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I. Introduction

I have been asked by counsel for the Congress of Aboriginal Peoples to undertake historical research and prepare a report on “the historical context in which Parliament was assigned jurisdiction over ‘Indians, and Lands reserved for the Indians’, the objectives and purposes of this assignment, and Canada’s historical policies and practices regarding its designation of Aboriginal people as ‘Indian’, including addition to and exclusion from Treaty paylists, withdrawal from and re-admission to Treaty, and relevant policies and practices related to the issuance of Métis scrip”. The research, based on archival documents, was to be focussed on the period from the signing of the Robinson Treaties in 1850 to the signing of the last of the “numbered treaties” and the issuance of the last Métis scrip in the 1920s and early 1930s. The questions to be addressed in the report were:

1. What were the key events in the pre-Confederation period that led to the assignment of jurisdiction over “Indians, and Lands reserved for the Indians” to Parliament? What were the objectives and purposes of this assignment?

2. What were the Government of Canada’s policies and practices regarding the assignment of legal status to Aboriginal populations in the nineteenth and early twentieth centuries as reflected in the designations “Indian”, “non-Indian”, “Métis” or “halfbreed”, and “non-Treaty Indian”? Describe how these policies and practices impacted the development and revision of the Robinson Treaty paylists, and withdrawals and re-admissions to Treaty in numbered Treaty areas.

2a. How did the Government of Canada policies influence the selective inclusion of mixed Aboriginal/non-Aboriginal ancestry individuals and families on Treaty paylists?

Canada’s general policy direction on the desirability of including Aboriginal people in Treaty or removing people from Treaty paylists should be included in the exposition and analysis within this section.

3. How did Treaty paylists evolve from a simple record of payment of annuities to a determining factor in the identification and families as “Indian” for a range of purposes such as Indian Reserve allocation, entitlement to assistance and benefits, recognition of harvesting rights, and legal status? What implications did this evolution have for the subsequent creation of the Indian Registry in 1951?

The report is structured around Canada’s reservation to the central government of jurisdiction over “Indians, and Land reserved for the Indians” in section 91(24) of the British North America Act (1867), and the central government’s exercise of that jurisdiction in territories added to the Dominion after 1867. The acquisition and development of these new territories, which were the
home of a wide variety of Aboriginal peoples, was a key objective of the confederating provinces (especially Canada West, now Ontario) in 1867. The new Dominion also explicitly inherited the practices and policies of the Imperial Government in North America regarding Aboriginal peoples, including an obligation to recognize and compensate Aboriginal occupants of lands by means of treaties or payments prior to intensive non-Aboriginal use and settlement. Canada’s experience had been that these treaties or payments, plus a degree of control over the Aboriginal/settler relationship, had contributed to the maintenance of order and peaceful relations between Aboriginal and non-Aboriginal peoples as economic and demographic shifts took place. The central government needed jurisdiction over “Indians” to fulfil its obligations and achieve its objectives. Canada began to exercise its jurisdiction in support of objectives as soon as new lands were acquired, dealing broadly with Aboriginal peoples from a variety of culture groups such as Ojibway and Métis and including agriculturists, hunters, fishermen, and those involved in the wage or fur trade economies, as it had done prior to Confederation. An overview of the pre-Confederation setting, the objectives of Confederation, and the immediate aftermath of the union is set out in section III of this report (addressing paragraph 1 of the Terms of Reference).

Canada’s exercise of its jurisdiction in the management of Aboriginal populations in the new territories in the late nineteenth and early twentieth centuries is the subject of section IV of the report (addressing paragraphs 2 and 2a of the Terms of Reference). The particular aspect of this management that will be most closely reviewed is the assignment of legal status to Aboriginal people, in the course both of meeting obligations to address “Indian title” prior to large-scale non-Aboriginal settlement and resource exploitation, and in subsequent attempts to manage the Aboriginal population to support development objectives such as assuring security for settlers. “Indian” legal status came to be associated with increased Government control and assistance, and Canada’s policies and practices in sorting the Aboriginal population into “Indians” and “non-Indians” adopted a range of criteria that were not linked to identity or ethnicity beyond a simple requirement for “Indian blood”. Policy-driven adjustments to the initial assignments of Aboriginal people to categories based on Treaty or Métis scrip continued at least until the 1930s, the end of the study period.
Section V of the report, addressing paragraph 3 of the Terms of Reference, will describe the development of Treaty paylists from simple records of payment into an administrative tracking and stabilizing tool for the Aboriginal population, and a means of determining “Indian” legal status for a range of purposes. The narrative of the management of the paylists ties into many of the themes related to the management of the Aboriginal population and the administration of the term “Indian”, as discussed in Section IV. As the numbered Treaty paylists were precursors to the Indian Register created in 1951, understanding the origin and administration of these earlier lists can provide valuable background in understanding the characteristics of the modern Register.

Section II of this report, following this Introduction, is an Executive Summary of the three substantive sections, to provide a guide to their content.

In any discussion of Aboriginal peoples in Canada, terminology can be problematic and complex. The word “Indian” itself is obviously an outsider’s construction; the invention of Europeans ever-hopeful that they had struck the spice- and gold-rich “Indies” of their imaginations. It does not specify a culture or linguistic group within the wide variety of peoples to which it could apply. It has also become overlaid with legal and historical connotations, some of which are the subject of this report. I use this term in conjunction with the documents I am discussing, usually in quotation marks, to follow its shifting conceptual shadings in context with the documents. “Indian” peoples, of a wide variety of languages, economies, and cultural manifestations, named their own people and ascribed names to others who were different from them. In using names of culture groups, such as “Ojibway” or “Cree”, I use either the words from the historical documents or the terms with which most readers are familiar, although I recognize that many nations have recently chosen different names that are closer to their own words. Again, there is a contextual element to these usages, as it will be evident in the report that these names do not imply impermeable or unchanging categories. “Aboriginal”, according to the Oxford English Dictionary, means “of races...inhabiting or existing in a land from the earliest times or from before the arrival of colonists”. I use it as an inclusive and non-specific term for persons descended from people who inhabited North America prior to the arrival of Europeans, capitalized as a proper name for a people rather than a simple adjective. The term
“Métis” is perhaps most controversial of all. I use it as the preferred modern general term for people of mixed Aboriginal and non-Aboriginal ancestry, without dictating implications for cultural homogeneity, modern legal rights, or identity. I use it in preference to the term “Halfbreed” and its variations, which although common in the historical documents is now considered to have derogatory connotations by the people to whom it could apply. In most instances, again, I follow the usages in the source historical documents, in quotation marks, with all the nuances they imply.

It should be apparent from the Terms of Reference that this is a report about Canada’s administration of Aboriginal peoples, and not a report about Aboriginal peoples themselves. The perspective of Aboriginal peoples on the developments described here may emerge briefly at intervals, but is largely obscured by the views of the non-Aboriginal authors of the documents, who were pursuing commercial, national, political or other objectives through the lens of their own beliefs and reference points. The purpose of the report is not to pass judgement on these varying objectives and perspectives, but to attempt to give an accurate portrayal of what the archival record indicates on specific aspects of Canada’s actions, as set out in the Terms of Reference.
II. Executive Summary

II (1). The Confederation of British North American colonies, 1867, westward expansion, and “Indian” peoples: the purposes of section 91 (24)

A. The Confederation of British North American colonies that took place in 1867 was the proposed solution to a number of political, economic, financial, and social problems. The annexation of the North West was a centrepiece of Canadian confederation proposals. The resolutions passed by the Canadian Legislature in 1865, carried forward from conferences in Charlottetown and Québec, therefore included clauses stipulating that “the North-West Territory, British Columbia and Vancouver [Island] shall be admitted to the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable”, and that “the communications with the North-Western Territory, and the improvements required for the development of the trade of the Great West with the seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit”.

B. In the resolutions of Charlottetown and Québec, and in the British North America Act, the Canadian federal government also reserved to itself jurisdiction over “Indians, and Lands reserved for the Indians”. This power was integral to the central government’s plan to develop and settle the lands of the North-Western Territory. The Canadian Government, at Confederation, inherited principles and practices of Crown-Aboriginal relations that had been embedded in British North America for well over one hundred years by 1867. These included the recognition of Aboriginal title in the “Indian territories” and protocols recognizing the relationship between Aboriginal nations and the Crown. Canada also inherited a British policy of “civilization” of the Indians, in place since the 1830s.

