

SUPREME COURT OF CANADA
(ON APPEAL FROM A JUDGMENT OF THE ALBERTA COURT OF APPEAL)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Appellant
(Appellant)

-and-

GILLES CARON

Respondent
(Respondent)

- and -

**CANADIAN CIVIL LIBERTIES ASSOCIATION, COUNCIL OF CANADIANS WITH
DISABILITIES *et al.*, COMMISSIONER OF OFFICIAL LANGUAGES OF CANADA,
ASSOCIATION CANADIENNE-FRANÇAISE DE L'ALBERTA and DAVID ASPER
CENTRE FOR CONSTITUTIONAL RIGHTS**

Interveners

FACTUM OF THE INTERVENER
COMMISSIONER OF OFFICIAL LANGUAGES FOR CANADA
(Rules 37 and 42 of the *Rules of the Supreme Court of Canada*)

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PART I - OVERVIEW AND FACTS

Overview

1. At issue in the appeal before this Honourable Court is an order for advance costs awarded to the Respondent in the longest language rights case in the history of Canada, a case described by the trial judge as “without precedent”.
2. Without the award for advance costs, the language issues of public importance raised in this case could not have been properly argued and resolved by the courts. Canadian society as a whole has an interest in there being a final determination regarding the constitutional status of French in western Canada and the extent of the language obligations of the province of Alberta. The fact that these questions have been raised in the context of quasi-criminal proceedings should not mean that they remain unanswered.
3. The Commissioner of Official Languages [Intervener] submits that the linguistic nature of the issues to be resolved in a case constitutes an indication that it would be in the interests of justice to award advance costs in cases that otherwise meet the criteria set out in *British Columbia (Minister of Forests) v. Okanagan Indian Band* [Okanagan] and *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)* [Little Sisters].
 - *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371
 - *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, [2007] 1 S.C.R. 38

Facts

4. The legal argument submitted by the Commissioner of Official Languages of Canada [*Intervener*] is based on the facts as set out by the Respondent.

PART II - QUESTIONS IN ISSUE

5. The legal argument submitted by the Intervener relates solely to the last two issues raised by the Appellant (see questions (3) and (4) in the appellant's factum). More specifically:

(a) Are the *Okanagan* and *Little Sisters* criteria met in this case?

The Intervener submits that the constitutional arguments raised by the Respondent are questions of public importance that transcend the Respondent's individual interests and have not previously been resolved by the courts.

(b) Is the test set out in *Okanagan* and refined in *Little Sisters* adequate to address applications for funding in the context of regulatory offences?

- i. The Commissioner submits that the analysis and application of the criteria set out in *Okanagan* and *Little Sisters* must be guided by the nature and importance of the issues raised and not the nature of the legal framework in which they are raised. Such an approach militates an affirmative answer.
- ii. The Intervener further submits that the linguistic nature of the issues to be resolved is an additional factor that the courts must take into account when determining whether a case is sufficiently special that it would be contrary to the interests of justice to deny an application for advance costs.

PART III - STATEMENT OF ARGUMENT

6. By characterizing the Respondent's case as a mere challenge to a ticket issued under a provincial statute, the Appellant is asking this Court to disregard the language rights component, as well as the public and constitutional importance of the Respondent's case. The Intervener urges this Court, in its consideration of this appeal, not to lose sight of the real nature and scope of the underlying case, which is a constitutional language rights case that is "without precedent".

- *R. v. Caron*, 2008 ABPC 232 at para 42, Book of Authorities of the Respondent, tab 12 at 185

7. The lower courts ensured that the criteria set out in *Okanagan* and refined in *Little Sisters* were met. More specifically, they concluded that the Respondent had met the impecuniosity criterion and had established that his claim was *prima facie* meritorious. The Intervener, as the federal official languages ombudsman, will instead address the public importance of the Respondent's case.

Public importance: the third criterion has been met

8. Among the conditions to be met, an individual or group seeking an advance costs award must demonstrate that the issues raised (i) transcend the individual interests of the particular litigant, (ii) are of public importance, and (iii) have not previously been resolved by the courts.

- *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371 at para. 40, Book of Authorities of the Respondent, tab 2 at 36

9. In the case at hand, both the trial judge and the judge who heard the appeal on the merits recognized that the Respondent's claim raises important questions that have never been resolved by the courts and that are different from the questions disposed of in *R. v. Mercure*.

- *R. v. Mercure*, [1988] 1 S.C.R. 234, Book of Authorities of the Intervener, tab 11; *R. v. Caron*, 2008 ABPC 232 at para. 30-42, Book of Authorities of the Respondent, tab 12 at 182-185; *R. v. Caron*, 2009 ABQB 745 at para. 143, Book of Authorities of the

Respondent, tab 13 at 193; see also *R. v. Caron*, 2006 ABPC 278 at para. 154, Book of Authorities of the Intervener, tab 10

10. The lower courts were also unanimous in concluding that the questions raised in this case transcend the Respondent's individual interests.

- *R. v. Caron*, 2006 ABPC 278 at para. 154, Book of Authorities of the Intervener, tab 10; *R. v. Caron*, 2007 ABQB 632 at para. 37, Appellant's Record at 124-125; *R. v. Caron*, 2007 ABBR 262 at para. 120, Appellant Record at 93; *R. v. Caron*, 2009 ABCA 34 at para. 59-60, Appellant's Record at 170-171

11. The defense raised by the Respondent calls on the courts to rule on the constitutional status of the French language throughout the territory that corresponds to the former Rupert's Land.

