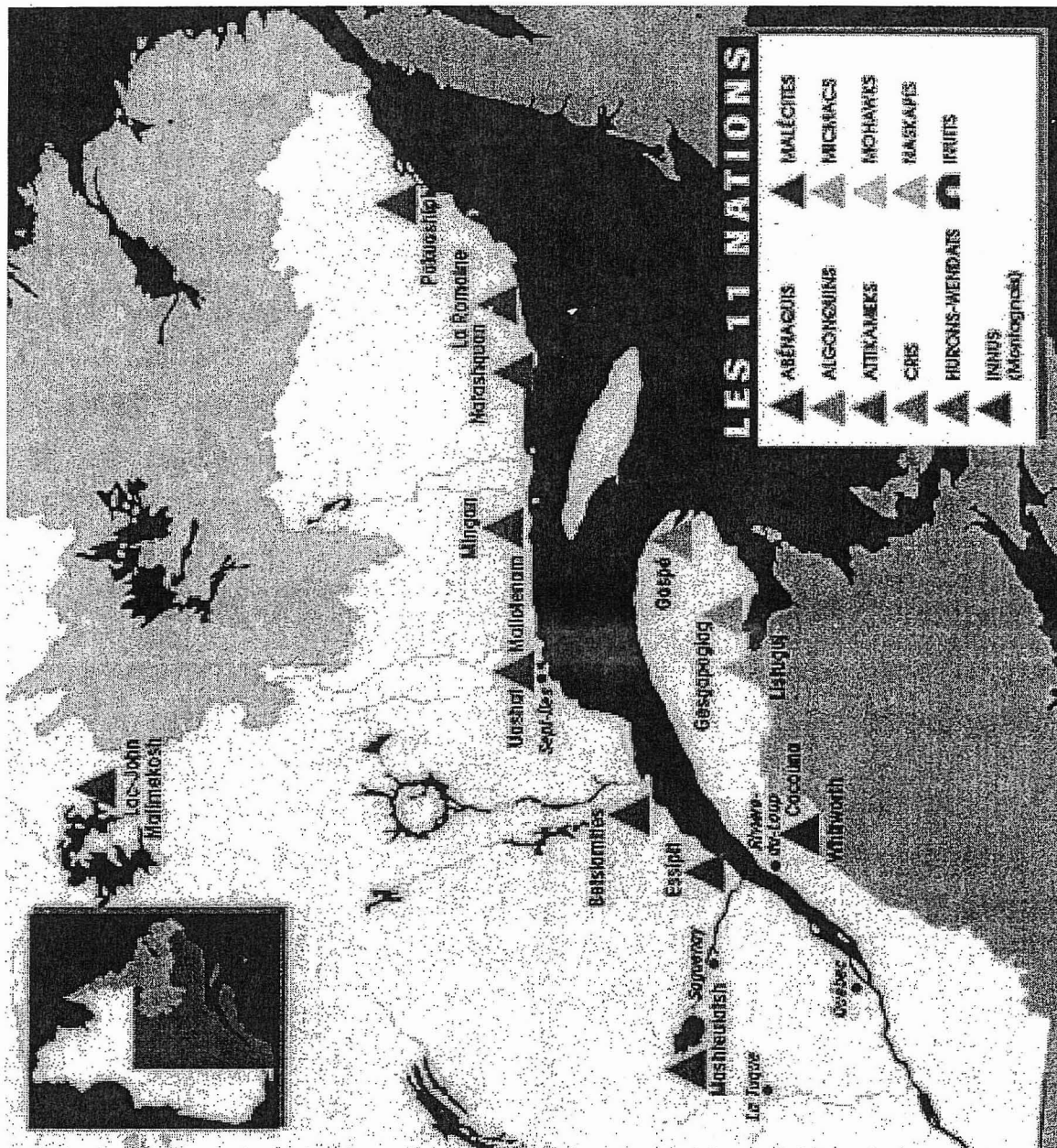


Right of Way of the James Bay and
Eastern Railway on Oujatchouan Indian
Reserve, Quebec, starting in 1910

Denis Brassard
Conseil Tribal Mamuitun
September 2005



1. The Historical Context:

- Lake St-John Montagnais Indian Band:
- - Mostly nomadic indian population;
- - Hunting & Fishing (10 months away);
- 23 000 acres reserve created in 1856:
- - Among the best agricultural land in area.
- 15 000 acres surrendered in 1869.
- 2 400 acres surrendered in 1895.
- About 5 600 acres left.

