

Indian victory halts power project

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PORTION OF CONCLUSION OF DECISION OF JUDGE MALOUP IN THE
QUEBEC SUPERIOR COURT, NOVEMBER 15, 1973, GRANTING THE
INJUNCTION AS PETITION BY THE INDIANS AND INUITS OF QUEBEC.

Judgment recognizes native rights

By Southam News Service

MONTREAL—Justice Albert Malouf's judgement ordering an immediate halt to all work on the \$5.8-billion James Bay power project recognizes without specifically defining native people's rights in the area.

Noting the testimony of several department of Indian affairs officials that there are no treaties covering the cession of land or rights by Indians in the province of Quebec, Justice Malouf states: "the evidence shows that the rights of the Cree Indians and Inuit population have never been extinguished."

Consequently, "it appears that the province of Quebec cannot develop or otherwise open up those lands for settlement without the prior agreement of the Indians and Eskimos."

And, after reviewing the evidence, Justice Malouf believes the native peoples "are justified in their apprehension of injury to the rights which they have been exercising."

'Damages taken place

"Damages to the flora and fauna have already taken place. Still more extensive and more serious damage will take place as the work progresses. In view of the dependence of the indigenous population on the animals, fish, and vegetation in the territory, the work will have devastating and far-reaching effects on the Cree Indians and the Inuits living in the territory."

Justice Malouf was not overly impressed by the corporations' argument that they will suffer a considerable monetary loss if a temporary suspension order is issued.

"In a case of this nature the sums of money expended even if substantial, must not be permitted to cloud the issues."

"Respondents of their own accord started work on the project notwithstanding the opposition expressed by petitioners. Even after the present proceedings were instituted, respondents (the development corporation and its subsidiaries) continued with the project and expended large sums of money. "This was a most unfortunate decision. "They took the risk of proceeding with the work. A more prudent person would have awaited the decision of the Court."

Justice Malouf also insists: "It is clear from an analysis that the damages resulting from a temporary suspension of the works will be very small."

Injunction ineffectual

He continues: "If this court were to allow the works to continue, a factual situation will soon occur which will render any final and permanent injunction ineffectual. In view of the nature and the extent of works which are going on and which are projected for the coming months, the project will become irreversible by the end of the current year. "It would then be physically impossible to put the parties in the positions they now are."

Satisfied the native peoples have shown they have clear rights in the territory and that they have a substantial case to be considered by the court in the next round of the legal battle, Justice Malouf ordered the development corporation "to immediately cease and desist and refrain from carrying out works, operations and projects in the territory . . . including the building of roads, dams dikes bridges and connected works; to cease, desist and refrain from interfering in any way with the petitioners' rights, from trespassing in the said territory and from causing damage to the environment and the natural resources of the said territory."

The development corporation and other respondents were required to post a security deposit of \$10,000 and what is even more significant, the court levied costs against the respondents—costs that could exceed \$1 million. Reaction to Justice Malouf's judgment ranged from jubilation, to stunned disbelief.

The court does hereby order Respondents, their officers, directors, employees, agents, servants and those acting under their authority and pursuant to their instructions:

- (A) To immediately cease, desist, and refrain from carrying out works, operations and projects in the territory described in the schedule of Bill 50 including the building of roads, dams, dikes, bridges and connected works;
- (B) To cease, desist and refrain from interfering in any way with Petitioners' rights, from trespassing in the said territory and from causing damage to the environment and the natural resources of the said territory;

Except in respect to respondent, Canadian National Railway Company in so far as such works, operations and projects may be authorized by applicable valid federal legislation; and provided that in respect to respondent Hydro Quebec, the foregoing injunction shall apply only, in respect to works, operations and projects outside the territory to those related to the La Grande Complex; and provided also that the foregoing injunction, the respondent Hydro Quebec shall not be prevented from producing, transmitting and distributing in the territory contemplated by Bill 50 the energy required to meet the requests of the inhabitants of the said territory for electricity in accordance with its present practice;

The whole with costs including the costs of all exhibits and expert evidence.

Security is fixed at the sum of \$10,000.00

The Judge came down strongly in favour of the argument in favour of Indian Rights.

Bourassa launches appeal over James Bay

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only 90 minutes before Malouf's injunction. Hydro-Quebec said it had registered its prospectus for the bond issue with the U.S. Securities and Exchange Commission. The debentures were to be dated Jan. 1, 1974, to mature in 20 years.

HOLD BACK

"If the situation remains unstable," Sandon commented, "we will probably hold back the issue. This has happened a few times in the past."

So far this year, Hydro has borrowed \$280 million dollars abroad and \$205 million dollars in Canada as part of its long-term plan to finance the James Bay project.

