. As regards the Michipicoten Ojibwa the map and chart notes that their hunting territories clearly extended back from the shore of Lake Superior to the height of land. The chart described the territory inhabited by the Michipicoten Ojibwa as stretching "From Puckuswawsebe [River] eastward in common with the Batchewawnung and Sault Ste. Marie Bands, and back to the Height of Land."²⁸

The map provides further evidence that their lands extended back to the arctic watershed although the bound-

A more specific outline of the Robinson Treaties in relation to hunting is in Calverley, "Who Controls the Hunt?" See in particular chapter 1.

²⁴ Sir Arthur G. Doughty ed., *The Elgin-Grey Papers, 1846-1852*, vol. 4, p. 1485. Lord Elgin to Colonial Secretary Earl Grey, 23 November 1849. Elgin refers to Metcalfe's administration as a "government of jobbers [who] gave licenses...without making proper arrangements with the Indians..."

²⁵ AO, Sir Aemilius Irving Papers, MU 1464, 26/31/4. Typescript Report of Commissioners Vidal and Anderson, 1840. Hereafter referred to as the Vidal-Anderson Report.

²⁶ Vidal-Anderson Report, 1-2.

²⁷ University of Western Ontario, Regional Room, Alexander Vidal Papers. "Journal of my Proceedings on my mission to the Indians of Lake Superior and Huron, 1849." 9 October 1849.

²⁸ Vidal-Anderson Report, Appendix B.

ary drawn on the map is imprecise. It is a gentle arc that starts far inland from the northeastern shore of Lake Superior, and extends south down towards Sault Ste. Marie. Written along the boundary line is only the phrase “Michipicoten and Sault Ste. Marie bands.” However, Vidal and Anderson noted that of the sixteen bands they met two had “hunting grounds partly in the Hudson’s Bay Company’s territory and partly within the limits of the Province...”²⁹ While it is not clearly stated if one of these two bands was Michipicoten the Commissioners clearly knew that some bands had hunting territories outside the proposed northern boundary.

Neither commissioner told the Ojibwa they met that the government wanted to restrict their harvesting activity, or alter existing territorial divisions. Their recommendation to Lord Elgin that the northern boundary of the treaty be the height of land was only a recognition of the pre-existing legal boundary between Canada West and Hudson’s Bay Company land. From the Ojibwa perspective, this boundary possessed no significance (apart perhaps from its geographic importance). They were never told to stay south of the proposed border.

Both commissioners wrote to Lord Elgin that a treaty would be a good arrangement as the government would secure “all that is known to be of value...on the [lake] front, and they [the Ojibwa] will still retain undisturbed possession

of their hunting grounds in the interior.” Neither Elgin nor the commissioners saw any economic value in the interior. There was no government desire to treat with the Ojibwa regarding resource use beyond the lakefront. However, treating for the entire territory, according to Vidal and Anderson, was the only way of securing the agreement of the Ojibwa. They offer no explanation as to why the Ojibwa made this demand. Perhaps the Ojibwa wanted all of their lands afforded the protection they thought a treaty would provide, and interior families wanted access to treaty annuity monies.

William Benjamin Robinson did not write on a blank slate when he negotiated both Robinson Treaties at Sault Ste. Marie in August/September 1850. Instead, Robinson reinforced what Vidal and Anderson said.³⁰ Robinson gave every indication to the assembled chiefs and headmen that their harvesting activity, and by extension their territorial divisions, would not be interfered with. Addressing the assembled chiefs and headmen on 5 September 1850 at the HBC post in Sault Ste. Marie, Robinson explained the terms the Crown was offering to the Ojibwa:

...[I] addressed them, explaining my appt. to them, & finished by proposing to pay them \$16,000 (£4000) down in specie and an annuity forever of £1000. ... Also told them they might make reasonable reservations for their own use for farming &c &c, & **that they would still have the free use of all territory ceded to H.M. [Her Majesty],**

²⁹ Vidal-Anderson Report, 2.

³⁰ AO, J.C. Robinson Papers, Diary of William B. Robinson on a visit to the Indians to make a treaty, 1850. 14 August 1850. Hereafter referred to as the Robinson Diary.

to hunt and fish over as heretofore, except such places as were sold to white people and others by the Govt. & occupied in such a manner to prevent such hunting [emphasis added]...³¹

The Lake Superior Chiefs agreed to the terms offered by Robinson. Totomenaïse, representing Michipicoten, said “he would not consent to give Michipicoten to the whites [miners] who asked for it, but would cede it to the Queen.”³² Totomenaïse and the other Lake Superior chiefs re-assembled on 7 September 1850, and signed the Robinson-Superior Treaty.³³

In the text of the written treaty the Ojibwa agreed to cede their land in return for an initial cash payment, an annual annuity, and the Crown’s promise:

to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals, and occupied by them with the consent of the Provincial Government.³⁴

For Robinson and colonial officials in Toronto the phrase “territory now ceded”

meant all land north to the arctic watershed but no further. Clearly the Ojibwa possessed a different understanding of the treaties’ hunting promises. In conjunction with the wording of the treaty and Robinson’s recollections of the negotiations in his diary, it is safe to say that the Michipicoten Ojibwa considered their harvesting territories north of the height of land secured by the terms of the treaty and the negotiations surrounding it. The phrase “height of land” cannot even be accurately translated into Ojibwa. Further complicating matters is that maps at that time did not even provide an accurate indication of where the height of land was.³⁵ More likely, the Michipicoten Ojibwa (and the other First Nations who signed the Robinson Treaties) took Robinson’s promise at face value: they could continue to hunt and trap as they had before the treaties were created. Their understanding included the belief that family hunting territories would be maintained.