12. The issues advanced by the Respondent mean that the courts have been asked to interpret, for the first time in the context of language rights, the *Royal Proclamation of 1869*, the *Order of 1870*, as well as the Addresses to the Queen made by Parliament in 1867 and 1869 regarding the annexation of Rupert's Land. As such, the courts must rule on the effect of those documents and determine the nature and scope of the resulting language rights. More specifically, the courts are asked to review the historical evidence that preceded the annexation of Rupert's Land to Canada in order to ascertain whether the residents of Rupert's Land were granted constitutional language rights that subsist today in Alberta.

- *R. v. Caron*, 2009 ABQB 245 at para. 145, Book of Authorities of the Respondent, tab 13 at 193

13. Canadian society as a whole has an interest in the issues raised in this case being properly argued and resolved by the courts. This would provide a final determination as to the constitutional status of the French language in western Canada, and accordingly, the extent of the province of Alberta's obligations.

14. Although the final outcome of this case will certainly have an impact on the charge brought against the Respondent, the effect of an eventual judgment in this case will,

more importantly, have an impact on the language rights of the public and francophone communities in the provinces of Alberta and Saskatchewan.

15. In Alberta, any recognition of constitutional language rights having to do with legislative and judicial bilingualism would have a positive impact on the identity of the Franco-Albertan community, both within Albertan and Canadian society, and would help strengthen the vitality of that community. The members of that community would henceforth enjoy recognized collective rights, but would just as equally benefit from the sociological effects of the recognition of their language rights, allowing past injustices to be rectified:

The actions of government not only have a determining role on the life experience and perceptions of the members of a language group but also on the very legitimacy of the group's language. A language that is not used in the public domain of society is perceived as being illegitimate, that is, as having no recognition within the society. [...] The more that government action makes a language visible and vital, the greater the recognition of the legitimacy of the language, and the more the members of the language group perceive their group as having a strong vitality.

- *Fédération franco-ténoise v. Attorney General of Canada*, 2006 NWTSC 20 at para. 600, Book of Authorities of the Intervener, tab 6

See also Will Kymlicka, "Multicultural Citizenship: a liberal theory of minority rights", New York, Oxford University Press, 1995 (Book of Authorities of the Intervener, tab 16) as well as the study entitled "Vitality Indicators for Official Language Minority Communities 3: Three Francophone Communities in Western Canada", Office of the Commissioner of Official Languages, 2010 at IX (Book of Authorities of the Intervener, tab 15)

16. The Respondent's constitutional challenge raises novel issues of public importance that transcend his individual interests. Considering that this case satisfies all of the criteria set out in *Okanagan*, the Intervener submits that it is in the interests of justice for this case to proceed on its course through the various levels of court, including the court of last resort.

The contextual analysis must take into account the language rights component of a case

17. In *Little Sisters*, this Court stated that, in addition to the three criteria set out in *Okanagan*, “[t]he discretion enjoyed by the court affords it an opportunity to consider all relevant factors that arise on the facts.” A court is asked to undertake this broader analysis in order to decide, “with a view to all the circumstances, whether the case is sufficiently special that it would be contrary to the interests of justice to deny the advance costs application”.

- *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, [2007] 1 S.C.R. 38 at para. 37, Book of Authorities of the Respondent, tab 7 at 84-85

18. The Intervener submits that when the courts conduct this broader analysis, the existence of a claim seeking the recognition of language rights, raised in the context of a case that otherwise meets the three criteria set out in *Okanagan*, is in itself an important additional indication that it would be consistent with the interests of justice to award advance costs.

19. Language rights hold a special place in our constitutional structure. They are rights that are designed to remedy past injustices so that substantive equality between the official languages can be achieved. However, governments are not always prepared, or do not always wish, to recognize the full extent of their obligations and take measures to ensure they are given concrete effect. In those cases, one of the few effective methods available to members of official language minority communities seeking recognition of their individual or collective language rights is to take legal action before the courts.

Reference re Secession of Quebec, [1998] 2 S.C.R. 217 at para. 81, Book of Authorities of the Intervener, tab 13;

Mahe v. Alberta, [1990] 1 S.C.R. 342 at 26 and 35-36, Book of Authorities of the Intervener, tab 13

20. Canada's legal history demonstrates the necessity for official language minority communities to take legal action in order to have their language rights recognized and to be able to fully enjoy those rights.

- See, *inter alia*, *Mahe v. Alberta*, [1990] 1 S.C.R. 342, Book of Authorities of the Intervener, tab 7; *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, Book of Authorities of the Intervener, tab 1; *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, Book of Authorities of the Intervener, tab 5; *DesRochers v. Canada (Industry)*, [2009] 1 S.C.R. 194, Book of Authorities of the Intervener, tab 3

21. Such being the case, having recourse to the courts is only possible if the financial resources are available, since the costs associated with preparing, initiating and conducting constitutional litigation are exorbitant.

22. The cost of litigation seeking the recognition of language rights are extremely imposing on official language minority communities, who sometimes have a very limited capacity to conduct lengthy and necessarily costly and complex litigation. For this reason, the Intervener submits that judges must be able to exercise their discretionary power to allow these communities to seek the recognition of their language rights before the courts in those exceptional cases that satisfy the criteria set out in *Okanagan*.

