

# **RE INDIAN RESERVE, CITY OF SYDNEY, N.S.**

**(1916), 42 D.L.R. 314 (also reported: 17 Ex. C.R. 517)**

**Exchequer Court of Canada, Audette J., 16 March 1916**

*INDIANS (II--36)--REMOVAL TO NEW RESERVE--EXPEDIENCY--COMPEN- SATION.*

The Exchequer Court, pursuant to the provisions of s.49a of the Indian Act, will recommend the removal of Indians from their Reserve to a new site, if, in the interest of the public and the welfare of the Indians, such removal seems expedient. Under s. 2 (4) of the Act, they are to be compensated for the special loss or damage in respect of their buildings or improvements upon the Reserve.

[Statement.] REFERENCE to the Exchequer Court of Canada under the authority of an order-in-council passed on April 24, 1915, pursuant to the provisions of s. 49a of the Indian Act, as amended by 1 & 2 Geo. V., c. 14, s. 2, for enquiry and report as to whether it was expedient, having regard to the interest of the public and of the band of Indians then resident on the Sydney (N.S.) Indian Reserve to another place outside the limits of the city of Sydney.

*J. A. Gillies*, K.C., appeared on behalf of the party interested in the removal of the Indians; *G. A. R. Rowlings* was appointed by the judge to represent the Indians on the hearing of the reference.

AUDETTE, J., made his report to the Governor-General-in- council as follows:--

To His Royal Highness, the Governor-in-council:

The question as to whether or not it is expedient--having regard to the interest of the public and of the Indians, that the latter should be removed from the Reserve at Sydney, and for further action under the provisions of the Act--having been referred to the Exchequer Court of Canada for inquiry and report, under both the provisions of the order-in-council of April 30, 1915, and of 1-2 George V., c. 14--the undersigned has the honour to report as follows:--

The notice, provided by s. 2 (2) of the Act, fixing the time and place for the taking of evidence and the hearing of the investigation respecting the above matter, having been published in the "Canada Gazette" and in a local newspaper at Sydney, I assigned counsel to represent and act for the Indians, who might be opposed to the proposed removal, they having previously declared their unwillingness to surrender.

The hearing of the matter was proceeded with at Sydney, on the 20th, 21st, 22nd, 23rd and 24th days of September, 1915, and upon hearing read the pleadings, and upon hearing the evidence adduced, both on behalf of the party seeking such removal, and on behalf of the Indians--and upon hearing *J. A. Gillies*, K.C., of counsel on behalf of the party seeking the removal, and *Mr. Rowlings*, on behalf of the Indians, the undersigned humbly submits the following finding:--

The Reserve in question, which is numbered 28 in the Official Shedule of Indian Reserves, is located on the eastern shore of Sydney Harbour, and was acquired by the Dominion government on April 28, 1882, under a grant from the Province of Nova Scotia, for the use of the Micmac Tribe.

It had been surveyed under direction of the federal government in 1877, and at that time contained 2 acres, 2 roods and 37 perches--the area mentioned in the provincial grant above mentioned.

When the Cape Breton Railway was built in 1887 or 1888, sixty-six hundredths of an acre of the Reserve was expropriated for the purposes of that public work, severing the land in two parcels, leaving the Reserve, already of irregular shape, with the contents of 2 acres and 12 perches, and a small piece of land on the water side of the track. This small piece of the Reserve, severed by the railway from its main part, is of no value and cannot be utilized for settlement purposes--and in the result leaves the Reserve, for practical purposes, still smaller than its apparent and real size.

Joe Christmas, the present chief, or captain, of the band on the Reserve, has lived on the Reserve back and forth since 1875. In 1887, two more Indian families arrived upon the Reserve. In 1899 there were 85 Indians on the Reserve, and on February 15, 1915, there were 23 houses and 115 Indians. At present there are between 120 and 122 Indians and 27 houses, without counting the school-house and the brick building with sanitary closets.

The present Reserve is really an adjunct of the Eskasoni Reserve, composed of 2,800 acres, and which is about 24 to 25 miles from Sydney. The Grand Chief of the Micmacs resides at Eskasoni, and there is only a sub-chief, or captain, at the Sydney Reserve. There are in the vicinity of 155 Indians at Eskasoni, who do some agricultural work. When these Eskasoni Indians come to Sydney to sell their handicrafts and products, they reside on the Sydney Reserve. There is also the Cariboo Marsh Reserve, of about 5,385 acres. The land on that Reserve is so poor that no Indians reside upon it, but as there is considerable timber upon it they use it to cut their supply for fuel and for making ties, which they sell to the Steel & Coal Co. There are also Indians residing at North Sydney and Little Bras d'Or who, like the others when they come to Sydney, put up at the Indian Reserve.

Now, this Reserve abuts on King's Road, which is one of the principal arteries of the city, a highway very much traveled and used by the public, and upon which a large number of fine residences are built. No one cares to live in the immediate vicinity of the Indians. The overwhelming weight of the evidence is to the effect that the Reserve retards and is a clog in the development of that part of the city. On this branch of the case I may say I would have come to a final decision with more satisfaction, had I heard the present mayor of the city, some representatives from the Board of Trade, and some prominent public-spirited citizens.