Relocation to Chapleau

Approximately thirty years later some of the Michipicoten Ojibwa left their reserve at Gros Cap on Lake Superior

³¹ Robinson Diary, 5 September 1850. Robinson also told the Ojibwa that since their lands were “barren and sterile” there was little chance of settlers displacing them. Based on what Robinson told the Ojibwa they were certainly led to believe that their hunting and trapping activities would face very limited interference by signing the treaty.

³² *Ibid.*

³³ The Lake Huron Chiefs and Headmen signed the Robinson-Huron Treaty on September 9, 1850.

³⁴ Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories Including the Negotiations on which they were based*. (Saskatoon: Fifth House Publishers, 1991), 303. Unlike the later numbered treaties, the Robinson Treaties are very explicit as regards hunting, trapping and fishing rights. The numbered treaties did contain a provision for government regulation within the written text of the treaty. Wildlife regulation, however, was never explained to the Aboriginal signatories of Treaty Nine.

³⁵ See Morrison, *The Robinson Treaties*, 100-101, 119.

and moved inland to Chapleau.³⁶ At least sixteen families had hunting grounds in the area, and Chapleau offered them the possibility of seasonal employment with logging camps, the CPR or the HBC. In a later petition in 1904, the sixteen men wrote that they needed the land “for our own use and for the care of our families while we are absent on voyaging trips or on other work.”³⁷ In 1903 the local Indian Agent, William Nichols, forwarded a petition to J.D. McLean, Secretary of Indian Affairs in Ottawa, from “sixteen adult male members of the Michipicoten Band of Indians residing at or near the village of Chapleau asking that a small section or a half section of land be acquired and set apart as a reserve for them in the neighbourhood.”³⁸ Nichols noted that these men already “obtain most of their livelihood in that neighbourhood,” and many of their deceased friends and relatives were buried in the local cemetery.

Indian Affairs was already aware of the Michipicoten connection to the Chapleau region. When D.C. Scott and J.D. Macrae traveled to NBH Post in 1899 they did so to distribute Robinson-Superior annuities to Michipicoten Band members and to pare down Robinson-Superior annuity lists.³⁹ It explains

why Indian Affairs agreed with a plan proposed by the sixteen families residing at Chapleau: it simply recognized an existing situation. Indian Affairs communicated the plan to Ontario’s Department of Crown Lands, which was also unopposed.⁴⁰ By October 1904, Thaddeus J. Patten, an Ontario Land Surveyor, was in the region surveying both the Missanaibi and Chapleau Indian Reserves.⁴¹ The two reserves comprised a total of 436 acres. Confirmed by a provincial order-in-council on 18 October 1905, the new reserve lands were “vested in the Superintendent General of Indian Affairs in trust for the Indians of Missanabie and the Indians of Chapleau respectively...”⁴²

At no time did the Michipicoten Ojibwa who wanted to reside at Chapleau agree to surrender any treaty rights, nor was it communicated to them that hunting outside of the Robinson-Superior abrogated their treaty protection. Instead the new reserves facilitated some Michipicoten Ojibwa accessing their hunting grounds.

Treaty Nine

Ontario’s desire to access the mineral, timber and hydro resources of northern Ontario led to the creation

³⁶ See W. Robert Wightman and Nancy M. Wightman, *The Land Between: Northwestern Ontario Resource Development, 1800 to the 1990s* (Toronto: University of Toronto Press, 1997): 97. A brief chronology of the Gros Cap Reserve and the relocation to Chapleau can be found at <http://www.ainc-inac.gc.ca/al/ldc/spc/nws/mbh-eng.asp>. Accessed 12 January 2009.

³⁷ LAC, RG 10, Vol. 7763, file 27065-1. Petition, 20 July 1904.

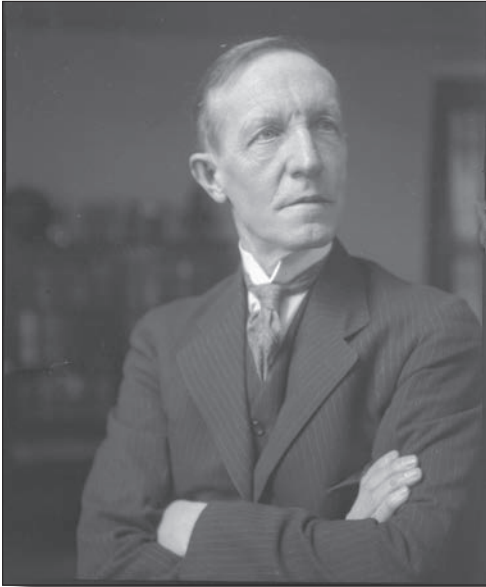
³⁸ *Ibid.*, William Nichols to J.D. McLean, 1 September 1903.