23. This Honourable Court has recognized that advance costs orders are not intended to resolve all access to justice difficulties, nor are they intended to supplement any of the other programs designed to assist various groups in taking legal action. However, the existence of a funding program for language rights litigation (the Language Rights Support Program) should not mean, in itself, that advance costs orders should not be awarded in litigation of this nature.

- *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, [2007] 1 S.C.R. 38 at para. 5, Book of Authorities of the Intervener, tab 8

24. In fact, the Intervener submits that the existence of a funding program for language rights litigation illustrates the special status and importance of those rights, and also demonstrates the need to counter the inequality that frequently exists between the resources available to the parties involved in this type of litigation.

25. Whenever a court assesses an application for advance costs, it must have regard to all of the circumstances. This analysis must include an assessment of the potential or real cost of a case seeking the recognition of language rights, the complexity of the language issues raised, the volume and nature of the evidence to be presented and the extent to which the resources available to the members of official language minority communities differ from those of the government opposing them. In many cases, the funding offered by the existing program may be sufficient. However, in exceptional cases, advanced costs could be necessary in light of the circumstances.

The analysis must be guided by the nature and importance of the issues

26. Legal advancements, in official languages matters or in other areas, occur in all sorts of cases, be they civil, criminal or quasi-criminal.

27. The Intervener submits that the analysis and application of the criteria set out in *Okanagan* should be guided by the nature and importance of the issues raised and not the nature of the legal framework in which they are raised.

28. Advance costs are intended to ensure that the justice system operates fairly and effectively.

29. To achieve this goal, this Honourable Court has set out very stringent criteria that must be met in order for advance costs to be awarded, and only in circumstances described as “rare and exceptional”. In doing so, this Court has in no way suggested that advance costs awards are available only in civil cases.

See, for example, *R. v. Caron* 2007 ABQB 262 at para. 129, in which Marceau J. concluded that criminal and quasi-criminal cases are not necessarily excluded from the application of the principles set out in *Okanagan*, Appellant’s Record at 95

30. Each case, whether civil or quasi-criminal in nature, must be considered on its merits and must be weighed seriously to determine whether, having regard to all of the circumstances, it would be contrary to the interests of justice to deny the advance costs award.

- *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, [2007] 1 S.C.R. 38 at para. 35, Book of Authorities of the Intervener, tab 8

31. Important questions of public interest that merit determination by the courts are sometimes raised in quasi-criminal cases. Language rights case law includes numerous examples of legal advancements that have resulted from quasi-criminal cases in which the true issue to be resolved was not the guilt or innocence of the individual, but rather the constitutionality of provincial statutes.

- *Attorney General of Manitoba v. Forest*, [1979] 2 S.C.R. 1032, Book of Authorities of the Intervener, tab 9; *R. v. Mercure*, [1988] 1 S.C.R. 234, Book of Authorities of the Intervener, tab 11, *Bilodeau v. A.G. (Manitoba)*, [1986] 1 S.C.R. 449, Book of Authorities of the Intervener, tab 2

32. Furthermore, many of the advancements that have occurred in language rights can be attributed to individuals who have invoked their language rights as a defense to a ticket that they had been issued.

- In addition to the cases listed in the preceding paragraph, see: *Société des Acadiens et Acadiennes du Nouveau-Brunswick Inc. v. Canada*, [2008] 1 S.C.R. 383, Book of Authorities of the Intervener, tab 14; *Doucet v. Canada*, [2005] 1 F.C.R. 671, Book of Authorities of the Intervener, tab 5 and *R. v. Rémillard (R.) et al.*, 2009 MBCA 112, Book of Authorities of the Intervener, tab 12

33. It is just as important, and just as much in the interests of justice, that language issues of public interest raised in a quasi-criminal proceeding be properly argued and resolved by the courts where, without the award for advanced costs, a party would be unable to submit those issues to the court. The nature of the legal framework or context in which the issues have been raised should not mean that they remain unresolved.

PART IV. SUBMISSIONS ON COSTS

34. The Intervener, the Commissioner of Official Languages for Canada, makes no submission as to costs.

PART V. ORDER SOUGHT

35. The Intervener asks that this Court dismiss the Appellant's appeal. The Intervener further seeks leave to present oral argument at the hearing of this case.

RESPECTFULLY SUBMITTED AT OTTAWA, this 30th day of March, 2010

Amélie Lavictoire
Kevin Shaar
Counsel for the Intervener
Commissioner of Official Languages

PART VI - ALPHABETICAL TABLE OF AUTHORITIES**Paragraph(s)****CASES**

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| <i>Arsenault-Cameron v. Prince Edward Island</i> , [2000] 1 S.C.R. 3 | 20 |
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| <i>Bilodeau v. A.G. (Manitoba)</i> , [1986] 1 S.C.R. 449 | 31 |
| <i>British Columbia (Minister of Forests) v. Okanagan Indian Band</i> , [2003] 3 S.C.R. 371 | 3, 5, 7, 8, 16, 17, 18, 22, 27 |
| <i>DesRochers v. Canada (Industry)</i> , [2009] 1 S.C.R. 194..... | 20 |
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SECONDARY MATERIALS

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| Will Kymlicka, “Multicultural Citizenship: a liberal theory of minority rights”, New York, Oxford University Press, 1995 | 15 |

PART VII - LEGISLATION

Royal Proclamation of 1869, 33 Vict., 1870, Sess. Papers No. 12

Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, 1870

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SESSIONAL PAPERS.

VOLUME V.

