

A Statement by Lindsay Lambert Regarding Land Ownership and Deeds on Chaudiere Island Dated December 6, 2020, part of the ongoing challenge at the Asinabka/Chaudiere Site

Stating conclusively that there is "fee simple deed ownership title" on the Chaudiere Islands disregards a body of evidence showing that this is illegitimate and that it's all Public Purpose Federal Crown Land issued under limited Licenses of Occupation and Leases. The fact of the matter is that the record is contradictory. Please keep in mind that Licenses of Occupation to Crown Land and Fee Simple private ownership are mutually exclusive concepts. They can't both be true. To find out, one must examine and weigh all the evidence:

The Fee Simple references come from the Service Ontario Land Registry. This is one of the first things I consulted. The Ottawa office is on the fourth floor of the Elgin Street Court House. I found how their computer files worked, extracted everything relating to the Chaudiere Islands and paid for electronic & print copies. I also copied the pre-computer records kept on microfilm. I gave Pamela the material. "Fee simple" first appears in a 1946 document where J.R. Booth transfers the Building Lots on Chaudiere & Albert Islands to E.B. Eddy. "DEED" is typewritten on the cover. It's identified as an "Indenture" in the text. Legal language is very precise: A Deed is defined as a written instrument conveying title to land. An Indenture is a binding agreement or contract between two or more parties. Fee Simple means that the property title is unconditional, unlimited and perpetual, or absolute. Fee Simple status can't just appear or be created in the record here. One must already own land in Fee Simple in order to deed it to somebody else as such. This should be established in the original Land Grants or Letters Patent issued by the Crown. These aren't included in the Registry. The other reference is from 1960, where the Ottawa City Council decommissioned most of the public streets on Chaudiere Island and assigned them to E.B. Eddy in "fee simple." This is a new creation by the City.

If I confined my search to the Service Ontario Land Registry, I would assume that everything on the Chaudiere Islands is Fee Simple. It gives the impression. The words do appear and this is the case with most City residential and commercial properties. I would include the Hydraulic Lots: The Registry documents the changes in occupancy, as with every lot, but it isn't obvious that these are leased. The Land Registry is a public record that compiles & organizes information. It's a useful reference tool, but has its limits and is not necessarily complete, definitive or without errors. The property issues on the Chaudiere Islands are exceedingly complex, with Crown Land, the long-term influence of lumber and pulp & paper interests, and overlapping jurisdictions of different levels of government.

When I spoke at the Ontario Municipal Board pre-hearing in 2014 while appealing the Ottawa City Council's re-zoning from Parks and Open Space to Downtown Mixed Use, I noted that the property ownership wasn't clearly defined and Windmill didn't have any title. According to Jeff Westeinde's Affidavit, they only had a "conditional agreement to purchase." I requested that we all see the Hydraulic leases and Land Deeds to know exactly what we are dealing with. The presiding OMB Member, Richard Makuch, replied "You don't have to be a property owner to request a change of zoning," declaring that this wasn't relevant. It didn't make sense: Most law concerns property, the details are *always* important, and I can't apply to have my local park re-zoned for development. I assigned myself the job of determining the property ownership of the Islands and learning what the rules are to see if the government and developer were following them. I consulted the Service Ontario Land Registry and then went further by researching the primary source material; the legal record and the original documents when the Lots were first issued and then administered. These are held by the

National Archives. I am skilled at original research and the critical analysis of historical material, having been taught this at university, and have publications to my credit. I have also dealt with legal issues as past Vice-Chair of the Somerset Village Business Improvement Area and understand some basic principles. Here is what I found:

--- In 1835, George Buchanan was given a 10 year lease from the Government to the Chaudiere Islands for the purpose of constructing a timber slide as competition to Ruggle Wright's private slide between Philemon Island and the north shoreline of the Ottawa River. They were then un-named "waste lands" associated with Lower Canada (now Quebec) rather than Upper Canada (Ontario). This is the first use. An 1845 Board of Works document states that he had a "License of occupation." The slide had to be open to the public and Buchanan charged tolls for passage. When the lease expired, it reverted to the Crown as the "Government Slide." (It can be seen on current maps as Buchanan's Channel.) The Government then expropriated Wright's Slide in 1848, bringing it under public ownership as well.

--- In 1851, the Chaudiere Islands were surveyed into streets, Hydraulic Lots where the Ottawa River's water flow can be harnessed for powering mills, and Building Lots. The Hydraulic Lots are designated alphabetically, while the latter are numbered.