³⁹ LAC, RG 10, Vol. 3033, file 235,225, part 1. Memorandum, 3 June 1901.

⁴⁰ LAC, RG 10, Vol. 7763, file 27065-1. Aubrey White to J.D. McLean, 24 September 1903.

⁴¹ *Ibid.*, Survey of the Missanaibi and Chapleau Indian Reserves, Diary.

⁴² *Ibid.* Order-in-Council approved by his Honour the Lieutenant-Governor, 18 October 1905.



Duncan Campbell Scott, 1925. It had only been nineteen years since the final Treaty Nine Commissioners' trip. It was the same year that the Chapleau Game Preserve dispossessed New Brunswick House and Michipicoten peoples of their hunting territories. Scott could only see a problem with the loss of reserve lands, not the loss of hunting territories. Photo by M.O. Hammond, AO, F 1075-13, H 972B.

of Treaty Number Nine (known also as the James Bay Treaty). In the summers of 1905 and 1906 the Department of Indian Affairs sent a party of treaty commissioners north of the height of land to secure a land cession agreement with the Ojibwa and Cree who resided north of the Robinson Treaties and Treaty Three.⁴³ Some

of the details and controversies surrounding what was and was not agreed to in this treaty are examined in other works.⁴⁴ What is clear is that the treaty promised the Cree and Ojibwa signatories and their descendants continued harvesting rights. Wildlife still paled as an economic resource in comparison to mining, logging, and the hydroelectric potential of the north despite the growing hunting tourism industry in Ontario.⁴⁵

Interest in other resources, however, did not protect wildlife. This was not entirely unexpected. In the 1880s Edward Barnes Borron, sent north by the Ontario government to assess the resource potential of the region, commented that the "Canadian Pacific Railway for

⁴³ Treaty Three was created in 1873, and covers land in the northwestern portion of present day Ontario. An outline history of Treaty Three's creation can be found in the opening chapters of Barry Cottam, "Federal/Provincial Disputes, Natural Resources and the Treaty #3 Ojibway, 1867-1924." Ph.D. Thesis, History, University of Ottawa (1994). See also Wayne Daugherty, *Treaty Research Report: Treaty Number Three* (Ottawa: Department of Indian Affairs and Northern Development, Treaties and Historical Research Centre, 1986).

⁴⁴ The largest published study to date is James Morrison, *Treaty Research Report: Treaty Nine* (Ottawa: DIAND, T&HRC, 1986). Smaller studies include Patrick Macklem, "The Impact of Treaty 9 on Natural Resource Development in Northern Ontario." *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference*. Michael Asch ed. (Vancouver: University of British Columbia, 1997): 97-134. John Long, "No Basis for Argument: The Signing of Treaty Nine in Northern Ontario, 1905-1906." *Native Studies Review*, 5:2 (1989): 21-54. Long offers further analysis in "How the Commissioners Explained Treaty Number Nine to the Ojibway and Cree in 1905." *Ontario History*, 98:1 (Spring, 2006): 1-29. The role of the HBC in the negotiation of Treaty Nine is offered in David Calverley, "The Impact of the Hudson's Bay Company on the Creation of Treaty Number Nine." *Ontario History*, 98:1 (Spring, 2006): 30-51. Stan Dragland offers a more literary interpretation of the treaty in *Floating Voice: Duncan Campbell Scott and the Literature of Treaty 9* (Concord: House of Anansi Press, 1994).

⁴⁵ Hydro-electric development in northern Ontario is explored in Jean Manore, *Cross Currents: Hydroelectricity and the Engineering of Northern Ontario* (Waterloo: Wilfrid Laurier University Press, 1999).

The James Bay Treaty signing party at Fort Albany, 3 Aug. 1905. Standing: Joseph L. Vanasse (L), James Parkinson (R) of NWMP. Seated: Commissioners Samuel Stewart (L), Daniel MacMartin, Duncan Campbell Scott (R) Fore-ground: HBC Chief Trader Thomas. One of the few pictures of all the Treaty Nine Commissioners. The Treaty Party told Cree and Ojibwa peoples that their hunting and trapping rights would not be interfered with if they signed Treaty Nine. AO, C 275-2-0-1 (S 7546).



upwards of a hundred miles passes through their [First Nations'] hunting grounds, and will unquestionably lead...to the destruction of the larger game, the fur-bearing animals and to some extent also of the fish..." Borron recommended a treaty to protect Ojibwa and Cree access to their hunting, trapping and fishing grounds.⁴⁶ Borron's observation was accurate. First Nations chiefs began to complain about incursions into their band's hunting territories as early as 1884.⁴⁷ In 1899 Chief Espagnol spoke with Indian Affairs' officials at NBH Post. Espagnol complained that railroads brought in white prospectors, loggers and workers, and interfered with his people's ability to earn a living through hunting, trapping and fishing.⁴⁸