3363

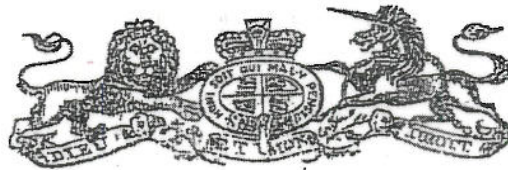
THIRD SESSION OF THE FIRST PARLIAMENT

OF THE

DOMINION OF CANADA.

SESSION 1870.

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VOLUME III.

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CONNECTED WITH

RECENT OCCURRENCES

IN THE

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1870.

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From what I can learn there is at present very little, if any, annexation sentiment in the country, but coercion would be likely to force that alternative. There is a little dash of the Fenian in the leadership. A young Irish priest, named O'Donohue, attached to Bishop Tache's establishment, being said to supply the brains of the movement.

DEPARTMENT OF SECRETARY OF STATE FOR THE PROVINCES.

Ottawa, December 7th, 1869.

To the Honorable Wm. McDougall, C.B.

SIR,—I had the honor to address to you Despatches on the 19th and 29th November, which, in view of the insecurity of the mails, were enclosed to a friend at St. Paul, to be sent forward, if possible, by private hand. For fear that they may have miscarried, duplicates are annexed to this.

Your Despatch of the 13th ult., with its enclosures, from ("A") to ("E.") reached me on the 3rd inst., and was immediately laid before the Council. Copies will be sent to the Colonial Secretary this week.

I have now the honor to inform you that the Very Rev. Mr. Thibault, accompanied by Charles de Salaberry, Esq., proceeds to-morrow, *via* St. Paul and Pembina to Fort Garry, for the purpose of assisting in putting down the unlawful assemblage of people on the Red River, and obtaining access for the Canadian Authorities into the North-West.

Mr. Thibault has had great experience in that country, having been for 37 years a priest there, and having only left it last year.

Mr. de Salaberry has also had considerable experience in dealing with the French half-breeds.

After consulting with you, they will take such action with these people as they think most calculated to carry out our objects, and it may, perhaps, be politic that they should have as little open communication with you as possible.

It is, of course, advisable not to arouse the suspicions of the Insurgents, who would be very likely to view with disfavor any persons coming directly as agents from you, and acting under your instructions; you will, however, be good enough to strengthen their hands as much as possible.

With them we send you a Proclamation issued by the Governor General by the direct command of Her Majesty. This should be widely disseminated, in such a manner and at such a time as you think most expedient. It has also been thought well to print copies of your Letter of Instructions, which will, of itself, show how unfounded is the charge that the North-West is to be governed without the interposition or aid of the residents, but by Canadians solely.

Messrs. Thibault and de Salaberry will be followed by Donald A. Smith, Esq., the Hudson's Bay Agent at Montreal, who now occupies the position formerly held by Mr. Hopkins. In his capacity as an officer of the Hudson's Bay Company, he will obtain ready access to the country and to Governor McTavish; and it is hoped that he will be able to strengthen that gentleman in his attempts to restore law and order at Fort Garry.

In order to give his representations due weight and importance, Mr. Smith has been asked to act as a Commissioner holding confidential relations with the Canadian Government. In that capacity, having once reached Fort Garry, he will be able to speak authoritatively as to the beneficent intentions of the Government.

We hope that calmer counsels will soon prevail, and that these misguided people will disperse. So soon as they do so, you will, I presume, proceed to Fort Garry and carry out your instructions.

It will be well for you to arrange for sending messages to St. Cloud, so that we may know by telegraph that order has been restored. On receiving this intimation, His Excellency will communicate the fact, by cable message, to the Colonial Office, and the Proclamation will be at once issued. It has been hitherto delayed, so that the authority

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of the Hudson's Bay Company might continue unimpaired, until it was replaced by the Canadian Government, as represented by you.

I have the honor also to send you an Order in Council, passed this day, on the subject of Customs duties.

You will now be in a position, in your communications with the residents of the North-West, to assure them:—

1. That all their civil and religious liberties and privileges will be sacredly respected.
2. That all their properties, rights, and equities of every kind, as enjoyed under the Government of the Hudson's Bay Company, will be continued them.
3. That in granting titles to land, now occupied by the settlers, the most liberal policy will be pursued.
4. That the present tariff of Customs duties will be continued for two years, from the 1st January next, except in the case of spirituous liquors, as specified in the Order in Council above alluded to.
5. That in forming your Council, the Governor General will see that not only the Hudson's Bay Company, but the other classes of the residents, are fully and fairly represented.
6. That your Council will have the power of establishing municipal self-government at once and in such manner as they think most beneficial to the Country.
7. That the Country will be governed, as in the past, by British law, and according to the spirit of British justice.
8. That the present Government is to be considered as merely provisional and temporary, and that the Government of Canada will be prepared to submit a measure to Parliament, granting a liberal constitution so soon as you, as Governor, and your Council have had an opportunity of reporting fully on the wants and requirements of the Territory.

You had, of course, instructions on all the above-mentioned points, excepting as regards the tariff, before you left Ottawa, but it has been thought well that I should repeat them to you in this authoritative form.

Trusting that ere long you may be in a position to carry these liberal propositions practically into the administration of the affairs of the North-West,

I have, &c.,
JOSEPH HOWE.

DEPARTMENT OF SECRETARY OF STATE FOR THE PROVINCES.
OTTAWA, Dec. 8th, 1869.

To the Honorable Wm. McDougall, C.B.

SIR,—Enclosed you will find the original Proclamation referred to in my letter of yesterday's date, in English and French.