C. The new Dominion of Canada at Confederation was to follow the pattern established in Canada West of negotiating Treaties with Aboriginal people prior to large-scale resource exploitation, infrastructure development, or settlement. The Canadian experience had
been that Treaties were effective in calming relations between Aboriginal and non-Aboriginal people.

D. One of the first acts of the new Dominion Parliament, in December 1867, was to draft a Joint Address of the House of Commons and the Senate to the Queen requesting that an Order in Council issue authorizing the transfer of Rupert’s Land to Canada. As conditions to the transfer of the territory to Canada, the Government of Canada undertook “that upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement, will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”. The central Government was enabled to make and fulfil this undertaking by its jurisdiction over “Indians” in section 91 (24) of the *British North America Act*.

E. The March 1869 Terms of Agreement between the Dominion Government and the Hudson’s Bay Company included a clause stating that “it is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government”. In April of 1869, Colonial Secretary Earl Granville emphasized to the Canadian Government that, with regard to the “Indian tribes”, the Imperial Government expected Canada to “not forget the care which is due to those who must soon be exposed to new dangers, and, in the course of settlement, be dispossessed of the lands which they are used to enjoy as their own, or be confined within unwontedly narrow limits”. A joint resolution of the Canadian Senate and House of Commons in May of 1869 affirmed that “upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes, whose interests and well-being are involved in the transfer; and we authorise and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the...agreement”.

F. Central government jurisdiction over “Indians”, to “extinguish” their “title” in accordance with British North American practice, to protect their “interests and well-
being”, and to ensure a peaceful environment for newcomers, was thus essential to the Canadian government’s project of acquiring, developing, and settling the territories west of Ontario and Québec, which in turn was a key part of the Confederation package to create a politically, economically and financially stable and viable British North American entity capable of resisting absorption into the United States.

II. (2) Exercise of central jurisdiction, legal status and Aboriginal populations, 1850 - 1935

A. Prior to Confederation, Canadian practices and policies had included “halfbreeds” on Robinson Treaty paylists and had conferred on them “Indian” legal status, which was defined legislatively as applying to “Indians or persons of Indian blood or intermarried with Indians”.

B. After the residents of Red River, who were predominantly Métis, protested against the unilateral actions of the Dominion of Canada in annexing Rupert’s Land, Canada acted by inserting a provision in the *Manitoba Act* appropriating Crown lands “for the benefit of the families of the half-breed residents”, “towards the extinguishment of the Indian Title to the lands in the Province”. While the Métis at Red River were not a homogenous group, all, in the words of Sir Francis Hincks, “were to be entirely swamped and their influence destroyed, that all their lands were to be taken” unless the Dominion undertook to protect or compensate them by granting land to the children of “half breed” families. As well as meeting the requirement to address “Indian title”, Canadian politicians hoped that this arrangement would guarantee peace for incoming settlers, railway construction workers, and other non-Aboriginal newcomers.

C. In furtherance of its objectives for Rupert’s Land, Canada began its programme of “numbered Treaties” in 1870. In making Treaties One through Five in the eight years following Confederation, Canada encountered a mixed Aboriginal population including groups it named “Crees”, “Swampy Crees”, “Saulteaux”, “Assiniboines”, “Chippewa”, and “Halfbreeds”. To “extinguish” the “Indian title” of these people, Canada offered Treaty, or Treaty and “halfbreed” scrip in the Province of Manitoba. Canada developed
these administrative options to meet the local conditions of the North West: a type of Treaty adapted (but different) from Upper Canadian Treaties, and a new “scrip” option, developed in negotiations with “halfbreed” representatives in 1869 -70. In the Province of Manitoba, “halfbreeds” were to “elect whether they shall be treated as Half breeds or Indians” and were instructed that “they cannot at the same time share in the allotment of lands as Half breeds and in the payments and presents made to the Indians”. In 1874, some Manitoba Métis were permitted to change their election, withdraw from Treaty without penalty, and apply for scrip for the lands allocated by Canada “towards the extinguishment of the Indian Title”. In both the North West Territories and Manitoba, any “Halfbreed” who elected to take Treaty was “treated as an Indian”, was entitled to all Treaty benefits, and assumed the same legal status as any other “Indian” under the Indian Act. This was a continuation of pre-Confederation Canadian practices and policies that had taken “halfbreeds” into the Robinson Treaty paylists and “Indian” legal status.

Outside the Province of Manitoba, the “Halfbreeds” who did not take Treaty and were waiting to have their claims to existing landholdings confirmed were told, in Morris’ words at Treaty Four, that they were “in the hands of the Queen who will deal generously and justly with them”. In Treaty Three, the Métis at Fort Frances succeeded in signing a separate adhesion to the Treaty in 1875 and having a Reserve surveyed for them as a group.

D. In the 1870s, violence had spilled over the U. S. border in present-day Alberta and Saskatchewan, demonstrating that the threat of disorder was real unless renegade non-Aboriginal and disaffected Aboriginal populations were controlled. Treaties and the introduction of a paramilitary mounted police force were two critical elements of the Canadian strategy to secure order without warfare. After the collapse of Canadian buffalo herds in 1879, the Canadian Government developed and implemented policies to control an Aboriginal population deprived of its primary means of subsistence and to teach Aboriginal people, by compulsion if necessary, a new sedentary agricultural life. In preparation to address the claims of Métis outside Manitoba, the Dominion Lands Act was amended in 1879 to provide for the satisfaction of “any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-
West Territories outside of the limits of Manitoba, on the fifteenth day of July, [1870], by granting land to such persons”.

E. In 1885, tensions came to a head with a short-lived armed uprising by non-Treaty Métis in present-day Saskatchewan and some Treaty people in present-day Alberta and Saskatchewan. By the time the resistance was ending, “Half-breed” scrip Commissioners were taking applications to determine entitlement to land grants “in extinguishment of the Indian title” under the Dominion Lands Act. Following the Manitoba model, Canada devised criteria and processes for determining if an Aboriginal person was “halfbreed” and therefore entitled to this form of compensation for their “Indian title”. The primary intent of this process was apparently to complete the undertakings of the Joint Address and the Deed of Surrender with a segment of the Aboriginal population not already covered by Treaty, as well as to pacify the country. Although this offer was aimed primarily at “halfbreeds” who had not yet accepted any compensation for their “Indian title”, Canada also made the scrip choice available to “halfbreeds” who had already accepted Treaty, as in Manitoba in 1874. The option to withdraw from Treaty and take scrip without penalty also recognized that many “halfbreeds” had entered Treaty outside Manitoba as no other choice of benefits for Aboriginal people had been available, although scrip and non-“Indian” legal status might have been better suited to them. Despite warnings from some observers of an impending mass exodus from Treaty of people who would “return to the Indian Reserves, where they have been residing, and become a burden, not only on the land but on the Government”, Canada was confident in 1885 that only “enterprising Halfbreeds who might...cease to be Indians and become self-supporting citizens” would elect to change the form of their compensation and their legal status.

F. Events during the 1886 working season of the scrip commission forced the Department of Indian Affairs to reconsider aspects of its management of the Aboriginal population in the numbered Treaty areas of Manitoba and the North West Territories, most particularly the assignment of individuals of “Indian blood” to the legal categories offered: Treaty (“Indian”) and scrip (“Halfbreed”). When Aboriginal people responded to the choices
and incentives offered in unpredicted ways, the Superintendent General (Prime Minister Sir John A. Macdonald) and his senior officials intervened to assert more Governmental control over the process, removing the ability to choose from some applicants. The assertion of control tended to emphasize the elements of wardship and dependency as sorting devices for the Aboriginal population. In attempting to determine the appropriate means of dealing with families in the Aboriginal population, Government officials began to develop the criteria of “[leading] the same mode of life as Indians”, with a series of questions on receipt of annuities and rations, private ownership of livestock, preferred type of housing, and means of support. The Aboriginal population was managed and classified by Canada at this time based on dependency relationships: potentially self-supporting (Métis scrip) or dependent on Government assistance (Treaty). In the case of married women, dependency was determined through their spouse.