2. The Historical Facts:

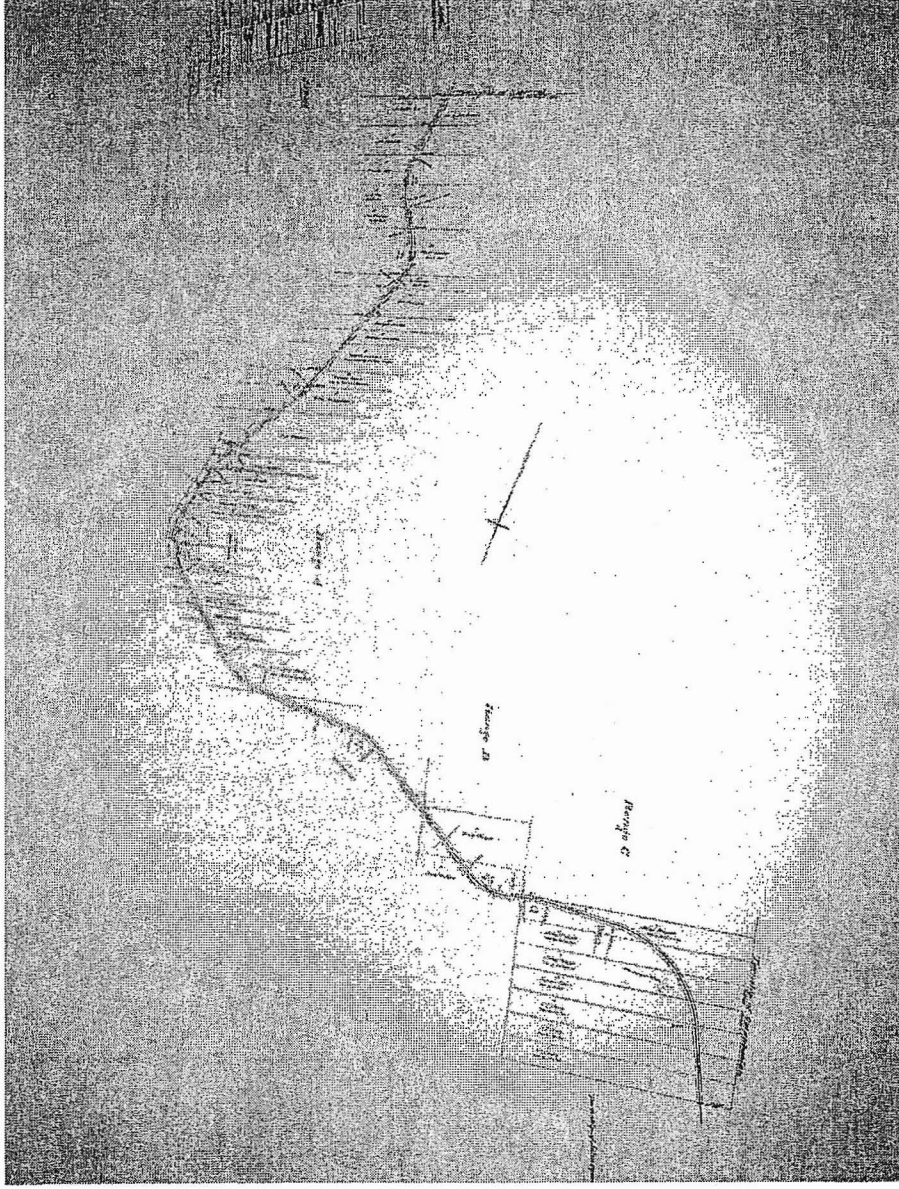
- Railway proposal submitted by CNR in Spring of 1910: 30 miles long, 100 ft. wide.
- On reserve: 5 miles in length, area of 61 acres, 42 lots, 31 (indian) owners affected.
- Land tenure: 39 acres in forest land, 20 acres cultivated and 2 acres in pasture.

Mashteuiatsh Indian Reserve



- Appraisal of land and improvements for Right of Way was made in May 1911:
- - \$ 50 / acre for improved land to owners;
- - \$ 5 / acre for unimproved land to owners;
- - \$ 5 / acre to Band fund.
- Order in Council approved in Sept. 1911.
- Letters Patent issued in October 1911.
- Railway Construction in Summer of 1912.
- - Railway Station replaced by « shelter ».

Lots crossed by Railway



" CNR offers to sell Station lot to the Band for \$ 250. in 1965.

" Band accepts, but DIAND insists: land is needed for new DIAND District Office.

" DIAND finds out right of way is not registered and does not « exist ».

" Band buys Station lot in 1968 and lot is added to reserve land in 1969.

" Band asks how right of way is not reserve land anymore in 1983.

3. The Band's allegations:

- No clear intention to exclude land from the reserve for railway purposes:
 - - « Droit de passage » (Right of Way) means « right to pass on land ».
 - - Indian Agent only consulted a few Indian owners about the railway project.
 - - Order in Council mentions Right of Way, but no mention of title or extent of right transferred.
 - - Right of Way was not registered in provincial land system until 1968.

- (2) In addition, even if an expropriation took place, it was not necessary: an easement or legal servitude was sufficient.
- Fiduciary obligation forces to expropriate the minimum right required (Osoyos) and title may not be necessary for railway purposes (Seabird).
- In 1912, Temiscouata Railway Co. in Quebec offered to rent land on Indian Reserve, rather than expropriate.

- Compensation to the Band was inadequate:
- Band received too little (\$ 5 / acre) compared to Indian Owners (\$ 50 / acre).
- Some Band members did not receive compensation for improvements made.
- Loss of Timber and loss of Land at 6 railway crossings were not compensated.
- Damages to public roads during construction were not compensated.

(4) Crown did not protect Band land uses when CNR objected to build additional crossings and to install safety barriers.

(5) Crown failed to defend Band rights during authorization process:

- DIAND's Chief Surveyor did not attend hearing with minister in 1910.
- Crown did not ask for deposit by CNR before construction begins.
- Crown did not ask for surrender of land.

- CNR installed a telegraph line without authorization.
- Maintenance of road crossings supposed to be at CNR's expense, but was not.
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- (6) In addition, if title to land was ever transferred, sale of land and letters patent are invalid, according to the Star Chrome decision (1920): Indian land reverts to Quebec when sold.