It may be as well that you should have the original Proclamation in your hands.
I have, &c.,
JOSEPH HOWE.

PROCLAMATION.



V.

R.

By His Excellency the Right Honorable Sir JOHN YOUNG, Baronet, a Member of Her Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Honorable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada.

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To all and every the Loyal Subjects of Her Majesty the Queen, and to all to whom these Presents shall come, GREETING

THE QUEEN has charged me, as Her representative, to inform you that certain misguided persons in Her Settlements on the Red River, have banded themselves together to oppose by force the entry into Her North-Western Territories of the officer selected to administer, in Her Name, the Government, when the Territories are united to the Dominion of Canada, under the authority of the late Act of the Parliament of the United Kingdom; and that those parties have also forcibly, and with violence, prevented others of Her loyal subjects from ingress into the country. Her Majesty feels assured that she may rely upon the loyalty of her subjects in the North-West, and believes those men, who have thus illegally joined together, have done so from some misrepresentation.

The Queen is convinced that in sanctioning the Union of the North-West Territory with Canada, she is promoting the best interest of the residents, and at the same time strengthening and consolidating her North American possessions as part of the British Empire. You may judge then of the sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred.

Her Majesty commands me to state to you, that she will always be ready through me as her representative, to redress all well founded grievances, and that she has instructed me to hear and consider any complaints that may be made, or desires that may be expressed to me as Governor General. At the same time she has charged me to exercise all the powers and authority with which she has entrusted me in the support of order, and the suppression of unlawful disturbances.

By Her Majesty's authority I do therefore assure you, that on the union with Canada all your civil and religious rights and privileges will be respected, your property secured to you, and that your Country will be governed, as in the past, under British laws, and in the spirit of British justice.

I do further, under her authority, entreat and command those of you who are still assembled and banded together in defiance of law, peaceably to disperse and return to your homes, under the penalties of the law in case of disobedience.

And I do lastly inform you, that in case of your immediate and peaceable obedience and dispersion, I shall order that no legal proceeding be taken against any party implicated in these unfortunate breaches of the law.

Given under my Hand and Seal at Arms at Ottawa, this Sixth day of December, the year of our Lord, One Thousand Eight Hundred and Sixty-nine, and in the Thirtieth year of Her Majesty's Reign.

[SEAL.]

By Command.

JOHN YOUNG.

H. L. Langevin,
Secretary of State.

COPY of the Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council on the 7th December, 1869.

The Honorable the Secretary of State for the Provinces, &c.

On a memorandum dated 3rd December, 1869, from the Honorable the Minister of Finance, submitting that it is expedient to come to an immediate decision as to the policy to be adopted on Rupert's Land, in the event of that Territory being added to the Dominion of Canada.

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Ministère de la Justice
CanadaDepartment of Justice
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Terre de Rupert et Territoire du Nord-Ouest - Texte no 3

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Décret en conseil portant adhésion à l'Union de la terre de Rupert et du Territoire du Nord-Ouest, daté du 23 juin 1870

La Cour, à Windsor, 23 juin 1870

Présents :

Sa Très Excellente Majesté la Reine

Le Lord président
Le Lord garde du sceau privé
Le Lord chambellan
M. Gladstone*Attendu :*

que la Loi de 1867 sur l'Amérique du Nord britannique dispose notamment que la Reine est habilitée, sur l'avis du très honorable Conseil privé de Sa Majesté et sur l'adresse des chambres du Parlement du Canada, à accepter l'adhésion à l'Union de la terre de Rupert et du Territoire du Nord-Ouest, aux conditions fixées dans l'adresse et approuvées par la Reine, sous réserve des autres dispositions de cette loi, tout décret en conseil pris à cet égard valant décision du Parlement du Royaume-Uni de Grande-Bretagne et d'Irlande;

que les chambres du Parlement du Canada ont, par l'adresse qui figure à l'annexe A du présent décret, demandé à la Reine de bien vouloir, sur l'avis du très honorable Conseil privé de Sa Majesté, unir la terre de Rupert et le Territoire du Nord-Ouest au dominion du Canada et octroyer au Parlement du Canada le pouvoir de légiférer, aux conditions énoncées dans l'adresse, pour leur prospérité et leur bon gouvernement futurs;

que la Loi de 1868 sur la terre de Rupert prévoit notamment la faculté pour la compagnie créée sous le nom de Governor and Company of Adventurers of England trading into Hudson's Bay (gouverneur et compagnie des marchands aventuriers d'Angleterre faisant commerce dans la baie d'Hudson) de céder à Sa Majesté, et pour Sa Majesté, par acte signé de sa main et revêtu de son cachet, d'accepter de se faire céder tout ou partie des territoires, terres, droits, privilèges, libertés, franchises et pouvoirs octroyés ou censément octroyés à la compagnie, par les lettres patentes qui y sont mentionnées, dans la terre de Rupert, aux conditions agréées par les parties, cette acceptation étant toutefois subordonnée à l'approbation par Sa Majesté des conditions d'adhésion de la terre de Rupert au dominion du Canada et à leur insertion dans une adresse des deux chambres du Parlement du Canada, conformément à

l'article 146 de la Loi de 1867 sur l'Amérique du Nord britannique;

que la même loi prévoit la faculté pour Sa Majesté de déclarer, par décret en conseil pris sur adresse des chambres du Parlement du Canada, l'adhésion de la terre de Rupert au dominion du Canada réalisée à la date qui y est mentionnée;

que les deux chambres du Parlement du Canada ont, dans une seconde adresse reçue par Sa Majesté et figurant à l'annexe B du présent décret, demandé à la Reine de bien vouloir, conformément aux lois visées plus haut, unir, aux conditions approuvées par elle et énoncées dans la résolution qui est citée dans l'adresse et qui figure aussi à l'annexe B, la terre de Rupert au dominion du Canada, et y unir en outre le Territoire du Nord-Ouest aux conditions, également approuvées par elle, énoncées dans l'adresse mentionnée en premier lieu;

qu'a été soumis au gouverneur général du Canada un projet de cession comportant les stipulations suivantes :