G. Beginning in 1887, Canada acted to undo some of the effects of its actions in offering scrip in 1885 and 1886. Finding that the outcome of this initiative worked against its other policy objectives for Aboriginal people, particularly the maintenance of order and security for non-Aboriginal settlers, Canada intervened to reassert control over the segment of the Aboriginal population that, in its view, needed ongoing assistance and supervision. “Destitute and starving” persons who had met Government criteria and accepted scrip as “half breeds” were taken back into Treaty as “Indians”, in cases where “Half-breeds can be managed more satisfactorily in their tribal state as Indians than as individuals”. Conversely, “half breeds” were not allowed to withdraw from Treaty if they could not “provide for themselves”. Canada reserved to itself the right to adjust the means of extinguishing “Indian title”, more than once if necessary, to meet the broader needs of managing the Aboriginal population in the context of non-Aboriginal development of the North West.

H. Over the next several years, Canada made adjustments to the distribution of Aboriginal people between Treaty and scrip categories, allowing some (but not all) Métis people to withdraw from Treaty and take scrip, and taking “destitute and starving” scrip-takers back into Treaty to prevent disorder.
I. Between 1896 and 1917, Canada made a series of attempts to manage the Robinson Treaty paylists in accordance with varying Departmental, quasi-judicial, and judicial interpretations of the *Indian Act*, precedents in practice, and policies. Under these interpretations, hundreds of annuitants or descendants of annuitants were deemed to be ineligible and then were later reinstated, and the Department reserved to itself the option to use its discretion, or “pure [acts] of grace”, for policy and practical reasons such as not inflicting “hardship” upon poor people”, or avoiding a situation in which “hundreds of annuitants would have besieged [the Superintendent General] with correspondence”. While the fact situations in the numbered Treaties and the Robinson Treaties were different, in both areas the legal designation “Indian” in the Aboriginal population, as represented in Treaty paylists, was managed to meet a variety of policy objectives and practical requirements.

J. In 1898, Canada decided to treat with Aboriginal people north of Treaty Six, to ensure peace in view of a large influx of non-Aboriginal people moving through the area toward the Klondike gold fields. The northern part of Treaty Eight was outside the historic boundaries of “Rupert’s Land”. Treaty and “Half Breed” scrip Commissioners were appointed at the same time, to address the claims of Indians and Métis simultaneously. This was done for practical reasons: it was thought that satisfying “Halfbreed” claims would cause the Métis to refrain from using their influence to defeat a Treaty, and Canada’s information was that in many parts of Treaty Eight, “it is practically impossible... to draw a hard and fast line between the Halfbreeds and the Indians”, as had also been the case in earlier numbered Treaties. Canada also drew on the obligations to Aboriginal people outlined in the Deed of Surrender of Rupert’s Land and the objective of “the extinguishment of the Indian title preferred by halfbreeds” outlined in the *Manitoba Act* and the *Dominion Lands Act* to develop the analysis that “Whatever rights [the halfbreeds] have, they have in virtue of their Indian blood; and the first interference with such rights will be when a surrender is effected of the territorial claims of the Indians. It is obvious that while differing in degree, Indian and Halfbreed rights in an unceded territory must be co-existent, and should properly be extinguished at the same
time”. Canada devised administrative options designed to appeal to different segments of the Aboriginal population in order to do this, including Treaty, scrip and a new Treaty variant that allowed individual families and small groups to take land on their own. Canada used a qualification process for “Halfbreeds” similar to that used in earlier scrip distributions, but asserted little control over which Aboriginal people took Treaty and the designation “Indian”. Similar policies were to be adopted for Treaties Ten and Eleven, negotiated in 1906 and 1921. In Treaties Eight, Ten and Eleven, Canada explicitly relied on the framework of policies and obligations described in the Deed of Surrender of Rupert’s Land, the Manitoba Act, and the Dominion Lands Act to deal with all Aboriginal peoples, “Indian” and “Half Breed”, in an unsurrendered area at the same time.

K. Treaty Eight Aboriginal people were, in the words of the Treaty Commissioner, “given the option of having their territorial right extinguished by the taking of a perpetual annuity as Indians, or by taking scrip as Halfbreeds. After electing, they should be bound by election”. This policy was carried forward in the remaining numbered Treaties. However, Canada also reserved to itself the right to consider “very special circumstances” and practical discretion in developing and implementing sorting policies for the Aboriginal population. Although preferred approaches varied with the opinions of senior officials, with some believing that admitting “halfbreeds” into Treaty was a “retrogressive” or “backward” step, persons of “Indian blood” living in association with “Indians” or requiring assistance were admitted on a case-by-case basis into Treaty up until at least the Second World War.

L. The undefined term or concept “Indian mode of life” took on increasing significance in Canada’s management of the Aboriginal population after the mass applications for withdrawal from Treaty in 1886. Economic self-sufficiency, rather than blood quantum, became the key to the Departmental discretion in assigning the legal status of “Half breed” (to scrip-takers) or “Indian” (to those in Treaty). The perceived need for assistance and Government control became a marker of eligibility for “Indian” status, to the extent that this became the “Indian mode of life”. An unsuccessful attempt was made in the early 1920s to shed “Indians...in receipt of large sums of money...professional men,
doctors and lawyers, [who] should not be treated as wards” from Indian lists, via compulsory enfranchisement, and a Treaty Indian who had “so far separated himself from the life of the Reserve as to be virtually a whiteman... if he is able to maintain his status and that of his family as ordinary citizens of the country” had a chance to be favourably considered for discharge. Conversely, some individuals (particularly dependent children) living on Indian Reserves with Treaty Indian people were admitted to Treaty “upon grounds of humanity and expediency, rather than rules or regulations laid down by law – written or unwritten”.

M. In 1905, Canada and Ontario jointly negotiated Treaty Nine with Aboriginal people between the northern boundaries of the Robinson Treaties and the Albany River. Many “half breeds” were taken into this Treaty; however a group of Moose Factory “half breeds” were “refused” by the Treaty Commissioners because they were not living the “Indian mode of life”. Canada advised Ontario that “the Halfbreed title is of the same nature as the Indian title”, and therefore that the Province was required to deal with them as it thought appropriate. Ontario offered to provide land to these “Halfbreeds”, and subsequently some of them were taken into Treaty.

N. At a meeting between Canada, Ontario and Québec in 1884, Deputy Superintendent General Lawrence Vankoughnet rebuffed a claim that only full-blooded Indians could claim Treaty benefits by stating that “those who are recognized by the Government, are Indians...Half-breeds are by the law of Ontario Indians – as long as they have Indian blood in their veins they are Indians legally”. Deputy Superintendent General D. C. Scott, writing 36 years later, confirmed this view by stating “Membership of Indian bands does not...depend on any degree of blood...many who are Indians within the law are as a matter of fact practically white while others who are white people under the law may have a considerable proportion of Indian blood”. In 1935, the keeper of the Indian Affairs records summarized these policies as follows: “those who followed the Indian mode of life on reserves and received annuity and certain other treaty benefits, were known as ‘Indians’ whether they were of pure Indian blood or mixed. Those who elected to take scrip in lieu of the treaty benefits and to live off the reserves were known as ‘Half-
breeds’, although they may have been of pure Indian blood”. The “distinction between the Indian and the Half-breed” was not only dependent on “the status they elected to assume at the time of the treaty”, but on the ongoing process of adjustment and reassignment of Aboriginal people to legal categories managed by Canada since the Treaties were signed.

II. (3) Development of Treaty paylists, 1850 – 1930

A. The Robinson Treaties of 1850 continued practices followed in earlier Treaties by allocating Indian Reserves and annuities as agreed upon with each Chief or principal man and his “tribe”, not on a per capita basis. Band chiefs exercised considerable authority over the paylists as late as 1873: “a certain Sum was sent to be divided amongst the Band and then the Band had a right to say who were to share in it”. Many of the family heads added to paylists of Bands after Treaty were Métis who had married women related to people already on Band paylists, or who were the children of such marriages. At the time of the Treaty, Canada legislation regarding “Indians” defined its subjects as “Indians or any person inter-married with Indians”. This definition was refined in legislation of 1857 to read “Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands”. The Indian Department received legal advice in 1858 that “it is impossible to contend that the word ‘Indian’ in 13 & 14 Vic c 74 s 3 is restricted in meaning to Indians of pure blood”.