Federal spokesmen have warned that continued foreign borrowing on such a vast scale could drive up the value of the Canadian dollar and hurt export industries.

Quebec government informants refused to comment publicly on the Malouf judgment last night. But they described it privately as a serious blow to the provincial economy. They listed several consequences if the work ban remains in effect pending lengthy proceedings before the provincial appeal court and the supreme court of Canada:

—More than 5,000 construction workers now employed on a highway-building project and the preliminary phase of the first of four dams along La Grande River would lose their jobs.

—Quebec taxpayers would get little value for nearly \$200-million dollars in public funds committed in the James Bay region so far for a 43-mile gravel highway between Matazami and Fort George, two airports equipped to handle jetliners, a townsite near the proposed first dam and technical studies.

—Cancellation of contracts already let to about 25 firms could cost the province tens of millions of dollars more.

—Coupled with the uncertainty surrounding Bourassa's plans for a super-tanker port in the lower St. Lawrence, yesterday's ruling could force a complete revision of Quebec's energy policies.

288 MILES

Under the James Bay plan, Bourassa's "Quebecs project of the century" the waters in 233 miles of rivers flowing into the sea from a 61,000-square-mile area of northern Quebec were to be impounded and harnessed to add 8.3 million kilowatts of electric power to Quebec's current

capacity of 12 million kilowatts by 1983.

This energy, more than twice the output from Labrador's Churchill Falls, would fuel the province's drive for industrial development in the last quarter of the 20th century.

It would "liberate the Quebec people from their situation of economic inferiority," Bourassa said when he launched the scheme with fanfare in April, 1971. He said it would create 125,000 jobs and become the "key to the future" for Quebec.

'BOURASSA BUILDS'

The injunction represents an acute political embarrassment for Bourassa. He has staked his career on the successful management of what he calls "the biggest construction project in Canadian history."

Quebec Liberals captured all but eight of the 110 seats in the Quebec National Assembly in the Oct. 29 election after campaigning hard on a James Bay-inspired slogan, "Bourassa builds."

The premier's campaign book proclaiming that "nothing can stop" his pet project landed him in Quebec superior court Wednesday on a charge of contempt of court. This case was to resume today before

Chief Justice Jules Deschênes.

Malouf said in his 170-page judgment that the natives had a strong case for a temporary injunction because they claim title to the northern half of Quebec under the terms by which the area was handed over to Quebec by the federal government in 1922. Under that agreement, he said, the province cannot develop the areas "without the prior agreement of the Indians and Eskimos" obtained through treaties.

He accused Hydro-Quebec and two associated crown corporations—James Bay Development Corp. and James Bay Energy Corp.—of violating the natives' historic rights, causing "devastating damage" to the ecology and wiping out enough wildlife to endanger the natives' "very existence as a people."

SERIOUS VIEW

If the project were barred permanently, it would have serious future implications for Canada when oil and other energy resources are diminishing.

At the peak of employment this year, there were 4,000 men employed on the project.

Hydro-Quebec officials testified at the seven-month long injunction hearing that

work already completed and cancellation of existing contracts would cost about \$50 million, but Malouf took issue with this estimate.

He said that there is no need to cancel the contracts.

"These works will have an adverse effect on the birds, the fish, the animals and aquatic life generally," the judge said. "Petitioners (the natives) will no longer be able to hunt, trap, and fish in the areas affected."

WOULDN'T SIGN

Malouf strongly criticized the Quebec government for failing to consult Indian leaders before starting the project, and for refusing to sign any treaties with the natives, although it agreed to do so when it obtained the northern territory from the federal government under a law passed in 1912.

The injunction was sought last December by the Indians and the Inuit Association, with the help of a \$10,000 collected in a national fund-raising campaign.

The James Bay complex involves the construction of four main dams along a 370-mile stretch of Le Grande River, 89 miles of lakes, and flooding of about 4,500 square miles of scrub forest.

Work on the first dam

project began this fall with the digging of two tunnels to divert the river.

Government witnesses predicted that Quebec will experience a shortage of energy by 1979 if the project is cancelled or suspended. Witnesses called by the natives replied that Hydro Quebec could meet the province's energy needs just as well by proceeding with several small hydro projects and by building nuclear power plants similar to those in Ontario.

Malouf heard 140 witnesses for a total of about 10,000 pages of evidence. "The petitioners are justified in their apprehension of injury to the rights which they have been exercising . . . the major rivers in the territory will be completely transformed, the flow of some will be cut off, reduced, increased or diverted," he wrote in his judgment. "The wetland habitat on which so many animals depend will be destroyed."

Malouf said the destruction of wildlife is crucial to the natives because "their diet is dependent, at least in part, on the animals which they hunt and trap and the fish they catch." Animal skins are used as clothing and are sold to gain revenue, he said.

