Francis Roy and Yaïves Ferland
Université Laval, Québec, Canada
FIG 2017, Helsinki FI, 31 May 2017
History Session

Land Registration and Cadastre Institutions in Lower Canada (1830-1867)
LAND REGISTRATION AND CADASTRE AS INSTITUTIONS IN LOWER CANADA (QUEBEC) PROVINCE, 1830-1867:

STILL A CURRENT SOURCE OF INSPIRATION TODAY?
NO LAND REGISTRATION WITHOUT REPRESENTATION!
OUTLINE

• Introduction about a Troubled Context (1830 – 1867)
  • Political Construction of the State = Reforms
  • Social Transformation

• Needs for Land Registration:
  • Guarantee for Economic Development
  • Security for Individual Owners
  • Establishment of Registry Offices
  • Needs for Cadastral Maps,

• Laws for New Land Institutions
INTRODUCTION OF THE WORK

• Collective book on Land Law for Land Surveyors in civilist Quebec
  • Mandated by the Ordre des arpenteurs-géomètres du Québec

• Two chapters:
  • Conceptual, historical, and legal aspects of Crown/Public Domain, Land Tenures, Private Land Property
  • Cadastre, Lot Matriculation (numbering), Security by Publicity

• Recollect knowledge from expert actors of the presently closing cadastral reform

• Compare cadastral reform with “originary” cadastre institution
NEW FRANCE

PROVINCE OF QUEBEC


SOCIO-DEMOGRAPHIC CONTEXT

• Lower Canada in the first half of 19th Century
  • Rural society with just four small cities

• French land tenure system (semi-feudal)
  • 220 “roture” (non-noble) seigneuries, with plenty of individual “censive” ownerships
  • Inherited from the Nouvelle-France royal regime
  • Located along the shores of the Saint-Lawrence River and few other important rivers.

• Overpopulated Seignories
  • Very high birth rate among French-speaking catholic population: from about 250k (est. 1806) to 1M (1861 census) inhabitants.
  • Montreal (1801 – 1861) = 9k to 90k inhabitants
  • Quebec (1790 – 1861) = 14k to 51k inhabitants
Seigniorial Domain, c.1832

Eastern Townships, c.1833
SOCIO-DEMOGRAPHIC CONTEXT

• Since the Conquest (1759-63)
  • Royal Proclamation of 1763
  • Weak British immigration in seigneuries; rather concentrated in cities

• Loyalists, Military, and Colonists settled newly opened interior lands, behind seigneuries
  • Common Law ‘fee-simple’ tenure in townships (forbidden to Catholics).

• Colonial Authorities surveyed about 100 square-model townships (1791-1860)
  • Inventory of Land Resources and Land Division
Surveying Plans of Townships
TROUBLED SOCIOECONOMIC CONTEXT

- Crown Land Grabbing by private Land Companies and Absentees
  - Corruption and discrimination
  - Source of undue profits
  - Speculation on new colonists
- Frauds
  - Double and triple forfeit sales
  - Occult/personal mortgages
  - Defective titles
- Industrialisation
  - Land and housing market in expansion and intensive exploitation
  - Liberalize land transfers, improvements, for financial mobility of capital

Barrier to Land Economy Development
British American Land Co.,
Eastern Townships, 1839
TROUBLED LEGAL AND POLITICAL CONTEXTS

• Parallel Legal Regimes: *Coutume de Paris* > *Civil Code* / *Common Law*
  • *Seigniorial tenure*, even in three cities, perceived as passive blockage
  • *Franc-alleu roturier* with *censive* tenure, versus *Free and Common Socage*
  • *Inheritance property*, versus *Alienation*, *i.e.* commercial, transactional (*deeds*)
  • Legislative Assembly struggled for responsible government and *access to lands*
  • 92 Resolutions (1834 - demands for reforms) and *Rebellions* (1837-38)

• Industrialisation, Roads, Canals, Railroads, Mines, and Urbanisation
  • Protection of public investments in infrastructures (*e.g.* ranges, roads, bridges)
  • *Concessions of land*, mines, forests, hydraulic power on *Crown/Public Domain*
  • Sustain emerging *local administrations*, duties, responsibilities, and funding
    (cities: 1833, municipal counties: 1845, municipal towns and parishes: 1855)
NEEDS FOR A LAND REGISTRATION SYSTEM

• Needs for publicity of land and immovable property rights and legal obligations

• Needs for security of individual private rights, thus for economic development

• In order to secure new colonists’ land ownership versus occult rights and frauds

• Regularisation of squatters’ occupation.