B. In 1862, Canada negotiated with Chiefs of Indian people resident on Manitoulin Island for a surrender for sale of most of the Island, which had been established as a reserve for the Upper Canadian Indian population in 1836. In the terms of this surrender, Canada introduced the concept of allocating Indian Reserves on a per capita basis (100 acres to each head of a family and 50 acres to each single adult, to be selected where possible in adjacent parcels). The interest from the proceeds of land sales was also to be distributed on a per capita basis. Although the implementation of this Treaty was dependent on per
capita distribution, there is no evidence that Canada conducted a systematic inquiry at the time of the Treaty into the basis of entitlement of claimants who came forward for land or interest distributions.

C. One of the key issues at the meetings for the numbered Treaties was the development of complete lists of those entitled to be paid the gratuity and annuity. Unlike the Robinson Treaties, Treaties One and Two did not set a fixed sum to be divided up amongst claimants, but established individual entitlements to a fixed amount, as in the Manitoulin Treaty. In both Treaties, a clause was inserted promising that “Her Majesty’s Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families.” This clause was also inserted in Treaties Three through Six. However, In reviewing the paylists for Treaties One, Two and Three in 1876, Robert Sinclair, an accountant in the Department of the Interior, noted that “the Department is yet very far from having a correct census of even the Indians who come under the operation of the older Treaties”.

D. About one-third of the Treaty Three Indian Reserves surveyed in the nineteenth century were laid out between 1875 and 1878. The acreage of these Reserves corresponds most closely on a per capita basis not to the Treaty paylists, but to population estimates given by Dawson in memoranda of 31 December 1874 and 17 February 1875.

E. In a practical sense, Aboriginal people in the numbered Treaty areas exercised substantial control over who was paid in the first several years after the Treaties were signed. New applicants for the annuity continued to appear at the payments. Annuity payments took place in large gatherings. Although some Aboriginal people were well-known to the Indian Agents and Mounted Policemen responsible for making the payments, the sheer number of people waiting to be paid and the lack of any identification system prevented government officials from inquiring into the background of every person or family that presented themselves for payments. The Indian Branch’s Treaty paymaster at the Treaty Four payments in the summer of 1876, M. G. Dickieson, found classifying Aboriginal
people was not straightforward: “where shall the line be drawn to decide who is or who is not an Indian?”

F. The paylists in all the numbered Treaties were simple documents in the 1870s. Although names may have been entered on a numbered list, family heads were not yet linked to a number that was carried over from year to year. There were no identification cards or tickets for claimants. The names on the paylists were phonetic approximations of Aboriginal names made by people who did not speak their languages, impromptu English translations of these names, or European names, many of which were so common at the time they were almost generic. Spellings, transliterations and translations were not consistent from year to year, and multiple naming was common in some of the Treaty Aboriginal populations. The paylists were not intended as a census of individuals, but as a record of to whom payments were made, and therefore only one person per group or “family” paid was named on the list. Women could appear on a paylist alone or as lone parents, when in fact they may have been married to men outside Treaty, or to men who had more than one wife. The term “family head” applied to paylist names is therefore more of a term of art than an indication of household or family composition. Paying officers did not, in the early years of the numbered Treaties, make an attempt to trace changes in families with notes on births, deaths, marriages or changes in group affiliation.

G. Selecting Indian Reserves in the numbered Treaty areas required taking further action to get the “correct census” referred to in the Treaty documents. Canada’s policy was to avoid the creation of very large Indian Reserves which, in the view of the Department, would aggregate unmanageable numbers of Aboriginal people and remove large unbroken areas from non-Aboriginal settlement, so simply counting the “Indians” was not sufficient. “Bands” of a moderate size with a stable membership had to be created so that per capita Indian Reserve allotments could be calculated and surveyed, a process that continued in Treaty Six until the mid-1880s. These policy requirements, together with a drive to reduce duplicate payments, increase accountability and better control Aboriginal populations, led to revisions in Treaty annuity payment methods and procedures in the early 1880s. Before the annuity payments of 1882, comprehensive instructions were
issued to Indian Agents in numbered Treaty areas with the intent of further standardizing paylist records, tracking, counting and controlling the Treaty population, and tying stable groups to Reserve lands.

H. Taken together, these procedures and documentation practices tended to crystallize the Band lists as they appeared in the early 1880s. Although field administration in the 1880s was not consistent and was driven by practicalities on the ground, paylist analyses in Treaty Six and Treaty Three show much greater stability and continuity of families from year to year after 1882. Band lists, however, should not be construed as comprehensive or exclusive lists of related or associated individuals, or as censuses of Reserve residency. Many people simply “disappeared” or are not traceable through paylist records.

I. In Treaties Four through Seven, and in Treaty Three after 1878, paylists of the closest available date were used to determine a Band’s entitlement to Indian Reserve land. As policies were introduced to keep Indians on their Band’s Reserves, the paylists were also used as a guide to entitlements to residency and land allotments on specific Reserves, as well as other benefits such as rations, access to Department-owned tools and livestock, and schooling. In areas covered by Treaty, the lists became a proxy for recognition of Indian legal status, on issues as disparate as voting rights, access to hunting and fishing, and liquor regulations. In 1951, when the official Indian Register was established, the Treaty paylists formed the basis for the Register, incorporating all the vagaries of record-keeping, implementation of understandings of the Indian Act, administrative decisions, and policy directions of generations past that had affected them for the previous 100 years.
III. The Confederation of British North American colonies, 1867, westward expansion, and “Indian” peoples: the purposes of section 91 (24)

Terms of Reference question:
1. What were the key events in the pre-Confederation period that led to the assignment of jurisdiction over “Indians, and Lands reserved for the Indians” to Parliament? What were the objectives and purposes of this assignment?

The Confederation of British North American colonies that took place in 1867 was the proposed solution to a number of political, economic, financial, and social problems. The United Province of Canada, consisting of Canada West (Upper Canada, or the south-eastern part of present-day Ontario) and Canada East (Lower Canada, or the southern part of present-day Québec) had been established in 1841 in response to political crises and demands for responsible government, including the Upper and Lower Canada Rebellions of 1837. However, by the late 1850s, the system of legislative union and representative equality between the two former colonies was coming under severe strain, and the 1860s were marked by almost complete political and legislative deadlock and unstable minority governments (five in two years). A “confederation” scheme, first proposed by Alexander Tilloch Galt in 1858, gathered proponents in the 1860s as a solution to this political paralysis, economic stagnation and financial weakness, especially as the Imperial Government became increasingly unwilling to support its North American colonies either financially or with services such as military protection. Conferences in Charlottetown and Québec in 1864, with delegates from Canada, Nova Scotia, New Brunswick, Prince Edward Island and (at Québec) Newfoundland, concluded with a set of resolutions on which the constitution for a confederation could be based.¹

Without such a reform, E. P. Taché remarked in introducing the resolutions for debate in the Province of Canada Legislative Council, “we would be forced into the American Union by violence, and if not by violence, would be placed upon an inclined plain which would carry us there insensibly”. Without access to the year-round saltwater ports of the Maritimes, Taché said,

¹ A recent brief summary of the events leading up to Confederation can be found in Janet Ajzenstat’s “Introduction” to Documents on the Confederation of British North America, G. P. Browne, ed. (Montréal and Kingston: McGill-Queen’s University Press, 2009; Carleton Library no. 215), xxix – xlvii [CAP11524].
Canada was “shut up in a prison...for five months of the year in fields of ice”. The improved financial and political stability of a larger confederation, its proponents urged, would allow for the completion of an Intercolonial Railway connecting the Maritime and Canadian Provinces. Galt, in discussing the financial implications of Confederation, also pointed to “the immense extent of territory that stretches away west of Upper Canada” and lamented that “the reason why we have not been able to assume possession of that territory and open it up to the industry of the youth of this country who, in consequence of the want of some such field for the employment of their energies, have been obliged to go off to the States in thousands...is because [the resources] of Canada...have been inadequate for the development of this great district”. George Brown, the Liberal leader whose co-operation with Conservative John A. Macdonald had made the Confederation plan politically possible, appealed to the imagination of the members of the Legislature by exhorting them to “look...at the map of the continent of America” from Newfoundland west, including “British Columbia, the land of golden promise” and the vast Indian territories that lie between – greater in extent than the whole soil of Russia...that will ere long, I trust, be opened up to civilization under the auspices of the British North American Confederation. (Cheers.) Well, sir, the bold scheme in your hands is nothing less than to gather all these countries into one – to organize them all under one government, with the protection of the British flag, and in heartiest sympathy and affection with our fellow-subjects in the land that gave us birth. (Cheers.) Our scheme is to establish a government that will seek to turn the tide of European immigration into the northern half of the American continent...