He concludes that the Indians "want to continue their way of life" and that "they have a unique concept of the land, make use of all its fruits and products including all animal life therein and any interference therewith compromises their very existence as a people."

The effects of the project on the environment of the area and the vegetable and animal life that exists in the region took up much of the concern in the court hearing and Malouf said he found the native peoples "justified in their apprehension of injury to the rights which they have been exercising."

Some damage has been done to the flora and fauna of the region and "still more extensive and more serious damage will occur as the work progresses."

ADVERSE EFFECT

After reviewing the evidence on the ecology in the region, the judgment says: "The evidence discloses that these works will have an adverse effect on the birds, fish, animals and aquatic life generally," significantly reducing the numbers of animals and preventing the native peoples from making "use of the fruits of the soil."

Judge who called halt a champion of underdogs

From our Montreal bureau
MONTREAL — A slight man with a subdued voice, Mr. Justice Albert Malouf often has trouble making himself heard in the muffled courtrooms in Montreal's high-rise "Palais de justice."

Yesterday, his message came through loud and clear in a temporary injunction ordering the Quebec government to stop work on the \$6 billion dollar James Bay hydro project.

Provincial officials reacted with shock and anger, but the 46-year-old Superior Court judge has repeatedly shown in the past that he sympathizes with the underdog.

"Although the majority rules in a democracy," he declared at his swearing-in ceremony in 1958. "we should not forget that the rights of the minority must be respected too."

The son of French-speaking Lebanese immigrants, Malouf has taken a deep interest in the rights of Indians and Eskimos from the start.

MINOR CASES

Not hearing a success-

sion of minor criminal cases involving natives from outposts 500 miles to 1,000 miles north of Montreal, he blasted the provincial justice department in 1970 for failing to open northern circuit courts.

Circuit judges were named soon after and Quebec Provincial Police stopped firing native suspects in drinking-bout cases to Montreal prisons. Malouf described the old practise as "a grave injustice" because it subjected northerners to culture shock and overlong pre-trial detention.

The same concern for human rights permeated his 170-page judgment on the James Bay case, issued simultaneously in French and English at the modestistic \$2-million dollar court-house. In polite but firm prose, he rebuked three provincial crown corporations for squatting on Indian land and for endangering the fragile ecology of the North.

COUPLE OF HOURS

When lawyers representing the 930 Cree Indians and Eskimos living in the James Bay region applied for the temporary injunction a year ago, government lawyers bragged that they would dispose of the natives' objections in a cou-

ple of hours.

Instead, Malouf rejected Hydro-Quebec's motion for an immediate ruling and decided to hear testimony on aboriginal rights and environmental protection from native spokesmen and expert witnesses.

In all, 167 witnesses were called by both sides and 32 exhibits ranging from color film to a 1670 Hudson's Bay Co. document were submitted in seven months of hearings.

Malouf's landmark decision was all the more notable since he has only one year's experience as a Superior Court judge. He was appointed by the Trudeau cabinet shortly before the 1972 federal election, after earning a reputation for patient, meticulous hard work as a provincially appointed sessions court judge. He

shuns publicity and rarely makes public appearances apart from his court duties.

Unlike most of his colleagues on the Montreal bench, Malouf likes to limit lunch breaks to 50 minutes during his hearings. This prompted Jacques Lebel, chief government lawyer in the James Bay case, to nickname him "the galloping gourmet."

After taking the injunction bid under advisement last June, the judge waded through more than 10,000 pages of verbatim transcripts.

He concluded in his ruling that the mammoth hydroelectric project is so harmful to the native territory and its people that it "constitutes their very existence as a people."

JAMES BAY PROJECT SHUTDOWN BEGINS

MONTREAL (CP) — The James Bay Development Corp. today is working out the mechanics of shutting down construction on its \$6 billion hydro project. The Quebec Superior Court yesterday ordered all work halted "immediately" on the development.

Officials of the development company said a plan may be ready today for the shutdown. Such matters as feeding men in the bush and reaching about 1,000 workers scattered in numerous camps (6) make northwest of Montreal must be considered, a spokesman said. "I don't want people to have nothing to eat or find themselves stranded," he said.

Judge fears 'devastation' of Indians' life

Special to The Star

MONTREAL — The land will be devastated, the animals will die and the way of life of northern Quebec Indians and Eskimos "since time immemorial" will be destroyed if the mammoth James Bay hydro project proceeds, says Mr. Justice Albert Malouf.

In a 170-page judgment explaining his decision to halt work on the \$6 billion network of dams, roads, airstrips and other installations where native peoples now hunt and fish, the Quebec Superior Court judge explores these issues with force and clarity. The following is a partial excerpt:

HUNTING, TRAPPING

The Cree Indians and Inuit population occupying the territory and the lands adjacent thereto have been hunting, trapping and fishing therein since time immemorial.