Cree and Ojibwa concerns regarding

harvesting rights surfaced more than once during the treaty negotiations.⁴⁹ These were not requests the commission tried to hide as they are recorded in the official report. References in the treaty diaries kept by Samuel Stewart and Daniel MacMartin further contextualize these promises.⁵⁰ While these concerns were raised primarily during the 1905 treaty trip, there is no reason to assume that First Nations did not raise similar concerns during the 1906 commissioners' trip. Written texts pertaining to treaty documents are sometimes silent about concerns raised by First Nations for various reasons. During the

⁴⁶ *Ontario Sessional Papers*, "Report on the Basin of Moose River and Adjacent Country belonging to the Province of Ontario." vol. 42, part 7 (Toronto: L.K. Cameron, 1890): 85.

⁴⁷ Morrison, *Treaty Research Report: Treaty Nine*, 1-2.

⁴⁸ LAC, RG 10, Vol. 3033, file 235,225, part 1. Memorandum, 3 June 1901.

⁴⁹ The Commissioners were: Duncan Campbell Scott, Samuel Stewart, Daniel G. MacMartin (Ontario's representative), Dr. A.G. Meindl, and two North West Mounted Policy officers James Parkinson and J.L. Vannse.

⁵⁰ Daniel MacMartin's Diary is located at the Queen's University Archives. See Misc. Collection, Queen's University Archives, "Dr. MacMartin, Diary of a Journey to the N.W.T., 1905." Samuel Stewart's diary is in RG 10. See also John S. Long, "How the Commissioners Explained Treaty Number 9."

commission's second stop at Osnaburgh Post on 11 July 1905 one chief, Missaby, expressed "the fears of the Indians that, if they signed the treaty, they would be compelled to reside upon the reserve to be set apart for them, and would be deprived of the fishing and hunting privileges which they now enjoy."⁵¹ Duncan Campbell Scott assured those assembled that "their fears in regard to both these matters were groundless, as their present manner of making a living would in no way be interfered with..." Stewart made a similar observation regarding the fears of Chief Missaby, and the assurances offered to him.⁵² At Fort Hope on 20 July 1905 the commissioners reiterated to Natives assembled there that "hunting and fishing... should for very many years prove lucrative sources of revenue [for the band]."⁵³

While concerns about harvesting were not raised on 25 July 1906, when the treaty commissioners arrived at NBH there is no indication that the commissioner's told any group of Ojibwa or Cree that their harvesting rights would be interfered with following the creation of the treaty. First Nations' concerns about harvesting activity were so common during the negotiations that Stewart wrote in his diary about the New Post meeting in August 1905, that "as usual... the Indians desired full information as to the effect the treaty

would have on their hunting and fishing rights." Both Stewart and MacMartin recorded the commissioners' response: that the treaty would not affect First Nations' harvesting activity in any manner.⁵⁴

The treaty, however, does contain a clause stating that First Nations' harvesting activity was subject to government regulation:

And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of his Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.⁵⁵

In light of statements made during the 1905 treaty negotiations the Ojibwa and Cree did not assent to government regulation. As noted earlier, it is logical to assume that similar promises were made by the treaty commissioners in 1906 to the various bands. Treaty commissioners knew that the Ontario government was already applying its conservation laws to First Nations south of the height of land, but made no mention of it to the bands they met. If there were a chance of provincial regulation the commissioners, and MacMartin

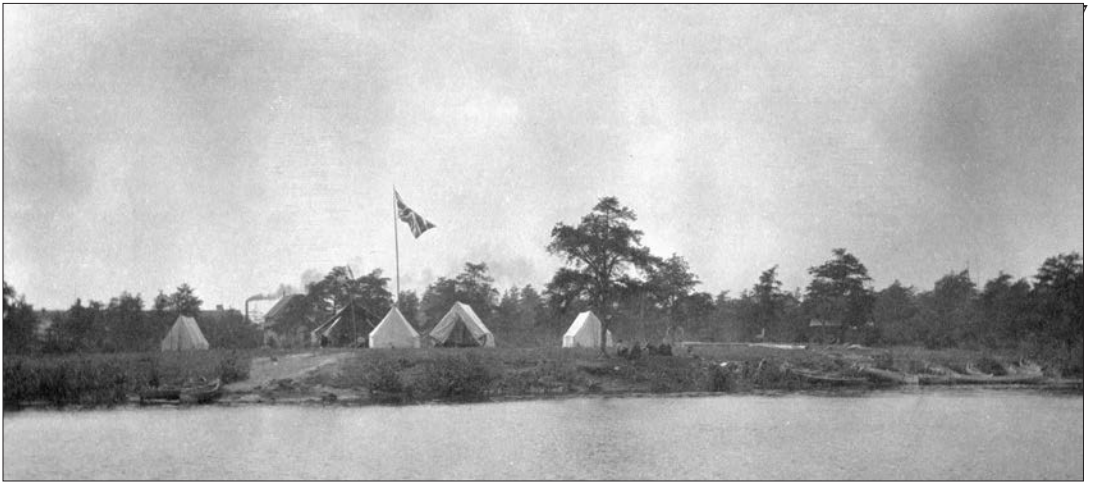
⁵¹ The 1905 and 1906 treaty reports can be found in Morrison, *Treaty Research Report: Treaty Nine*. Page numbers cited here correspond to the numbering of that report, and the source will hereafter be cited as either Treaty Report 1905, or Treaty Report 1906. Treaty Report 1905, 91.