--- The Lots were offered for industrial use under strict conditions. These were established in a Report to the Governor in Council from the Department of Public Works dated June 30th, 1852, and a Memorandum by the Chief Commissioner of Public Works, July 9th, 1852. Most of the information concerns the Hydraulic Lots: They were sold by auction, with the successful bidder paying half the realised price immediately. They must construct a mill within a year, use a specified quantity of water, and thereafter pay an annual lease for the water power used. If the rules aren't followed, the Lot reverts to the Crown and any payment made is forfeited. The Building Lots are referred to briefly: They are likewise to be auctioned with half the price paid immediately. The purchaser must construct a building worth at least 100 Pounds within a year or they lose it and forfeit anything paid. From the Report, "The undersigned is of the opinion that the foregoing conditions &c, would effectually ensure the lots being taken only by parties actually intending to embark in business for which the position and water power is suitable; and that they would prevent the lots being acquired by mere speculators." (I have underlined this important point.) The Memorandum adds that the Government needs to construct a dam and other works for everything to proceed. If the money realized from the sales isn't sufficient to cover the cost, these will be cancelled and the payments returned. Fee Simple is not specified and the restrictions preclude this.

--- On August 25th, 1854, the Government of the Province of Canada approved an Order-in-Council reserving the Chaudiere Islands among others for "Public Purposes," along with part of Lot 39 on the Ottawa shoreline. *The British North America Act* brings this into our current constitution: Section 108 states that "The Public Works and Property of each Province enumerated in the Third Schedule to this Act shall be the property of Canada." Items 5 and 10 of this Schedule apply here, "Rivers and Lake Improvements" and "...Lands set apart for general Public Purposes." The Order placed the Islands under the control of the Department of Public Works for the purposes of Provincial Works "and, when not so required, to be disposed of by Lease, or otherwise."

The Public Purposes designation does not permit Fee Simple ownership. It's a major condition.

--- The National Archives has the Crown Grants for Hydraulic Lots B, C and D, issued in 1861. These specify the conditions established in 1852, plus a new one: If the Crown "shall at any time or times

during the existence of the Grant... determine that said parcel of land and Easement or flow of water or either of them or any part thereof are or is required for any public purpose whatever... this Indenture... shall thereupon be null and void." The Grantee is to be given "the value with an addition of ten percent thereon of all the buildings Erections and fixtures... such value to be determined by three arbitrators." The files unfortunately don't include a Building Lot Grant for reference.

--- Messrs. Perley, Pattie & Brown were the main Lot holders on the Islands and had also obtained a "Beach Lot" on the Ottawa shoreline for a wharf. There is correspondence from 1869 regarding irregularities with the latter. The final letter is from Sir John A. Macdonald:

"The land in question is Ordnance Land... in the Department of Crown Lands.

The Hon. Mr. Campbell, while Commissioner of Crown Lands, ordered the issue of a License of Occupation to Messrs. Pattie & Perley. He had the right to do this, and whether his action is judicious or not it was within the scope of his authority.

It is stated that Messrs. Pattie & Perley, in consequence of this License of Occupation have erected large mills and incurred large expense.

Under the circumstance, it seems to me that it would be unfair to deprive them of the License of Occupation. It is true that the power is reserved to the Crown to reserve the property at any time, but its resumption in order to transfer it to other parties would seem to the undersigned to be a breach of faith.

Great care should be taken that the License of Occupation should be limited strictly to the terms contained in the letter of Col. Coffin to Messrs. Pattie & Perley."

Pattie & Perley's mills were on Chaudiere Island. Macdonald is apparently stating that all their holdings come under the same License of Occupation, and he should know.

--- *An Act respecting certain Works on the Ottawa River* was approved in 1870 and is still in force. This Statute establishes that Parliament has exclusive authority over everything in or on the River, irrespective of whether it is for the purpose of public utility or not, or constructed by the Government or private interests. It all "shall be held to be works for the general advantage of Canada." This applies to the Chaudiere Islands, being previously reserved for Public Purposes. Furthermore, the Works here are extensive, from Buchanan's Channel to dams, bridges, extended shorelines and infill.

--- There had been ongoing disputes between the industrial occupants and against the Crown. The Crown resolved these in 1889 by taking back the Hydraulic Lots and reissued them under leases. The printed Lease document, dated November 19th of that year, provides the details. The leases were renewable on a 21 year basis. (This continued until 2017 when they were changed to 99 years for the Zibi development.) Item 21 in the General Conditions reaffirms the Public Purposes provision: "HER MAJESTY the Queen reserves to herself the right to expropriate at any time the interest of the lessees, or any of them, for any public purpose whatever." The Building Lots remained as they were.

This raises a question: Since they didn't take the Building Lots back at the same time, could it be that the repossession rule doesn't apply to these after all? I researched the record to find evidence:

--- In 1926, Building Lots and adjacent irregular lands at the eastern end of Victoria Island were taken back for the Royal Canadian Air Force aircraft repair depot. The occupants were given notice to clear their lumber yards and vacate, with nothing owed by the Crown. This follows the same Public Purpose rule specified for the Hydraulic Lots.