- 1. que le gouvernement du Canada verse à la Banque d'Angleterre au crédit de la compagnie, dans les six mois suivant l'acceptation de la cession, la somme, mentionnée ci-après, de 300 000 livres, majorée des intérêts, au taux annuel de cinq pour cent, comptés à partir de la date de l'acceptation jusqu'à celle du versement;*
- 2. que les périmètres à choisir par la compagnie aux abords de chacun de ses forts de la rivière Rouge aient les surfaces suivantes : haut Fort Garry et ville de Winnipeg, y compris le parc clos entourant le magasin et le terrain situés à l'entrée de la ville : 500 acres;
Bas Fort Garry, y compris l'exploitation agricole de la compagnie : 500 acres;
Prairie du Cheval-Blanc : 500 acres;*
- 3. que les responsables des dépôts de matériel du télégraphe électrique dressent constat, dans les trois mois suivant l'acceptation, de la déduction, mentionnée ci-après, à effectuer pour détérioration sur le prix du matériel, le gouvernement du Canada devant verser à la Banque d'Angleterre au crédit de la compagnie, dans les six mois suivant l'acceptation, la somme correspondante, majorée des intérêts, au taux annuel de cinq pour cent, comptés à partir de la date de l'acceptation jusqu'à celle du versement;*

que le gouverneur général a, le 5 juillet 1869, approuvé le projet de cession conformément à un rapport du comité du Conseil privé de la Reine pour le Canada, mais qu'il n'était opportun d'insérer les stipulations en cause, dont la seconde adresse ne fait pas état, ni dans l'acte de cession des droits de la compagnie à Sa Majesté, ni dans le présent décret;

que la compagnie a, par l'acte, revêtu de son sceau et daté du 19 novembre 1869, qui figure à l'annexe C du présent décret, cédé à Sa Majesté tous les droits de gouvernement et les autres droits, privilèges, libertés, franchises et pouvoirs qui lui ont été octroyés ou censément octroyés par les lettres patentes mentionnées plus haut, tous les droits analogues qu'elle peut avoir exercés ou s'être attribués dans les parties de l'Amérique du Nord britannique situées hors de la terre de Rupert, du Canada ou de la Colombie-Britannique, de même que tous les territoires et terres, sauf exception ou réserve prévue par l'acte, ainsi octroyés ou censément octroyés;

que Sa Majesté a accepté la cession en bonne et due forme, par acte signé de sa main et revêtu de son cachet, fait à Windsor et daté du 22 juin 1870,

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Sa Majesté, sur l'avis du Conseil privé et au titre des pouvoirs dont elle est investie par les lois en cause, décrète réalisée le 15 juillet 1870 l'adhésion au dominion du Canada, d'une part, du Territoire du Nord-Ouest, aux conditions de l'adresse mentionnée en premier lieu, le Parlement ayant dès lors le pouvoir plein et entier de légiférer pour la prospérité et le bon gouvernement futurs de ce territoire, d'autre part, sans préjudice des obligations découlant de l'approbation du rapport cité plus haut, de la terre de Rupert, aux conditions ci-après qui, parmi celles de la seconde adresse du Parlement du Canada, restent à exécuter et ont été approuvées par Sa Majesté :