⁵² Stewart Diary, 11 July 1905. MacMartin's diary contains no reference to Missaby's concerns.

⁵³ Treaty Report 1905, 92.

⁵⁴ See Stewart Diary, 21 August 1905. Also MacMartin Diary, 21 August 1905.

⁵⁵ *Ontario Sessional Papers*, vol. 61, part 10. "The James Bay Treaty, Treaty No. 9." (Toronto: L.K. Cameron, 1909), 4.



The Commissioners' tent near the town of Chapleau (c. 1905). To the right of the camp are the HBC canoes, piloted by Cree and Ojibwa paddlers, that ferried the Commissioners to the various fur trading posts to negotiate Treaty nine. AO, C 275-2-0-1 (S 7647).

in particular, would have said something. Either they lied, or there was no expressed interest on the part of the Ontario government to regulate wildlife that far north. It could be argued that the reference to the "Government of the country" meant the Ontario government. At no point during the treaty negotiations, based on available records, were the Cree or Ojibwa told that the Ontario government reserved the right to regulate their harvesting activity.

Within this context, the NBH Ojibwa chose their reserve "at the entrance to an unnamed creek on the west shore of Missinaibi river, about half a mile southwest of the Hudson's Bay Company's post, thence north four miles, and of sufficient depth to give an area of twenty-seven square miles."⁵⁶ Under no treaty obligation to restrict their harvesting to reserve lands, the NBH Band likely believed access to their traditional hunting and trapping grounds was protected under the terms of Treaty Nine.

Treaty Rights, Aboriginal Rights and the Chapleau Game Preserve, 1903-1930

Starting in the 1920s, Ontario's Department of Game initiated a new policy aimed at conserving wildlife in northern Ontario: the creation of game preserves. That this policy would affect the treaty and Aboriginal rights of First Nations was immaterial. Disdain for treaties and treaty rights had been a consistent feature of Ontario's wildlife conservation laws since their consolidation and expansion in 1892, and the creation of the province's first permanent wildlife authority, the Ontario Game and Fish Commission, that same year. Economically, wildlife was still the poor cousin to mining and logging as far as gross revenues were concerned, but Ontario's vast northern forests still produced sizeable revenue for those who catered to sport tourists: guides, railways and steamships, tourism operators, and

⁵⁶ Treaty Report 1906, 104.

local businesses. Government also made a tidy revenue selling hunting, fishing and trapping licenses. Maximizing revenues from the 'proper' scientific management of wildlife was the Commission's paramount concern. First Nations' treaty rights were a variable in the conservation equation that the Commission believed threatened their policies.⁵⁷

Chapleau Game Preserve itself sprung from the heads of William McLeod, a merchant and fur trader from the area, and George B. Nicholson who was the local MP. Both men believed that a wildlife sanctuary would provide a haven for fur bearing animals and large game to breed in. Once the populations of the preserve grew sufficiently, the theory ran, the excess would spill over into the surrounding territory, repopulate the area, and provide targets for sport hunters and local trappers.⁵⁸ As a first step, two game wardens undertook an extensive survey of the proposed territory described as

...all that territory bounded on the south by the Canadian Pacific Railway from Chapleau to Franz, on the west by the Algoma Central and Hudson Bay Railway from Franz to Oba, on the north by the Canadian Northern Railway from Oba to the hamlet of Agate near Elsa, and on the east by the Chapleau or Kebequasheshing River from Agate to the place of commencement.⁵⁹

Evidence filed by the wardens only strengthened the resolve of McLeod and Nicholson. They located only two occu-

ried beaver lodgers in Dog, Crooked and Missinaibi lakes. With the preserve established, the Department of Game hired six wardens to patrol the preserve's 2,600 square miles. Based out of neighbouring villages and hamlets these men traveled the preserve, using patrol cabins built in the preserve's interior during long trips.

At the centre of the new preserve lay the NBH Reserve. With the preserve's creation the band could no longer hunt, trap or fish within its boundaries. Simply transporting firearms or traps through the preserve carried the risk of arrest and prosecution. It was a blunder of such incredible proportions one cannot believe that the Department of Game was unaware of the reserve's existence; in light of the survey undertaken by the two game wardens it was either a staggering mistake or a blatant and bloody-minded assault on the harvesting activity of the NBH reserve.

Furthermore, the Ontario government did not consult Indian Affairs about the preserve. Indian Affairs' first inclination that something had occurred in the area was in September 1925, when George Prewar, an Anglican missionary, contacted D.C. Scott.⁶⁰ Prewar informed Scott that the NBH Ojibwa were angry that an "extensive area surrounding their reserve" was now off limits to them when hunting or trapping.