Most of the “vast Indian territories” to which George Brown referred were within the boundaries of Rupert’s Land, under the administration of the Hudson’s Bay Company. On May 2, 1670, King Charles II of England granted to “the Governor and Company of Adventurers of English tradeing into Hudson Bay” an exclusive right to trade in an area including the watershed of Hudson’s and James Bays in present-day Northern Ontario, Northern Québec, the Canadian Prairies, the Northwest Territories, and Nunavut, to be named Rupert’s Land after one of the

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3 A. T. Galt, 7 February 1865, Confederation Debates, 71 [CAP10859].
4 G. Brown, 8 February 1865, Confederation Debates, 86 [CAP10864].
King’s cousins, and made the Governor and Company and their successors “the true and absolute Lordes and proprietors of the same Territory”.  

Canada’s ambitions to acquire Rupert’s Land had been publicly expressed since at least 1856, when hearings were held by a committee of the British House of Commons on the proposed renewal of the Hudson’s Bay Company’s exclusive licence to trade in its territories. Although Sir George Simpson claimed at these hearings that the North West (Rupert’s Land and the northern lands draining into the Arctic Ocean) was unsuitable for settlement, other evidence was presented favourable to its agricultural and mineral potential, and political pressure in Canada West (Ontario) began to grow in favour of annexing the territory. In 1857, the Imperial Government ruled that the HBC’s exclusive licence was to be allowed to lapse in Rupert’s Land in 1858. In the same year, the Canadian Government sponsored an expedition led by H. Y. Hind and S. J. Dawson to gather information about the country and possible routes between Lake Superior and Red River (present-day Winnipeg), and the Imperial Government sponsored an expedition led by John Palliser to “report on the natural features and general capabilities of the country” between the Missouri and Saskatchewan Rivers and to examine routes across the Rocky Mountains. From this period onward, the annexation of the North West was to be a centrepiece of Canadian confederation proposals.

The resolutions passed by the Canadian Legislature in 1865, carried forward from Charlottetown and Québec, therefore included the following:

10. The North-West Territory, British Columbia and Vancouver [Island] shall be admitted to the Union on such terms and conditions as the Parliament of the Federated Provinces shall deem equitable, and as shall receive the assent of Her Majesty; and in the case of the

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5 [http://www.solon.org/Constitutions/Canada/English/PreConfederation/hbc_charter_1670.html](http://www.solon.org/Constitutions/Canada/English/PreConfederation/hbc_charter_1670.html) (accessed March 2010) [CAP10720].

6 The term “Rupert’s Land” referred to the area described in the Charter of 1670, while the term “North West Territories” was applied to the land to the north that was not included in the Charter. British Columbia and Vancouver Island had also originally been in the HBC domain, but were made Crown colonies in 1858. The term “North West Territories” was also used in a generic sense to describe the land north and west of Canada West and east of British Columbia, as seen in the Confederation resolutions themselves.


Provinces of British Columbia or Vancouver, as shall be agreed to by the Legislature of such Province...

69. The communications with the North-Western Territory, and the improvements required for the development of the trade of the Great West with the seaboard, are regarded by this Conference as subjects of the highest importance to the Federated Provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit. 9

In the resolutions of Charlottetown and Québec, the Canadian federal government also reserved to itself jurisdiction over “Indians, and Lands reserved for the Indians”. This power was integral to the central government’s plan to develop and settle the lands of the North-Western Territory. The Canadian Government, at Confederation, inherited principles and practices of Crown-Aboriginal relations that had been embedded in British North America for well over one hundred years by 1867. These included the recognition of Aboriginal title in the “Indian territories” and protocols recognizing the relationship between Aboriginal nations and the Crown.

The custom of distributing “presents” predated the drafting of written documents to record Crown-Aboriginal alliances. Representatives of the Crown, in accordance with Aboriginal and European customs, gave gifts of food and European goods to Aboriginal groups with whom they wished to foster and maintain relationships, either at formal meetings or at unscheduled trading or travelling encounters. Aboriginal leaders responded in turn with gifts of furs, food, or expressions of friendship such as ceremonial dances or the transfer of objects with special meaning including wampum belts or war implements. 10 One of the largest present distributions in British North America was that made at Manitowaning on Manitoulin Island until 1858.

The earliest treaties between the Crown and Aboriginal peoples in British North America were signed to confirm military alliances or halt hostilities between Britain and Indian nations, and

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9 Address of the Parliament of Canada, 13 March 1865, Confederation Debates, 1027, 1031 [CAP10869].
have been termed “peace and friendship” treaties by later writers. An example of this type of Treaty is the Treaty of 1725 between the British Crown and Indian nations from Massachusetts to Nova Scotia.\textsuperscript{11}

In the mid-eighteenth century, Britain and France, in conjunction with their Indian allies, fought a long series of battles for control of territory in eastern North America, which finally came to an end with the conclusion of the Seven Years’ War and the Treaty of Paris in 1763. Under the terms of this Treaty, France ceded all its territories in North America, with the exception of the islands of St. Pierre and Miquelon and the town of New Orleans, to the British. As part of the process of establishing governance over its consolidated territories in North America, King George III of Britain issued a Royal Proclamation in 1763 setting out the basic structures of government in the territories. Four new British colonies were created by the Proclamation, to be added to the Thirteen Colonies and the Maritime colonies (roughly, present-day Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador) already established along the eastern seaboard of North America. The north, west and south boundaries of one of the new colonies, Quebec, were described as follows in the Proclamation:

\begin{quote}
    a Line drawn from the head of [the River St. John, adjacent to Labrador] through the Lake St. John, to the South end of the Lake Nipissing; from whence the said Line, crossing the River St. Lawrence, and the Lake Champlain, in 45 Degrees of North Latitude, passes along the High Lands which divide the Rivers that empty themselves in the said River St. Lawrence from those which fall into the sea.\textsuperscript{12}
\end{quote}

To regulate relations between colonists and Indian peoples, and avoid Indian wars along the margins of the colonial territories, clauses were included in the Proclamation as follows:

And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved them, or any of them, as their Hunting Grounds – We do


\textsuperscript{12} http://www.solon.org/Constitutions/Canada/English/PreConfederation/rp_1763.html (accessed March 2010) [CAP10726]. The other three colonies established by the Royal Proclamation were East Florida, West Florida and Grenada. A map of these colonies and territories can be found in Miller, Compact, Contract, Covenant [CAP11537], 68.
therefore...declare...that no Governor or Commander in Chief in any of our Colonies...do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the bounds of their respective Governments...or upon any Lands whatever, which not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further...reserve...for the use of the said Indians, all the Lands and Territories not included within the Limits of Our said...new Governments, or within the Limits of the Territory granted to the Hudson’s Bay Company...

And We do further strictly forbid...all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained...13

The Proclamation also provided a process for acquiring “Lands of the Indians”, which was to be done only by representatives of the Crown in a public meeting under instructions from the Crown. After this Proclamation, procedures and policies related to Treaties were developed, refined and standardized over time to the present day. Numerous Treaties for relatively small tracts of land immediately required for roads or settlement were completed in present-day southern Ontario between 1761 and 1850.