It is worth passing notice to mention that the two medical doctors who respectively held the position of Indian agent for this Reserve since 1899 favour the removal of the Indians, provided larger and better quarters are given them. Dr. McIntyre says, he thought the Reserve congested with 20 houses and 100 Indians, and there are now 27 houses and 122 Indians. The removal would make the property in that neighbourhood more valuable for assessment purposes--and it is no doubt an anomaly to have the Indian Reserve in almost the centre of the city, or on one of its principal thoroughfares.

The racial inequalities of the Indians, as compared with the white man, check to a great extent any move towards social development, a state of affairs which, under the system now obtaining, can only grow worse every day, as the number of Indians is increasing.

I do, therefore, without hesitation, come to the conclusion, on this branch of the case, that the removal of the Indians from the Reserve is obviously in the interest of the public.

Coming to the second branch of the case, as to whether it is in the interest of the Indians to be removed to a larger place, I may say that during the trial or investigation, I had occasion, accompanied by counsel on both sides, to view and examine the Reserve in question. It was on that day quite clean and in good sanitary condition; but it is established that this condition did not always obtain.

The majority of the Indians is opposed to the removal. They find their present Reserve well located, close to the place where they earn their livelihood, and it suits their methods of life. They want to stay where they are, and do not wish to accept any place offered to them. However, if a better, larger and more suitable place is found it will be acceptable to some of them. This state of things carries us thus far and no further. But the Reserve is getting too small, too congested and too limited, to accommodate its increasing population, besides the fact that the sanitary conditions are unsatisfactory and can only grow worse with an increase in population in the settlement.

The brick sanitary closet in the Reserve has been closed as a result of misuse, and the several draught-houses, now in use to replace it, have proved to be very objectionable to the neighbourhood. Although provided with a number of such draught-houses, the Indians have not been always considerate and mindful of their neighbours in respect of cleanliness. They are also charged with disturbance, but that part of the evidence is meagre and not very reliable, and in that respect they may not be any worse than white men of certain classes. And while it can be said in one sense they may be undesirable neighbours in that locality, they could be considered as reasonably well-behaved Indians. They are healthy Indians and the Reserve is free from tuberculosis.

These Indians have abandoned the nomadic life of their ancestors, and are now employed as labourers all over the city at different works, while the women do some charring and washing.

This Reserve has become too small for the present requirements. There are too many buildings upon it, and the band of Indians has become too numerous to be located under the present conditions for sanitation on such a small area. An undesirable and objectionable congestion is the necessary result. Moreover, the band is growing, the young men are marrying and desire to settle there. And while the Reserve is too small for the Indians actually in occupation, we must not overlook that all the Indians of Cape Breton who come to Sydney reside on the Reserve during the time of their visit. And, looking to the future, made wise by looking on the past of this Reserve, it appears that the desirability of a larger Reserve, a matter of expediency now, will become imperative in the near future.

The Indians, in their own interest, should be removed to a larger place where they would be given a small plot of land to cultivate. But this removal, while it should be to a place outside of the city, to avoid a further removal in the future, must be consistent with and considerate of the interest of the Indians. They should remain as close as possible to the city, although outside its limits, to allow them to pursue the same manner of earning their livelihood by doing work in the city, where, indeed, they have become quite a factor in the labour market. They must also be kept close to their Church, because it is insisted upon, in the evidence, that their priest has a very

salutary influence over them, and when the Indian loses the influence of his Church, he goes on the down grade. These Indians are labourers of all classes: brick- layers, masons, plasterers, carpenters, pick and shovel men, and some of them work on the Cape Breton Electric Tramway. They are much employed during the winter, for the removal of snow from the tramway. They also make pick handles, tubs and baskets.

The evidence establishes in the result that the removal would be in the interest of the Indians, provided they are given a better and larger Reserve in some place convenient to their church and their work. And in doing so, to place them in the neighbourhood of the Coke Ovens district must be avoided--that locality is undesirable in many respects--and occasion for intemperance is sure to arise there.

Both the unsatisfactory condition of the present Reserve with respect to sanitation, and the advantage to be derived by the Indians from larger grounds, make it expedient to recommend their removal to a better and larger place, consistent with the relatively close proximity to their work and church.

What the Indian, on the one hand, may lose from the convenience of close neighbourhood to his place of labour, in the future perhaps made costly by the expense of a ferry or car-fare-- which with that class must be reckoned--will be offset by the advantage of a larger territory for his Reserve, where he can have his little plot of ground under cultivation, giving him a vegetable garden, helping materially in support of his family.