Immediately upon receiving Prewar's wire, Scott wrote to the Department

⁵⁷A full exposition of Ontario's wildlife laws in relation to First Nations' treaty rights is provided in Calverley, "Who Controls the Hunt?" See in particular Chapter 2.

⁵⁸AO, RG 1-437-0-13. V. Crichton, Senior Conservation Officer, Chapleau, "The Chapleau Game Preserve." See also Baldwin, 191, and McNab, 5.

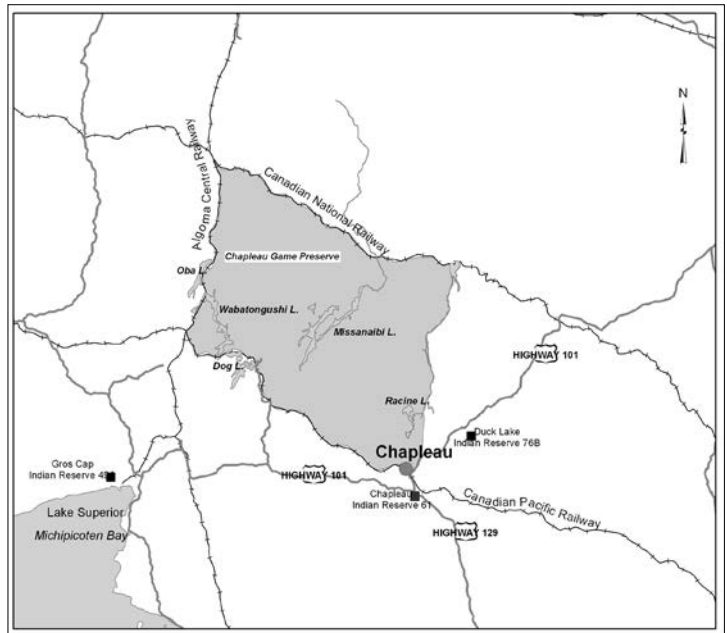
⁵⁹V. Crichton, *ibid.*

⁶⁰LAC, RG 10, Vol. 6745, file 420-8a. George Prewar to D.C. Scott, 21 September 1925.

The Chapleau Game Preserve showing its location in relation to both natural and modern landmarks. Created by Anjélien Slater, Geography Department, Crescent School.

of Game but received no response for over three weeks. In the interim Prewar provided Scott with an explanation of the situation in Chapleau, and how the new preserve affected both the NBH Ojibwa and First Nations north and south of the preserve.⁶¹ Linking all of these hunters to the land was the Missanaibi River that traversed the preserve. A well “traveled waterway for canoe and packet since time immemorial,” Prewar explained, it connected Michipicoten to James Bay. The importance of the Missanaibi River as a vital transportation route should not have been news to Scott: it was noted in the 1906 report filed by the Treaty Nine commissioners. Furthermore, Prewar continued, the local Indian population lived off its “game and fish which the country and rivers abounded in...”⁶² Prewar’s ironic choice of words, “since time immemorial,” drove to the heart of the issue: the game preserve represented a restriction of Aboriginal and treaty rights.

Prewar acknowledged that few Ojibwa still resided on the Brunswick House Reserve. When the HBC post relocated to Peterbell on the CPR mainline many families moved with it. However, the area



covered by the preserve encompassed familial hunting and trapping territories. Prewar noted that not all the Ojibwa who used the preserve were from NBH Reserve, but that some are “from Chapleau, [and] from Mitchepecoten [sic.]...”⁶³

Prewar’s understanding of the situation reveals a sophisticated and nuanced appreciation of the situation. He recognized that treaty rights to hunt encompassed both the resource itself (the animals) and the land that supported that resource. Prewar even reminded Scott of Indian Affairs’ fiduciary obligation to First Nations noting that Indian Affairs should intervene since “the Indians depend on Dominion Authorities to see that their rights are not infringed upon.” While Prewar believed that laws required fidelity those that harmed innocent people could not be tolerated.

⁶¹ *Ibid.* Prewar to Scott, 9 October 1925.

⁶² *Ibid.*

⁶³ *Ibid.*

Already suffering because white trappers pushed them off their traditional hunting grounds, Prewar feared that further privation due to wildlife conservation laws would drive the Ojibwa to alcoholism. Appealing perhaps to the frugality of Indian Affairs, Prewar warned that if the Dominion government did not live up to its responsibility it would be responsible for providing food to the Ojibwa.

The Department of Game and Fisheries was not concerned with the plight of the Ojibwa. On 12 October 1925, D. McDonald, Deputy Minister of Game and Fisheries, wrote to J.D. McLean stating that the Department was not disposed to change its policy because the situation concerning the NBH reserve did not warrant it.⁶⁴ McDonald claimed to speak from experience since he had been “[in] charge of a Hudson’s Bay Post practically opposite the location referred to [i.e.: NBH]...” Taking considerable liberty with the truth, McDonald said the Ojibwa no longer resided on the reserve anymore, and their hunting and trapping grounds were some distance away from the game preserve. McDonald also believed it unfair to ban white hunters and trappers from the preserve, but permit the Ojibwa to harvest there. McDonald closed by stating that the game preserve would ultimately benefit the Ojibwa who would “in later years reap the harvest” of

increased wildlife populations.