• Socioeconomic conditions would favour progressive implementation of land-right registry offices in English-speaking counties of Lower Canada.

• Land Registry Offices established in neighbouring province of Upper Canada (Ontario) since 1795

• But the Law did not provide a standardized distinct identification system for each parcel-lot, neither official accurate maps to do so, only for land concession
Traditional Public Announcement of Land Inheritance or Transaction in Rural Lower Canada

ESTABLISHMENT OF LAND REGISTRY OFFICES

• In 1830, the Legislative Assembly enacted five registry offices in counties of the South of Eastern Townships region, along to the U.S. border.
  • Six other registry offices appear within few years; registers were only schedules.
• In 1841, the Act of the new constitutional government of United provinces of Canada, generalized registry offices to each county, in order to cover all settled territory.
  • A genuine "Index to immovables" (i.e. of "real estates"), for inscription of private acts, deeds, and mortgages concerning any particular lot, appeared utopic.
  • But an “Index of names” (i.e. a repertory book by parties’ names) alone became quite unpractical by two decades without identification of their properties.
• In 1845-46, two official inspection reports concluded to inefficiency due to:
  • Lack of money and resources
  • Clerical incompetencies,
  • Absence of an identification system of all parcel-lots
Index of Names
UNIFICATION OF LAND TENURES AS FULL PROPERTY

• An operational system for registration of land rights
  • A unique mode of land tenure, warrant of full property.

• Seigniorial tenure was abolished (1854-1859)
  • Both franc-alleu roturier and censive ownerships can be commuted in a kind of “fee simple”.
  • This type of “absolute property” was confirmed by the new *Civil Code* (1866).

• Compensation of seigneurial rights and rents was assessed by commissioners (not surveyors)
  • Production of an “abridged cadastral schedules of assessment”
  • This first tabular form of seigneurial cadastre, plans being not necessary for it, was produced for this unique purpose.
<table>
<thead>
<tr>
<th>No.</th>
<th>NOME</th>
<th>ETUDE DES PERMIS</th>
<th>ESPOCENT</th>
<th>ADJUVANT</th>
<th>SUPERVISOREN</th>
<th>NUMERI EXTRACTO</th>
<th>VILLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>John James Naslin</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>2.</td>
<td>Théophile St. Jean</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>3.</td>
<td>Edward J. Douglas</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>4.</td>
<td>James Douglas</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>5.</td>
<td>François Poulin</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>6.</td>
<td>Do</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>7.</td>
<td>Mesures du Sénateur</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>8.</td>
<td>Do</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>9.</td>
<td>Joseph Parent</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>10.</td>
<td>Alexandre Parent</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>11.</td>
<td>Louis Germain</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>12.</td>
<td>Avis Gravel</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>13.</td>
<td>Marie E. Chalifour</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>14.</td>
<td>John Ravey</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>15.</td>
<td>Louis Lalonde</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>16.</td>
<td>H. N. Jones</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>17.</td>
<td>Edward Willinghby</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>18.</td>
<td>Sowell</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>19.</td>
<td>Jean Bé, Renaud</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>20.</td>
<td>William Walker</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>21.</td>
<td>W. H. Anderson</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
<tr>
<td>22.</td>
<td>François X. Gagnon</td>
<td>8</td>
<td>12</td>
<td>4</td>
<td>2</td>
<td></td>
<td>Helsinki</td>
</tr>
</tbody>
</table>
PUBLIC DEBATE OVER THE NEED FOR CADAstral MAPS

• With or without maps? Which kind? Which element should linked the map with the register?

• No parcel-lot plans available: transfers by heritage or “as seen”

• City, streets and road maps: too little scales

• Primitive surveying plans of townships: for concession purpose only

• Solution inspired by France and some German Kingdoms (e.g. Bavaria): a middle-scale cadastral map for complete graphical representation, delimitation of shape, and identification of each lot with assignation step by step of distinct sequential number within the same parish or township limits, joined to an official and mandatory register for property and rights transfer, without fiscal valuation.
PROBLEMATIC QUESTIONS, IN DEBATE

• Which information data must be registered to fit the land publicity purpose?

• No standardized large- or middle-scale maps. Which standards needed?

• If any maps or plans at all, where were they? Which quality had they?

• Few maps showing parcel-lot numbering, out of surveyed townships…

• What would be the sources for good land property information: legal documents or terrain observations?