The Robinson-Huron and Robinson-Superior Treaties, signed in September of 185014 following resistance by Aboriginal people to mining exploration on the north shores of Lakes Huron and Superior, continued some features of earlier Treaties but differed in key respects. The scale was larger: the Treaties covered a very large area south of the “height of land which separates the territory covered by the charter of the Honorable the Hudson’s Bay Company” from the Treaty lands, to the north shores of Lakes Superior and Huron and east at least as far as Lake Nipissing. Most of this land, unlike Southern Ontario, was not suitable for agricultural settlement, but it contained valuable minerals, timber and water powers. In exchange for (in the words of the Treaties) ceding “all their right, title, and interest to” this territory, the signatories, representing over twenty “bands”, received reservations of land, a one-time payment plus an annual payment in perpetuity, and a guarantee of the “full and free privilege to hunt over the territory now ceded...”13

13 [http://www.solon.org/Constitutions/Canada/English/PreConfederation/rp_1763.html](http://www.solon.org/Constitutions/Canada/English/PreConfederation/rp_1763.html) (accessed March 2010) [CAP10726].

14 Reprinted in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories including the Negotiations on which they were based* (Toronto: Belford, Clarke, Publishers, 1880; reprinted by Fifth House Publishers, Saskatoon, 1991), 302 – 309 [CAP10773, CAP10777].
by them, and to fish in the waters thereof... saving and excepting such portions of the said territory as may from time to time be sold or leased”.

At the time of the Robinson Treaties, Canada legislation regarding “Indians” defined its subjects as “Indians or any person inter-married with Indians”. The Robinson Treaties included people of mixed Aboriginal and non-Aboriginal ancestry (“half breeds”) from established Métis communities such as Sault Ste. Marie and Fort William (Thunder Bay) (see Section IV(1). This definition was refined in legislation of 1857 to read “Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands”. “Indians” included Aboriginal peoples with a variety of lifestyles, such as the agriculturalists of the Six Nations and “Moravians” settled on the Thames River, the hunters of the Algonquins of the Ottawa Valley and Québec, and the mixed fur-trade and fishing economies of Lakes Superior and Huron.

The 1857 Act, entitled An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians, also codified a British and Canadian policy objective to remove the legal protections and distinctions for “Indians” and “Indian lands” from “Indians” deemed to be “of good moral character” and “sufficiently intelligent to be capable of managing [their] own affairs” (sections 3 and 4). This “enfranchisement” or “civilization” policy had been developed in the 1830s, and was to be carried forward in post-Confederation legislation and policy in iterations of the Indian Act and the use of the concept “the Indian mode of life” to assign legal status to Aboriginal peoples.

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16 Province of Canada Statutes, 20 Vic., cap. 26, “An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians”, 10 June 1857, para. 1 [CR009551].
17 See for example the comprehensive 1858 report of Superintendent General Richard Pennefather, which described the “progress” (or lack thereof) of the “civilization policy” in the Province of Canada (Province of Canada Legislative Assembly Journals, 1858, Vol. VI, appendix 21.
18 See for example Province of Canada Statutes, 22 Vic., cap. 9, 1859, “An Act respecting Civilization and Enfranchisement of certain Indians”, whose stated objective was to “encourage the progress of civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty’s
In early 1856, the Imperial Government at London, under heavy financial pressure as a result of the Crimean War, gave notice to the Government of the Province of Canada that it would discontinue issuing presents to Indians in Canada in 1858, although it would continue to accept responsibility for the “guardianship of the Indians” and the management of their property through Canadian officials.\(^\text{19}\) In 1860, the Imperial Government transferred financial and administrative responsibility for Canadian Indians entirely to the Government of the Province of Canada.\(^\text{20}\) In 1862, Canada negotiated for a surrender for sale of most of Manitoulin Island, which had been established as a reserve for the Upper Canadian “Indian” population in 1836.\(^\text{21}\)

These surrenders were notable for introducing the concept of *per capita* allotments of Indian Reserve lands and payments of revenues.

The new Dominion of Canada at Confederation, therefore, was to follow the pattern established in Canada West of negotiating Treaties with Aboriginal people prior to large-scale resource exploitation, infrastructure development, or settlement. The resistance of Aboriginal people to pre-Robinson Treaty mineral exploitation in the 1840s had demonstrated the importance of settling with them prior to development unconnected with the fur trade, and the Canadian experience had been that Treaties were effective in calming relations between Aboriginal and non-Aboriginal people.

The Québec conference resolutions were incorporated into Imperial legislation that came into effect on 1 July 1867. The *British North America Act* drew together the United Province of

other Canadian subjects” [CR-009562]; Canada Statutes, 32 – 33 Vic., Cap. 6, *An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42*, in which the Superintendent General could recommend the issue of Letters Patent to “any Indian who from the degree of civilization to which he has attained...appear to be a safe and suitable person for becoming a proprietor of land” (s. 13) [CR-009601]; this report, section IV(7) through section IV(13); also Miller, *Compact, Contract, Covenant* [CAP11537], 104 – 109; J. L. Tobias, “Protection, Civilization, Assimilation: An Outline History of Canada’s Indian Policy”, *Western Canadian Journal of Anthropology* 6, no. 1, 1976; reprinted in *Sweet Promises: A Reader on Indian-White Relations in Canada*, J. R. Miller, ed. (Toronto: University of Toronto Press, 1991), 127 – 144 [CAP11176].

\(^\text{19}\) Despatch from H. Lebouchere to Sir Edmund Head, no. 42, 21 February 1856, copy in LAC, RG10, Vol. 711, 151-156 [CAP12785].


Canada, Nova Scotia and New Brunswick into a new governing structure, and included a clause (s. 146) providing for Imperial action to admit Newfoundland, Prince Edward Island, British Columbia, and “on Address from the Houses of Parliament of Canada to admit Rupert’s Land and the North-western Territory...into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve”. The clause respecting federal jurisdiction over “Indians, and Lands reserved for the Indians” was included in the *British North America Act* as s. 91(24). One of the first acts of the new Dominion Parliament, in December 1867, was to draft a Joint Address of the House of Commons and the Senate to the Queen requesting that an Order in Council issue authorizing the transfer of Rupert’s Land to Canada. The arguments advanced in the Joint Address for this course of action reflected pre-Confederation discussions, and included

That it would promote the prosperity of the Canadian people, and conduce to the advantage of the whole Empire if the Dominion of Canada...were extended westward to the shores of the Pacific Ocean;

That the colonization of the fertile lands of the Saskatchewan, the Assiniboine, and the Red River districts, the development of the mineral wealth which abounds in the regions of the North West, and the extension of commercial intercourse through the British possessions in America from the Atlantic to the Pacific, are alike dependent upon the establishment of a stable Government for the maintenance of law and order in the North Western Territories;

That the welfare of a sparse and widely-scattered population of British subjects of European origin, already inhabiting these remote and unorganised territories, would be materially enhanced by the formation therein of political institutions...22

As conditions to the transfer of the territory to Canada, the Government of Canada undertook to respect and protect “the legal rights of any corporation, company, or individual within the same”, and also “that upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement, will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”. 23 The central Government was

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22 Canada Senate and House of Commons to the Queen, 16 – 17 December 1867, reprinted in Great Britain (House of Commons), “Canada (Rupert’s Land)”, Return to an Address of the Honourable the House of Commons dated 5 August 1869, Colonial Office, 11 August 1869, 1 – 2 [CAP10876].

23 Canada Senate and House of Commons to the Queen, 16 – 17 December 1867, reprinted in Great Britain (House of Commons), “Canada (Rupert’s Land)”, 2 [CAP10876].
enabled to make and fulfil this undertaking by its jurisdiction over “Indians” in section 91 (24) of the British North America Act.