Interpreting McDonald’s letter is not easy unless one considers the broader context of the situation. Prewar recognized that the preserve encompassed lands used by different Ojibwa and Cree families. Further evidence from an earlier Indian Agent’s report indicates that in 1914, NBH Band members left their reserve in the late spring and summer to work for the HBC and other local employers, but returned to the reserve in the winter to hunt and trap.⁶⁵ Lastly, it is difficult, if not impossible to believe that the NBH Band chose a reserve in 1906 that was some distance from their hunting territories. In light of this evidence, McDonald was lying to justify the creation of the preserve and either stall or halt completely Indian Affairs’ investigation into the situation.⁶⁶

Regardless, Indian Affairs decided to sell the NBH Reserve to the Ontario government, place the proceeds into the band’s reserve fund, and re-locate the community to a new reserve site. This solution grew out of a suggestion made by H. Bury, Supervisor of Indian Timber Lands in October 1925.⁶⁷ Bury had been at the NBH Reserve in order to estimate the value of the timber located on it. He realized that the Ojibwa of NBH, totaling 120 people, were suffering due to the creation of the preserve as they could

⁶⁴ *Ibid.* D. McDonald to J.D. McLean, 12 October 1925.

⁶⁵ Murphy, 14.

⁶⁶ Macdonald may not have been lying. Elizabeth Furnis argues that popular misconceptions about Aboriginal peoples soon took on the aura of fact in frontier communities. See Furnis, *The Burden of History: Colonialism and the Frontier Myth in a Rural Community* (Vancouver: University of British Columbia Press, 1999).

⁶⁷ LAC, RG 10, Vol. 6745, file 420-8a. H. Bury to McDonald, 26 October 1925.

not hunt, trap or even carry firearms or traps through either the preserve or their own reserve. However, Bury could only conceive of the NBH Band's treaty rights within the context of their reserve lands. As he wrote, they had "just cause for complaint and reasonable right to adequate compensation" from the Ontario government "as the usefulness of their reserve has been completely nullified by the fact of its inclusion in the Chapleau Game Preserve." Acquiring a new reserve, in Bury's opinion, was a suitable course of action as the residents of NBH had not occupied the current reserve permanently for some years. A sale, he concluded, would allow the Province to have full control over the entire game preserve "and the Indians would be properly compensated for the loss of their Treaty rights." Bury was concerned solely with the NBH Band, and noted in his letter, "those Indians who used to formerly hunt in this area (outside of the NBH Reserve itself) have no cause for complaint..."⁶⁸

Bury's solution did not address the problem directly; rather it attempted to find a political solution that would suit both governments, but do little for the Ojibwa. Lost treaty rights were not being compensated with his plan, only the physical loss of reserve lands. Familial hunting territories and rights of access to wildlife resources were now denied to both the NBH Band and the Michipicoten Ojibwa within the preserve. Bury's and Deputy Minister McDonald's concern with "per-

manent" occupation of the reserve reflected their limited understanding of Treaty Nine. Neither Bury nor the bureaucrats at Indian Affairs or the Department of Game considered that the Chapleau Game Preserve violated the promises made during the creation of Treaty Nine, nor that at that time the Ontario government expressed no desire to regulate wildlife in that particular area. Compensation, therefore, for the loss of hunting grounds within the preserve was not a consideration as far as senior Dominion and provincial officials were concerned. Treaty rights were limited to the need to compensate the Ojibwa for the loss of their reserve, not the loss of hunting grounds.

Duncan Campbell Scott, however, concurred with Bury's opinion. Considering Scott's first hand knowledge of Treaty Nine, and the area around Chapleau, his willingness to compromise can only be interpreted as a political solution to what he considered a political problem. Scott did want to find some succor for First Nations in Ontario against the province's game laws, but believed that challenging these laws within the context of a game preserve stood little chance of success in the courts.⁶⁹ Scott wanted an ideal test case to bring before the courts: a treaty Indian hunting for subsistence purposes on unoccupied crown land.

Scott wrote to W.C. Cain, Deputy Minister of the Department of Lands and Forests, and expressed concern over the preserve and the NBH Ojibwa.⁷⁰ Al-

⁶⁸ *Ibid.*

⁶⁹ Scott's position regarding game laws is explored in Calverley, "Who Controls the Hunt?" See especially chapters 5 and 6.

though not permanent residents of the reserve, Scott wrote that approximately thirty trappers still used the reserve and twenty-three others the land adjacent to it, and were “rightly entitled to some reasonable compensation.”⁷¹ If the province bought the NBH Reserve the Ojibwa could be properly remunerated, and the money “utilized for the benefit of the Indians.” The response of the Department of Game and Fisheries was positive to an extent. Deputy Minister McDonald asked what the price for the reserve would be.⁷² If a suitable price could not be reached, McDonald continued, his department would amend the regulations in the game preserve to permit the Ojibwa to hunt and fish on their reserve only, but not outside of it.