• How much does it may cost? Who shall pay for that? How to fund this operation?

• Who will be able to perform the job? How many private surveyors are ready, capable, and competent? How to train new necessary surveying teams?

• Complete sheet of uniform cadastral map drawn and paid under official mandate? or collection of plans submitted by each parcel-lot owner (a mosaic)?

Source: Bélanger (1986)
In 1860, an Act for land registration required “correct plans” for the cadastre of any official locality (parishes, townships, villages, towns, cities, wards).

A large surveying operation of “cadastration” involved:

- land owners to present their titles and, after operation, to look over the cadastral plans displaying their property,
- original surveying methods with modern instruments,
- close collaboration between state-employed and private surveyors.

In 1866, the first provincial *Civil Code Code of Lower Canada* enforced cadastral plans as the legal identification basis for registration of private land rights, securities, mortgages, obligations, in order to support the emerging real estate market.

Opening of ten regional *Cadastre Bureaux*, with particular instructions to private surveyors for each mandate of cadastral operation in a locality.
GENERAL INSTRUCTIONS – COMPILATION OF THE CADASTRE

GENERAL INSTRUCTIONS

Conserving the cadastralion of the cities, towns, parishes, townships, and incorporated villages in the Province of Quebec and respecting the preparation of the official plans and books of reference to be made in conformity to the provisions of the 27th chapter of the Revised Statutes of Lower Canada (1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, and 1814th sessions); of the 25th chapter of the Act 33 Victorina, and of the 15th and 16th chapters of the Act 30 Victoria, of the Legislature of this Province. [These provisions are reproduced in the Civil Code and the Revised Statutes of the Province of Quebec, 1886].

The operations of the cadastrist in the Province of Quebec, being undertaken with a view of furnishing the register of cadastral division a correct designation of all the landed properties comprised in the cities, towns, parishes, townships, and incorporated villages, or part of the same forming the said cadastral division, so as to be able to follow with regularity all the transactions and hypothecarv transactions which take place therein. It follows that the duties of the person charged with the making of the cadastrist should consist in the preparation of the plans and the preparation of the official books of reference, which should give (for the purposes hereinabove specified) an exact description as positive as all the landed properties enclosed within the above mentioned cadastral division. These official plans and books of reference, to be prepared under the order, and under the direction of the Directors of the Woods, Lands, and Mines (hereinafter called the Ministry of Mines and Fisheries) pursuant to the 65th clauses of the 27th chapter of the Revised Statutes, [see articles 5642, R. R. P. Q.]; in the second place, all the plans and maps should establish the interior subdivisions of the assignation, and indicate the lines laid on the ground, dividing them one from the other; in the third place the information possessed by the cadastral, as to the subdivision of the properties, and the valuation roll prepared by the surveyor treasurer of the municipalities; finally, in the fourth place, (as the plans of the Segregational Commission) the Minister of Mines and Fisheries do not indicate the divisions of the parcels civilly created, the diagrams deposited in the Department of Woods Lands, accompanying the description inserted in the declaration establishing the civil division of those parcels, together with the various documents relating to the surveys of the Province, complete the data to which the officials of the cadastral must be furnished with.
CONCLUSION

• Cadastre Bureaux: surveying for cadastral mapping of existing localities
  • Cadastral large- and middle-scale maps for lot identification and numbering
  • Cadastral large-scale plans for transfer or operation on individual parcel-lot
  • Book of Reference (technical description of each numbered parcel-lot)

• Land Registry Offices, in each county (registration division) or so
  • Index to Immovables (sheet by identification number for each parcel-lot)
  • Index of Names (of all persons mentioned in registered documents)
  • Entry-Book or Deposit of Deeds (for sequential transcription in the documents)
CONCLUSION = NEW LEGAL LAND INSTITUTIONS

- 1830: Act to establish first land registry offices in five counties
- 1833: Incorporation of the Cities of Quebec and Montreal
- 1841: Act to generalize land registry offices over the settled territory
- 1845: First *Act on Local and County municipal authorities*
- 1845-46: Reports on deficiencies of land registry offices
- 1854-59: *Seignorial Act* for commutation of land rights and rents
- 1855: *Act for municipalities and roads*
- 1860: *Act for registration* system for land transactions (fit-for-purpose)
- 1866: *Civil Code*: merges both sorts of property rights
- 1867: Canadian Confederation; first “*cadastre originaire*” map drawn.