The removal of this band of Indians from the Reserve will open to improvement at once that part of the city of Sydney, while the Indian, in the result, will not suffer anything serious, save perhaps a disadvantage in the degree of convenience in going to and from his work, and his morals can be looked after just as well upon the new Reserve. He will be able to attend his church just the same, and he will, moreover, be perhaps further away from the temptation in the way of intemperance and kept busy and interested in his Reserve by attending to his vegetable garden. Having each a small plot of land would also be an incentive to keep it in proper condition.

Having found the removal of the Indians from this Reserve expedient and advisable, it becomes my duty now, under the provisions of s. 2 (4) of the Act:

To ascertain the amounts of compensation, if any, which should be paid respectively to individual Indians of the band for the special loss or damages which they will sustain in respect of the buildings or improvements to which they are entitled upon the lands of the Reserve.

On that branch of the case, ex. "E," testified to by 3 witnesses, establishes the value of each building upon the Reserve, with the name of the proprietor opposite the figures. This valuation, however, has been arrived at on a basis of re-instatement value. That is, it does not shew the actual market value of the buildings, taking into consideration the depreciation for wear and tear. That document shows what it would cost to build these, however, anew today.

While the Indian, the ward of the nation, should be treated as well as possible, it is quite conceivable that a great part of the old buildings could be used in the erection of the buildings on the new Reserve. The total value of the buildings, owned by the Indians on the Reserve, is placed by these three witnesses at \$8,850, subject to what has just been said. This is exclusive of the

value of the brick sanitary closet and the school-house.

Passing now to the question of the selection of the site for a new Reserve, it may be said that a deal of evidence has been adduced in that respect. Indeed, the selection of a site is a question not free from difficulty, and upon which a deal of evidence has been adduced. A large plan of the city has been filed, and upon it has been shewn as prospective or available sites, the places marked respectively "A," "B," "C," "D," "E," "F," "G," and "H." On that plan is also shewn the site of the present Reserve.

Besides these sites so indicated on the plan, there is also across the harbour at Westmount, almost opposite the present Reserve, a place recommended by some of the witnesses. It is entirely outside of the limits of the city, and quite accessible to the city for the most part of the year. However, in the autumn and in the spring the ice makes the crossing quite impossible at times for a period varying from one week to three weeks and perhaps more. Were it not for that last difficulty, the place would be ideal. The Murphy farm of 50 acres is there available--and there is also a large quantity of land in that neighbourhood which could easily be secured at a reasonable price. The soil is very good, the site beautiful and abutting on the harbour. If the Indians were established at Westmount on a really good farm, would it not be possible for them to keep a few horses, and when the ice on the river prevents them from coming across, they could drive to town, a distance of only 5 or 6 miles? They would be there away from the liquor shops and the undesirable foreigners settled at the Coke Ovens, where they often get liquor--always a source of trouble to them.

Of all the other sites above mentioned and referred to by the letters "A" to "H," I would only recommend in the alternative, either "A" or "E."

The "A" site lies outside of the eastern part of the city between the Grand Lake Road and the Sydney and Glace Bay R. Co.'s line; and "E," which is also outside the eastern part of the city, at the top of the Cow Bay Road.

Jos. Christmas, one of the Indians, although objecting to the removal, says if they must be removed, he would prefer the Westmount site to any other. Ben Christmas, another Indian, speaking for himself, says "E," at the top of the Cow Bay Road, would meet with his approval if they are given a little assistance in building and larger grounds. The soil there, however, seems to be of doubtful character for farming purposes.

Under all the circumstances, I would humbly recommend, as prospective alternative sites, "A" at the top of the Grand Lake Road, or "E" at the top of the Cow Bay Road, or Westmount. The prospective sites within the limits of the city should be discarded, because the same question of removal would arise again at some future date.

The price at which these prospective properties could be acquired has been estimated by some of the witnesses.

It may be said that while the present site can only be sold at public auction, Mr. Gillies, K.C., has offered to purchase it at \$5,000. If the sale is made this amount may be used as an upset price. Agent Parker valued the land at \$4,800--witnesses Ross and Midgley at \$5,000--Rev. Father Cameron at \$150 an acre-- and Rev. Father McDonald, in his letter of January 8, 1914, at \$12,000. The valuation of \$5,000 would appear to be about fair and right.

Therefore, the undersigned has the honour to report he finds it expedient, having regard to the interest of the public and of the Indians located on the small Sydney Reserve, that the said Indians should be removed from such Reserve.

Furthermore, it is found that the compensation above set forth should be paid respectively to the individual Indians of the band for the special loss or damages sustained by them in respect of their buildings or improvements upon the Reserve, or an adjustment be made for their claims in respect thereto, and a suitable new Reserve be obtained for them before they be removed from or disturbed in the possession of the present Reserve.

The undersigned would further recommend that the Indians should, on their removal, be treated with great consideration and kindness, and that such removal should be made quietly without undue haste, trouble or inconvenience, to the Indians. The site to be first selected and the compensation for their buildings or improvements adjusted on the basis above mentioned.

In witness whereof I have set my hand this 15th day of March, A.D. 1916.

(Sgd.) L. A. AUDETTE,

J.E.C.