Eventually, by 1947, the NBH Ojibwa had a new reserve.⁷³ This did little to compensate them for their loss of hunting grounds, but the Michipicoten Ojibwa received even less. Their reserve lay outside the game preserve, and neither Indian Affairs nor the Department of Game recognized familial hunting territories as ‘owned’ property. Both Scott and Bury ignored the issue of Michipicoten hunting territories even though the band relocated to Chapleau to facilitate access to their traditional lands. Within a short period of time, however, arrests of Michi-

picoten Ojibwa began to occur inside the preserve. In December 1927, Henry Black and Walter Soullier of Michipicoten were arrested for possessing a gun, two moose hides and two traps within the game preserve.⁷⁴ They requested assistance from Indian Affairs for their court appearance on 20 December. Indian Affairs wrote back to inform both men that “the Department does not undertake to provide counsel for the defence of Indians on trial for violations of the law.”⁷⁵

Soullier, unprepared to let matters go, wrote to Indian Affairs two months later. Unhappy with his inability to get a “square deal” in court (he was ultimately fined), Soullier outlined his frustration as he attempted to get Indian Affairs or his Indian Agent to help him. Soullier argued that game wardens harassed any “Indians going away on train or meeting them on the train. They [game wardens] turn around and search. They never let an Indian go by.”⁷⁶ Godfrey, the local Indian Agent, wrote to Ottawa to give his version of events. He reported that Soullier lived only 100 feet within the preserve, but refused to relocate his camp even though Godfrey told him that wardens would lay charges against him. In Godfrey’s opinion, Soullier wanted to “break the law and get away with it.”

Other incidents followed the Soullier

⁷⁰ LAC, RG 10, Vol. 6745, file 420-8a. Scott to W.C. Cain, 12 November 1925.

⁷¹ *Ibid.*

⁷² *Ibid.*, McDonald to Scott, 27 November 1925.

⁷³ Murphy, 18-25

⁷⁴ LAC, RG 10, vol. 6745, file 420-8a. Henry Black and Walter Soullier to Indian Affairs, 7 December 1927.

⁷⁵ *Ibid.*, Indian Affairs to Black and Soullier, 13 December 1927.

⁷⁶ *Ibid.*, Soullier to Indian Affairs, 21 February 1928.

arrest. Thomas Kuskitchee was arrested on Boxing Day, 1928, for having beaver traps with him inside the preserve. He was not arrested or fined, but he explained that the game warden “picked them up and took my traps away.”⁷⁷ Kuskitchee explained that starvation was becoming a real problem for his family, but that the game warden told him, “the Indians has [sic.] no rites [sic.] to trap Beaver & Otter and not allowed to have moose meat out of season.” Albert Fletcher of Michipicoten was arrested in June 1928 for killing a moose within the preserve and fined twenty dollars. In a letter to Indian Affairs Fletcher explained that he killed the moose for food.⁷⁸ Fletcher stated his hunting and trapping grounds were within the preserve, but now the game wardens “chase me away” and he could not make a living.

By the winter of 1929 the Ojibwa of the Chapleau Agency sent another petition to Indian Affairs complaining of their inability to access hunting grounds within Chapleau Game Preserve. Bishop George Prewar acted as their spokesperson. Prewar outlined the hardship that many of these families laboured under. Unable to pay their advances from the HBC because “large tracts of country have been set apart by the province as game sanctuaries” they now trapped over “territory fully covered by persons engaged in trapping, thus greatly lessening the chances of the original holders [to trap enough animals].”⁷⁹ Pleading, Pre-

war told Scott that if he could “see the situation from the Indian standpoint, ...[he would gladly] lend [his] influence to better the situation.”

Such complaints, petitions and arguments had no affect on Indian Affairs. It had secured compensation for the NBH people for the sale of their reserve. Indian Affairs believed this fulfilled their sole obligation to the band. Ottawa bureaucrats, the local Indian Agent and other Indian Affairs’ employees in the region, however, did not consider the concerns of the Michipicoten Ojibwa legitimate. George Prewar was the only non-Aboriginal who recognized the impact this preserve had on the harvesting activity of all local First Nation hunters. Band members from both reserves also realized that they had lost something. Both lost access to traditional hunting grounds that had been, within the broader context of the Robinson-Superior Treaty and Treaty Nine, given protection by the Crown.

Displacement of First Nations is an unknown part of the story behind the Chapleau Game Preserve, and many of Ontario’s and Canada’s parks and preserves. While this displacement was not of the same magnitude as the Cherokee Trail of Tears in the United States, it was still a loss. Treaty promises were broken, families pushed further into poverty and dependency, and they lost the treaty right to support themselves through hunting and trapping.

⁷⁷ *Ibid.*, Thomas Kuskitchee to Indian Affairs, 26 December 1928.

⁷⁸ LAC, RG 10, Vol. 6767, file 420-8x part 1. Albert Fletcher to Indian Affairs, 23 July 1928.

⁷⁹ LAC, RG 10, Vol. 6745, file 420-8B. Prewar to Scott, 20 February 1929. Also Godfrey to Scott, 14 February 1929.