1. Le Canada verse 300 000 livres à la compagnie lors du transfert de la terre de Rupert au dominion.
2. La compagnie conserve ses postes du Territoire du Nord-Ouest; elle peut, dans les douze mois suivant la cession, procéder, aux abords de ses postes de l'Amérique du Nord britannique non situés au Canada ni en Colombie-Britannique, à un choix de périmètres conforme, sauf touchant le district de la rivière Rouge, à la liste, établie par elle et communiquée aux ministres canadiens, qui figure à l'appendice de l'acte de cession, l'arpentage proprement dit devant s'effectuer dans les meilleurs délais possible.
3. La surface de chaque périmètre ne doit pas dépasser 10 acres autour du haut Fort Garry, 300 acres autour du Bas Fort Garry ni, dans le reste du district de la rivière Rouge, une surface à fixer sans délai par accord entre le gouverneur en conseil et la compagnie, pour un maximum global de 50 000 acres.
4. Pour autant que la configuration des lieux s'y prête, les périmètres doivent affecter en gros la forme de parallélogrammes bordant sur leur largeur, au plus égale à la moitié de leur longueur, le cours d'eau ou la voie qui y donne accès.
5. La compagnie peut, pendant cinquante ans suivant la cession, revendiquer, dans tout canton ou district de la zone fertile où des terres sont délimitées aux fins de colonisation, des concessions ne dépassant pas un vingtième de ces terres. Les concessions sont octroyées par tirage au sort, la compagnie devant acquitter une part proportionnelle des frais d'arpentage, jusqu'à concurrence de 8 cents canadiens par acre. Elle peut différer l'exercice de son droit de revendication à l'égard de chaque canton pendant dix ans au plus suivant la délimitation de celui-ci, le tirage au sort ne pouvant alors s'effectuer que parmi les terres restées invendues à la date où elle manifeste son intention de faire valoir ce droit.
6. Pour l'application de l'article précédent, la zone fertile est ainsi délimitée : au sud, par la frontière avec les États-Unis; à l'ouest, par les montagnes Rocheuses; au nord, par la Saskatchewan du Nord; à l'est, par le lac Winnipeg, le lac des Bois et les cours d'eau qui les relient.
7. La compagnie peut prélever son vingtième sur tout canton créé en bordure de la rive nord de la Saskatchewan du Nord, à condition de céder au dominion du Canada une surface égale de ses concessions des cantons de la rive sud; pour l'application du présent article, les cantons de la rive nord sont considérés comme ne s'étendant pas sur plus de cinq milles à partir de la rivière.
8. Le gouvernement du Canada peut, pour la construction de voies publiques, canaux, etc. à travers un périmètre de la compagnie, prendre possession des terrains nécessaires, jusqu'à concurrence de un vingt-cinquième de la surface totale du périmètre, sans indemnisation, sauf s'il s'agit de terrains cultivés, bâtis, indispensables aux préposés de la compagnie pour avoir accès à une rivière ou à un lac ou situés en bordure de rivière ou de lac; il verse alors à la compagnie l'équivalent de la juste valeur des terrains et indemnise celle-ci ou ses préposés de tous dommages éventuels.
9. Il est entendu que les acquisitions de terrains visées à l'article précédent sont d'utilité publique.
10. Tous les titres fonciers conférés par la compagnie jusqu'au 8 mars 1869 sont à confirmer.
11. La compagnie peut, en sa qualité de personne morale, se livrer au commerce en toute liberté, sans être assujettie à des taxes exceptionnelles sur ses terres, son commerce ou ses préposés ni à des droits sur les marchandises importées par elle antérieurement à la cession.
12. Le Canada reprend le matériel du télégraphe électrique au prix coûtant, y compris les frais de transport mais non les intérêts, et sous réserve de la déduction à effectuer sur constat de détérioration.

13. La compagnie renonce aux droits fonciers revendiqués au titre des accords conclus avec MM. Vankoughnet et Hopkins.
14. Le gouvernement du Canada, en concertation avec le gouvernement impérial, procède au règlement des demandes d'indemnisation présentées par les Indiens au sujet des terres affectées à la colonisation, la compagnie étant dégagée de toute responsabilité à cet égard.
15. Le gouverneur en conseil est habilité à prendre toute mesure nécessaire à l'exécution des conditions énoncées ci-dessus. Le très honorable comte Granville, un des premiers secrétaires d'État de Sa Majesté, est chargé de donner les instructions qui s'imposent en l'occurrence.

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2009-07-31

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Rupert's Land and North-Western Territory - Enactment No. 3

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Order of Her Majesty in Council admitting Rupert's Land and the North-Western Territory into the union, dated the 23rd day of June 1870

At the Court at Windsor, the 23rd day of June, 1870.

PRESENT,

The QUEEN'S Most Excellent Majesty.

Lord President.
Lord Privy Seal.
Lord Chamberlain.
Mr. Gladstone.

WHEREAS by the "*British North America Act, 1867*," it was (amongst other things) enacted that it should be lawful for the Queen, by and with the advice of Her Majesty's Most Honorable Privy Council, on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-Western Territory, or either of them, into the Union on such terms and conditions in each case as should be in the Addresses expressed, and as the Queen should think fit to approve, subject to the provisions of the said Act. And it was further enacted that the provisions of any Order in Council in that behalf should have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland:

AND WHEREAS by an Address from the Houses of the Parliament of Canada, of which Address a copy is contained in the Schedule to this Order annexed, marked A, Her Majesty was prayed, by and with the advice of Her Most Honorable Privy Council, to unite Rupert's Land and the North-Western Territory with the Dominion of Canada, and to grant to the Parliament of Canada authority to legislate for their future welfare and good government upon the terms and conditions therein stated:

AND WHEREAS by the "*Rupert's Land Act, 1868*," it was (amongst other things) enacted that it should be competent for the Governor and Company of Adventurers of England trading into Hudson's Bay (hereinafter called the Company) to surrender to Her Majesty, and for Her Majesty, by any Instrument under Her Sign Manual and Signet to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by certain Letters Patent therein recited to the said Company within Rupert's Land, upon such terms and conditions as should be agreed upon by and between Her Majesty and the said Company: provided, however, that such surrender should not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land should be admitted into the said Dominion of Canada should have been

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approved of by Her Majesty and embodied in an Address to Her Majesty from both the Houses of the Parliament of Canada, in pursuance of the 146th Section of the "*British North America Act, 1867*:"

And it was by the same Act further enacted that it should be competent to Her Majesty, by Order or Orders in Council, on Addresses from the Houses of the Parliament of Canada, to declare that Rupert's Land should, from a date to be therein mentioned, be admitted into and become part of the Dominion of Canada:

AND WHEREAS a second Address from both the Houses of the Parliament of Canada has been received by Her Majesty praying that Her Majesty will be pleased, under the provisions of the hereinbefore recited Acts, to unite Rupert's Land on the terms and conditions expressed in certain Resolutions therein referred to and approved of by Her Majesty, of which said Resolutions and Address copies are contained in the Schedule to this Order annexed, marked B, and also to unite the North-Western Territory with the Dominion of Canada, as prayed for by and on the terms and conditions contained in the hereinbefore first recited Address, and also approved of by Her Majesty:

AND WHEREAS a draft surrender has been submitted to the Governor-General of Canada containing stipulations to the following effect, viz.: --

1. The sum of 300,000l. (being the sum hereinafter mentioned) shall be paid by the Canadian Government in to the Bank of England to the credit of the Company within six calendar months after acceptance of the surrender aforesaid, with interest on the said sum at the rate of 5 per cent. per annum, computed from the date of such acceptance until the time of such payment.
2. The size of the blocks which the Company are to select adjoining each of their forts in the Red River limits; shall be as follows: --
 - Upper Fort Garry and town of Winnipeg, including the inclosed park around shop and ground at the entrance of the town: 500 acres
 - Lower Fort Garry (including the farm the Company now have under cultivation): 500 acres
 - White Horse Plain: 500 acres
3. The deduction to be made as hereinafter mentioned from the price of the materials of the Electric Telegraph, in respect of deterioration thereof, is to be certified within three calendar months from such acceptance as aforesaid by the agents of the Company in charge of the depots where the materials are stored. And the said price is to be paid by the Canadian Government into the Bank of England to the credit of the Company within six calendar months of such acceptance, with interest at the rate of 5 per cent per annum on the amount of such price, computed from the date of such acceptance until the time of payment:

AND WHEREAS the said draft was on the fifth day of July, one thousand eight hundred and sixty-nine, approved by the said Governor-General in accordance with a Report from the Committee of the Queen's Privy Council for Canada; but it was not expedient that the said stipulations, not being contained in the aforesaid second Address, should be included in the surrender by the said Company to Her Majesty of their rights aforesaid or in this Order in Council:

AND WHEREAS the said Company did by deed under the seal of the said Company, and bearing date the nineteenth day of November, one thousand eight hundred and sixty-nine, of which deed a copy is contained in the Schedule to this Order annexed, marked C., surrender to Her Majesty all the rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted, or purported to be granted to the said Company by the said Letters Patent herein and hereinbefore referred to, and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada or of British Columbia, and all the lands and territories (except and subject as in the terms and conditions therein

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mentioned) granted or purported to be granted to the said Company by the said Letters Patent:

AND WHEREAS such surrender has been duly accepted by Her Majesty, by an instrument under her Sign Manual and Signet, bearing date at Windsor the twenty-second day of June, one thousand eight hundred and seventy:

It is hereby Ordered and declared by Her Majesty, by and with the advice of the Privy Council, in pursuance and exercise of the powers vested in Her Majesty by the said Acts of Parliament, that from and after the fifteenth day of July, one thousand eight hundred and seventy, the said North-Western Territory shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited Address, and that the Parliament of Canada shall from the day aforesaid have full power and authority to legislate for the future welfare and good government of the said Territory. And it is further ordered that, without prejudice to any obligations arising from the aforesaid approved Report, Rupert's Land shall from and after the said date be admitted into and become part of the Dominion of Canada upon the following terms and conditions, being the terms and conditions still remaining to be performed of those embodied in the said second address of the Parliament of Canada, and approved of by Her Majesty as aforesaid: --

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1. Canada is to pay to the Company 300,000l. when Rupert's Land is transferred to the Dominion of Canada.
2. The Company are to retain the posts they actually occupy in the North-Western Territory, and may, within twelve months of the surrender, select a block of land adjoining each of its posts within any part of British North America not comprised in Canada and British Columbia, in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the Schedule of the aforesaid Deed of Surrender. The actual survey is to be proceeded with, with all convenient speed.
3. The size of each block is not to exceed [10] acres round Upper Fort Garry, [300] acres round Lower Fort Garry; in the rest of the Red River Territory a number of acres to be settled at once between the Governor in Council and the Company, but so that the aggregate extent of the blocks is not to exceed 50,000 acres.
4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, of which the frontage shall not be more than half the depth.
5. The Company may, for fifty years after the surrender, claim in any township or district within the Fertile Belt, in which land is set out for settlement, grants of land not exceeding one twentieth part of the land so set out. The blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming the proportion of each township for not more than ten years after it is set out; but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.
6. For the purpose of the last Article, the Fertile Belt is to be bounded as follows: C On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.
7. If any Township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which for the purpose of this Article shall not extend more than five miles

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inland from the river, giving to the Canadian Dominion an equal quantity of the portion of lands coming to them of townships established on the southern bank.

8. In laying out any public roads, canals, &c., through any block of land reserved to the Company, the Canadian Government may take, without compensation, such land as is necessary for the purpose, not exceeding one twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, they shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.
9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause shall be appropriated for public purposes.
10. All titles to land up to the eight day of March, one thousand eight hundred and sixty-nine, conferred by the Company are to be confirmed.
11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade or servants, nor any import duties on goods introduced by them previous to the surrender.
12. Canada is to take over the materials of the electric telegraph at cost price C such price including transport, but not including interest for money, and subject to a deduction for ascertained deterioration.
13. The Company's claim to land under agreements of Messrs. Vankoughnet and Hopkins is to be withdrawn.
14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.
15. The Governor in Council is authorized and empowered to arrange any details that may be necessary to carry out the above terms and conditions.

And the Right Honorable Earl Granville, one of Her Majesty's principal Secretaries of State, is to give the necessary directions herein accordingly.

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