The new Canadian Government had close at hand an example of Western development that it wished to avoid: the Indian wars and violence of much of the American west, especially the Montana Territory borderlands in the 1860s. Gold strikes in Helena and vicinity in 1862 and 1863 attracted restless frontiersmen and men displaced by the decline in the fur trade. The American Civil War drew whatever small resources the United States had invested in preserving order, and a spike in intertribal warfare spilled over into attacks on isolated non-Aboriginal residents and travellers. These in turn drew increasingly violent reprisals from settlers and miners who no longer needed Aboriginal people as guides and trading partners. Independent traders traded a poisonous concoction inaccurately called “whiskey” to strip Aboriginal populations of buffalo robes, furs and horses, accelerating the demoralization and violence.24

By 1869 the “whiskey” traders were crossing the unsurveyed boundary between British and American territory to work in what is now southern Alberta and Saskatchewan. The Hudson’s Bay Company, never present in these areas, had no capacity to evict these traders or to control the Aboriginal or non-Aboriginal populations in Rupert’s Land. Some positive Government action was clearly required, but a purely military response was beyond Canada’s capacity at this time: U. S. spending on army operations in the “Indian wars” of the west exceeded the entire Canadian federal government budget in the early 1870s.25

25 Miller, Compact, Contract, Covenant [CAP11537], 156. Macdonald referred explicitly to the American example in June of 1871, as the negotiators for the first Treaties were preparing to meet, writing to the Governor of the HBC that “the Indians...are the great difficulty in these newly civilized countries. They are the great difficulty with which the Americans have to contend...The Hudson’s Bay Company have dealt with the Indians in a thoroughly satisfactory way. The policy of Canada is also to deal with the Indians in a satisfactory manner.” Quoted in A. J. Ray, J. R. Miller and F. J. Tough, Bounty and Benevolence: A History of Saskatchewan Treaties (Montréal and Kingston: McGill-Queen’s University Press, 2000) [CAP11396], 60 – 61.
In the winter of 1868 – 1869, a Canadian delegation (Sir George Etienne Cartier and William McDougall) travelled to London to negotiate with the Hudson’s Bay Company and the British Government for the acquisition of Rupert’s Land. The March 1869 Terms of Agreement between the Dominion Government and the Hudson’s Bay Company included a clause stating that “it is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government”. In April of 1869, Colonial Secretary Earl Granville emphasized to the Canadian Government that, with regard to the “Indian tribes”, the Imperial Government expected Canada to “not forget the care which is due to those who must soon be exposed to new dangers, and, in the course of settlement, be dispossessed of the lands which they are used to enjoy as their own, or be confined within unwontedly narrow limits”. A joint resolution of the Canadian Senate and House of Commons in May of 1869 affirmed that “upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes, whose interests and well-being are involved in the transfer; and we authorise and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the...agreement”.

Central government jurisdiction over “Indians”, broadly understood as being persons of “Indian blood” or “intermarried with Indians”, to “extinguish” their “title” in accordance with British North American practice, to protect their “interests and well-being”, and to ensure a peaceful environment for newcomers, was thus essential to the Canadian government’s project of acquiring, developing, and settling the territories west of Ontario and Québec. This western expansion was in turn was a key part of the Confederation package to create a politically, economically and financially stable and viable British North American entity capable of resisting absorption into the United States.

27 Earl Granville to Sir John Young, 10 April 1869, reprinted in Great Britain, “Canada (Rupert’s Land)”, 14 [NO IMAGE].
28 Joint Address of the Senate and the House of Commons (Canada), 29 and 31 May 1869, reprinted in Great Britain, “Canada (Rupert’s Land)”, 8 – 9 [CAP10886].
IV. Exercise of central jurisdiction, legal status and Aboriginal populations, 1850 - 1935

IV (1). The Robinson Treaties, 1850; pre-Confederation Canadian practices and policies regarding “Indian” Treaties and legislation

As mentioned in Section III, the Robinson-Huron and Robinson-Superior Treaties were signed in September of 1850 following resistance by Aboriginal people to mining exploration on the north shores of Lakes Huron and Superior. The Robinson Treaties were concluded after a fourteen-year pause in Treaty-making in present-day Ontario, and were the last cessions of new territory prior to Confederation.\(^29\) Important new elements, such as a perpetual annuity, were introduced in the Robinson Treaties and later incorporated into post-Confederation Treaties. They thus represent a significant precedent and an indication of the “state of the art” of Treaty-making and Treaty implementation at the time of Confederation.

At the time of the Robinson Treaties, Canada legislation regarding “Indians” defined its subjects as “Indians or any person inter-married with Indians”.\(^30\) Robinson knew before he left for the Treaty negotiations that he was going to be meeting with both “Indians” and “half breeds” on the north shore of the Great Lakes. Métis populations both north and south of the Great Lakes had flourished since the eighteenth century, and identifiable Métis residential sites including Sault Ste. Marie, Killarney, St. Joseph’s Island, Penetanguishene, Fort William (present-day Thunder Bay) and Michipicoten were established north of the Lakes by 1850.\(^31\) Métis people had participated with the Indians in the attacks on mining operations on the north shore of Lake Superior that had precipitated government action on the Treaties.\(^32\) A December 1849 report on

\(^{29}\) The Manitoulin Island Treaty of 1862 was technically the surrender of an Indian Reserve.

\(^{30}\) Province of Canada Statutes, 13-14 Vic., cap. 74, 10 August 1850, “An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury”, para. V [CAP10765].


\(^{32}\) Morrison, “Robinson Treaties” [CAP11312], section 5.
preliminary meetings and information-gathering for the Treaties by Alexander Vidal and T. G. Anderson highlighted the potential issues regarding “halfbreeds” in the Treaties:

Another subject [which] may involve a difficulty is that of determining how far halfbreeds are to be regarded as having a claim to share in the remuneration awarded to the Indians and (as they can scarcely be altogether excluded without injustice to some) where and how the distinction should be made between them; many of these are so closely connected with some of the Bands, and being generally better informed, exercised such an influence over them, that it may be found scarcely possible to make a separation, especially as a great number have been already so far recognized as Indians, as to have presents issued to them by the Government at the annual distribution at Manitowaning.\(^{33}\)

John Swanston, the head of the Hudson’s Bay Company post at Michipicoten and himself a “half breed”, argued to Sir George Simpson, the Governor of the Hudson’s Bay Company, prior to the Treaty that some “half breeds” had a better claim to Treaty than some of the “Indians”.\(^{34}\) Some prominent Chiefs of the “Indians” in the future Treaty area were themselves “half breeds”, although they were usually identified as Ojibway Indians.\(^{35}\)

However, the Government’s instructions to Robinson referred only to the “Indians” of Lakes Superior and Huron.\(^{36}\) At the negotiations, as expected, the Métis played a prominent role and some Chiefs pressed Métis claims to be included in the Treaties.\(^{37}\) Robinson elided the issue by leaving the matter in the hands of the Chiefs who were signatory to the Treaties:

As the half-breeds at Sault Ste. Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion. I told them I came to treat with the chiefs who were present, that the money would be paid to them – and their receipt was sufficient for me – that when in their possession they might give as much or as little to that class of claimants as they pleased. To this no one, not even their advisers, could object and I heard no more on the subject.\(^{38}\)

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\(^{33}\) LAC, Vol. 266, 163121 – 163155, Alexander Vidal and T. G. Anderson to Governor-General in Council, 5 December 1849 [CAP12734]; see also transcript in AO, G1027-1-2 (Aemilius Irving Papers), item 26/31/04 [CAP10741].

\(^{34}\) HBCA, D.5/28, fols. 465 – 466, J. Swanston to George Simpson, 21 August 1850 [CAP10768].

\(^{35}\) Chiefs Shinguaconce and Nebanagoching of the Sault Ste. Marie area and Chief Dokis of Lake Nipissing were of mixed ancestry. Morrison, “Robinson Treaties” [CAP11312], section 3.6.1, paragraph 1.


\(^{37}\) W. B. Robinson to R. Bruce, 24 September 1850, reprinted in Morris, Treaties, 18 [CAP10802]; Morrison, “Robinson Treaties” [CAP11312], section 9.1, section 10.4, paragraph 4, section 12.5.3.