I then found:

--- In 1860, the Government took back Building Lots 3, 4 and 5 on the north shore of Chaudiere Island east of the bridge for "Public Use." They were occupied by Perlie, Pattee & Brown. The other mill owners had complained that these gave them too much of a monopoly. The Lots were then used as lumber storage and wharfage for everyone. The National Archives has the Deed of Surrender. The Crown paid Perlie, Pattee & Brown a Dollar. There is no mention of Fee Simple title. The Lots are identified as "reserve Lots." This means that they are reserved to the Crown, as with the Bridge Reserve on Chaudiere Island. (An Indian Reserve is held by the Crown for the benefit of First Nations.)

The Archives has a 20th century map identifying everything on the Islands as Crown Land:

--- "Dept. of Public Works, Canada, Plan showing Federal Gov't Properties on Chaudiere, Victoria, Amelia Islands, Ottawa, Ont. and Little Chaudiere, Hull, Que." is dated February 12th, 1926. The Legend shows that it is all "Federal Gov't Properties." Leased areas are indicated by colour.

The first use of Fee Simple is in the 1946 land transfer document between J.R. Booth and E.B. Eddy, 20 years later. The definition suddenly appears here without any precedent, and it goes against the record.

Did the Ottawa City Council have the right in 1960 to transfer the public streets to E.B. Eddy in Fee Simple? According to *An Act respecting certain Works on the Ottawa River*, Parliament has exclusive authority here.

The property history of the Chaudiere Islands is convoluted and very messy. There are two streams running through it. One is the Government trying to maintain their ownership and control in the public interest. The other is the lumber and pulp & paper industries doing their best to have everything for their own benefit. J.R. Booth and then E.B. Eddy treated the Islands as if they owned them, whether they did or not. As an example, the right to collect the Union Bridge tolls for 5 years was sold at auction in June, 1869. Booth bought it. The toll gate was on a Government Reserve on Chaudiere Island and he was more interested in the land. When tolls were no longer required, he applied for a lease. This was granted in 1891, for 21 years. When it came up for renewal in 1912, he and the Government couldn't come to an agreement. What happened? Booth continued occupying it, built on it, and didn't pay any rent for 18 years. He then offered to buy the land and there is a Government letter recommending that this be accepted. (I don't think that he was successful in the end. It isn't included in the 1946 transfer document or the area that Windmill presented as privately-owned.)

Is it hard to believe that J.R. Booth somehow just claimed Fee Simple for the 1946 land transfer and got away with it?

Pamela has the information that I am working with. I had the National Archives Reprography service scan the documents onto CDs. She downloaded them to her computer.

From the legal and historical record, the Chaudiere Islands are Public Purpose Crown Lands. They were made available for the lumber industry to create an economic base and employment. This was regarded as being in the public interest. As stated in the 1852 Report to the Governor in Council,

they were not for "mere speculators." The industrial use ended in 2007 when Domtar closed their paper mills. The Government had the obligation at this point to void the old agreements and hold public consultations to determine what use would be for the greater public good now. Plans were already in place:

--- The Federal Government's 1950 master plan for the long-term growth and development of the Capital Region, Jacques Greber's *Plan for the National Capital*, specifies that "The most effective improvement will be the *central park at the Chaudiere Falls* (his italics) once the "heavy and obnoxious industries" are gone. Order-in-Council P.C. 5635 of August 16th, 1945, approves Greber's planned development as Canada's National War Memorial to the Second World War.

--- In 1988, the National Capital Commission and Treasury Board of Canada designated the Chaudiere Islands as National Interest Land Mass (NILM). From the document, NILM lands "have high symbolic value for all Canadians." They are "essential to the achievement of the NCC mandate to have the Capital communicate Canada to Canadians, serve as a meeting place for Canadians, and to safeguard and preserve the Capital for future generations." They are "to be retained by the NCC on behalf of the government in perpetuity."

--- There is also Grandfather William Commanda's vision for freeing the Chaudiere Falls and reclaiming the Islands for parkland and an Indigenous healing and peace centre. This is well known and has received a lot of support. He was made an Officer of the Order of Canada and given the Key to the City of Ottawa in recognition of his peace and environmental initiatives.

Prime Minister Justin Trudeau is quoted on page NP3 of the Friday, November 20th, 2020, *Ottawa Citizen* saying "Canada is a country of the rule of law. And obeying those laws can't just be when it's convenient or when it's easy. If you're a country of the rule of law, if you're a country of values, you need to stick up for those." He's defending the arrest of Huawei executive Meng Wanzhou, but the principle is universal. What I am pointing out is that the Government is breaking its own laws in permitting a private condominium & commercial development on the Chaudiere Islands. I expect them to follow the rule of law and their own established plans. I am doing what I can to hold them to these.

I am of course biased. My wish is to see the Chaudiere Falls and Islands given back to themselves and returned to Algonquin stewardship as a true act of Reconciliation. I'm not in favour of the Zibi project. Does it follow that I am an unreliable and unobjective researcher and that the information I have found and my analyses aren't valid? I will leave this question for the reader.