They have been exercising these rights in a very large part of the territory and the lands adjacent thereto, including their trap lines, the lakes, the rivers and the streams.

These pursuits are still of great importance to them and constitute a way of life for a very great number of

them.

Their diet is dependent, at least in part, on the animals which they hunt and trap, and on the fish which they catch.

FORM OF REVENUE

The sale of fur bearing animals represents a source of revenue for them, and the animals which they trap and hunt and the fish which they catch represent, if measured in dollars, an additional form of revenue.

The hides of certain animals are used as clothing.

They have a unique concept of the land, make use of all its fruits and produce, including all animal life therein, and any interference therewith compromises their very existence as a people.

They wish to continue their way of life . . .

In reviewing the evidence

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James Bay

Project under fire from start



By Joseph MacSwen
Canadian Press staff writer

MONTREAL — "The world begins today..."

Those words boomed over loudspeakers in a Quebec City hockey arena when Premier Robert Bourassa's government announced in April, 1971, the decision to undertake the giant James Bay hydroelectric project.

The announcement was given impressive audio-visual presentation at a Liberal meeting marking the first anniversary of the Bourassa government taking power.

Premier Bourassa's "project of the century" emerged while the province was recovering from the kidnap-murder crisis of October, 1970, and the government was driving for economic progress and the creation of jobs.

The project came under fire virtually from the start, critics charging that Mr. Bourassa cleared the way for partisan sniping by announcing the enterprise at a political meeting.

Critics also charged the government committed itself before all preliminary studies were completed.

However, another kind of time bomb was ticking, involving the James Bay area in question, an area larger than Britain.

The Indians of Quebec Association (IQA) had begun negotiations in 1967 with the Quebec government in regard to Indian rights, especially hunting, fishing and land rights. A temporary agreement was reached in connection with hunting and fishing but the James Bay project was announced before negotiations resumed on land rights.

Committee formed

Early in 1971, the IQA formed a "James Bay Task Force" or committee to study all aspects of the project. Dr. John Spence, McGill University professor experienced in the study of the effects of dams on fish, became scientific co-ordinator.

"In the summer of 1971, the Indian chiefs and peo...

Premier Bourassa looks out over James Bay earlier this year

Abitibi, Mistassini and James Bay regions publicly stated their opposition to the project," says a "summary of information" prepared by the task force.

"This opposition was communicated to the provincial government and the federal government. However, this did not change the province's decision about the project and the federal government did not become directly involved.

"In the meantime, negotiations resumed with the provincial government in respect to all questions dealing with Indian rights. The representatives of the IQA told the provincial government that they were opposed to the James Bay project and that they would not discuss with the provincial government any questions regarding Indian land rights until questions of hunting, fishing and taxation rights and the question of lands for building schools and houses were satisfactorily settled."

IQA lawyers Jacques Beaudoin, who has since died, and James O'Reilly outlined at a meeting in Fort George the various recourses open to the Indians, who were joined at that time by the Northern Quebec Inuit (Eskimo) Association.

Though the federal government provided the Task Force with \$250,000 for research, including field expeditions, the committee later reported its opinion that the native peoples would have to depend on their own efforts.

Negotiations broke down in October 1972, after which Indian and Eskimo representatives and IQA officials met Premier Bourassa, Natural Resources Minister Gilles Masse and Lionel Chevrier, former federal minister who had been appointed negotiator for the province.

On Nov. 7, 1972, lawyers for the native peoples filed an interlocutory injunction against the James Bay Development Corp., the James Bay Energy Corp. and approximately 25 contractors involved in the project. The action asked a court order stopping all works connected with the project immediately

Government talks

in Chretien, federal minister of

Indian affairs, was requested to intervene. He communicated with Premier Bourassa and a negotiation session was held in mid-June, 1972.

Malouf rules

In a preliminary stage Dec. 5-7, Mr. Justice Albert Malouf ruled that the native people had a right to a hearing. The hearing of "proof and counter-proof" stretched into six months of sessions before lawyers delivered their legal summations and the judge retired to consider a mountain of testimony and exhibits.

Though evidence of the environmental implications of the power project captured much attention, observers saw the question of native rights as basic in the case.

The lawyers argued, however, that the Indians and Eskimos in question do enjoy aboriginal rights which have never been surrendered and are recognized in royal proclamation, statute, administrative act, order-in-council and practice.

Justice Malouf, the son of Lebanese immigrants, ruled in their favor after listening to witnesses ranging from simple-spoken trappers to economists, engineers and scholars of many kinds.