\(^{38}\) W. B. Robinson to R. Bruce, 24 September 1850, reprinted in Morris, Treaties, 20 [CAP10802].
Robinson included “Half Breeds” in his estimates of “the number of Indians entitled to the benefit of [the] treaty” in both the Robinson-Huron and Robinson-Superior Treaties. 39

From 1851 to 1875, the Hudson’s Bay Company paid Robinson Treaty annuities to the Lake Superior beneficiaries. The annuity payment lists from the 1850s, preserved in Hudson’s Bay Company records, list “Half Breeds” and “Indians” separately. 40 In 1876, the year after the Indian Affairs Branch of the Canadian Government took over the payment of annuities, “Half Breeds” were still listed separately on one of the largest Band paylists. 41

On Lake Huron, a different method was chosen for the payment of annuities. From 1851 to 1855, Government Indian Superintendents made the payments at Manitowaning on Manitoulin Island, at the same time as the customary Indian present distributions. Both the Treaty annuity payments and the present distributions were made in goods. In 1856, the annuity payments were made in cash, and lists of family heads were prepared at the 1856 payments. These lists, for many Bands, showed large increases from the lists made in 1850. 42 Many of the family heads added to paylists of Bands such as Henvey Inlet and Spanish River were Métis who had married women related to people already on Band paylists, or who were the children of such marriages. 43

At Garden River and Batchewana, near Sault Ste. Marie, “half breeds” accepted by the Bands

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40 HBCA, B.129/d/7 (Michipicoten account books), see for example “Payments to Michipicoten Indians 1852”, p. 2 [CAP10808]; and “Statement of Indian Annuity Money on hand at Michipicoten”, 1 July 1857, p. 37 [CAP10832]. From 1855 onwards, Métis annuity recipients were not always consistently identified as “Half breeds”, although the distinction was preserved in summaries such as the “Statement of Indian Annuity Money” of 1 July 1857. Paylists and summaries of annuities paid continued to show “Half breeds” separately in the 1860s (see for example LAC, RG10, Vol. 290, Michipicoten paylist for 1864 [CR-000320], “Abstract of Annuity Payments at Fort William & Michipicoten Year 1864”, 6 October 1864 [CR-000321]).


42 See Morrison, “Robinson Treaties” [CAP11312], section 12.5.2. For example, at Henvey Inlet, 11 family heads representing 47 people were added to the paylist between 1850 and 1857, and at Spanish River the number of people on the paylist increased from 137 in 1850 to 337 in 1857 (Robinson-Huron treaty annuity paylists, RG10, Vol. 9497, Henvey Inlet [ CAP10780] and Spanish River [CAP10782], 1850, 1857).

43 See Jones, “Dancing with Underwear” [CAP11504], 6 – 7; Morrison, “Robinson Treaties” [CAP11312], section 12.5.3, paragraph 13.
drew annuities, lived on the Reserves and harvested Reserve resources. Although some Métis from Sault Ste. Marie were paid with these Bands in 1850, many more were added to the paylists after 1859, following a surrender for sale of Reserve lands and difficulties in securing land title in Sault Ste. Marie.

In 1857, Canada refined its legislative definition of “Indian” to read “Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands”. In July of 1857, just after this legislation was passed, the Superintendent General of Indian Affairs, Richard Pennefather, wrote to George Ironside, the superintendent responsible for the Robinson-Huron Treaty Bands, to request a list of Indians entitled under the Treaty to share in annuities and reside upon the Reserves, “such list to specify any addition made thereto since [the Treaty], distinguishing the halfbreeds and noting those who claim participation through the Mother”. Many of the Band lists produced by Ironside in response to this request identified persons in this category. There were no apparent immediate consequences for these families and individuals as a result of being labelled in this way, and indeed the Indian Department received legal advice in 1858 that “it is impossible to contend that the word ‘Indian’ in 13 & 14 Vic c 74 s 3 is restricted in meaning to Indians of pure blood”.

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45 Morrison, “Robinson Treaties” [CAP11312], section 12.5.3.
46 Province of Canada Statutes, 20 Vic., cap. 26, “An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians”, 10 June 1857, para. 1 [CAP10827].
48 See for example the Spanish River paylist, RG10, Vol. 9497 [CAP10782].
In May of 1868, in legislation establishing the Department of the Secretary of State and providing for the management of Indian and Ordnance lands, Canada set out the following definition of “Indian”:

15.1 All persons of Indian blood reputed to belong to the particular tribe, band or body of Indians interested in such [Indian] lands or immovable property, and their descendants;

15.2 All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians or an Indian reputed to belong to the particular tribe, band or body of Indians interested in such lands or immovable property, and the descendants of all such persons; and

15.3 All women lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriages, and their descendants.50

In June of 1869, Canada passed a revised Indian Act, amending and supplementing pre-Confederation legislation. Among its provisions were limitations on Indian entitlements based on blood quantum and marriage:

4. In the division among the members of any tribe, band, or body of Indians, of any annuity money, interest money or rents, no person of less than one-fourth Indian blood, born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certification to that effect is given by the Chief or Chiefs of the band or tribe in Council, and sanctioned by the Superintendent General of Indian Affairs...

6. The fifteenth section of the thirty-first Victoria, Chapter forty-two, is amended by adding to it the following proviso:
“Provided always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children of such marriage be considered as Indians within the meaning of this act...”51

In this legislation, the new Canadian federal government took over the crafting of “Indian” legislation from the old Province of Canada and continued to adjust its naming of “Indians” “within the meaning of this Act”. While “all persons of Indian blood reputed to belong to the particular tribe, band or body of Indians”, including those “residing” with and descended on

50 Canada Statutes, 31 Vic., Cap. 42, 1868 [CR-009595].
51 Canada Statutes, 32 – 33 Vic., Cap. 6, An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of the Act 31st Victoria, Chapter 42 [CR-009601].
either side from “such Indians” were considered “Indians” under the 1868 Act, in 1869 persons of less than one-quarter “Indian blood” born after the passage of the 1869 legislation were excluded from sharing in Treaty annuities or other “Indian” revenues if so identified by the Chief and Council, although they were not excluded from “Indian” legal status or Band membership. The role of the Chief and Council in identifying annuity recipients reflected the practice in the Robinson Treaties at that time (see also Section V). However, women marrying “non-Indians” after 1869, and the children of those marriages, ceased to be “Indians” for the purposes of the Indian Act, regardless of their blood quantum, ethnic characteristics, or identity. As women were presumed to be financially and legally dependent on their husbands, this provision was a step in the direction of an economic and dependency-based definition of “Indian” that was to be strongly developed in Indian legislation and policy in the latter part of the nineteenth and the early twentieth centuries.

Canada’s implementation of its purchase of Rupert’s Land was clumsy, to say the least. In June of 1869, Canada obtained the consent of the Hudsons’ Bay Company “to survey lands for settlement before actual transfer, so as not to lose season”, but it did not think to seek consent from or to inform the local population at Red River, the majority of whom were Métis. Already disturbed by news of the impending sale of Rupert’s Land to Canada, transacted without their involvement, many Métis and their allies were concerned and angered by the appearance of Dominion surveyors at Red River in August 1869. The head of the survey expedition, J. S. Dennis, met with some Métis leaders, including Louis-David Riel, to explain his mission and attempt to give assurances that Métis lands would be protected, but surveying came to a stop on October 11 when a party of Métis led by Riel confronted a group of Dennis’ men as they approached the river lots of St. Vital.

52 Sir John Young to Earl Granville, 19 June 1869, reprinted in Great Britain, “Canada (Rupert’s Land)”, 9 [CAP10889].
53 See PAM, H3, 619.2 bj1869D, J. S. Dennis, “Rough Diagram based on Hind’s Map, intended to illustrate Report of this date on Township Surveys – Red River Territory”, 12 February 1870 [CAP10900], for the precise location of the stopping of the surveys. The party had been running base lines for use in later surveys. See also W. S. Morton, Manitoba [CAP11115], 116 – 120; G. F. G. Stanley, The Birth of Western Canada: A History of the Riel Rebellions (Toronto: Longmans, Green and Co. Ltd., 1936, reprinted by University of Toronto Press, Toronto, 1963), 55 – 57 [CAP11081].
Only a few days afterward, however, an announcement appeared in the Red River Settlement newspaper the *Nor’Wester* that Canada had appointed a Lieutenant-Governor of the North West Territory, William McDougall. This action, and a December 1 proclamation by McDougall announcing the transfer of Rupert’s Land to Canada (prior to its legal transfer) led Riel and his allies to proclaim a Provisional Government for the “People of Rupert’s Land”. This Government sent a delegation to Ottawa in March of 1870 to negotiate terms for Rupert’s Land and the North West Territories to enter the Canadian Confederation. This delegation succeeded in establishing many of its principles in a new *Manitoba Act*: first of all, that representatives of the people of Rupert’s Land should be consulted in the process of the transfer to Canada, that some of the territory would enter Confederation as a province under the framework of the *British North America Act*, that the use of both English and French and access to English and French schools would be guaranteed in the new province, plus a guarantee of existing land titles and a land grant of 1,400,000 acres to unmarried children of “half-breed” families in the province:

31. And whereas, it is expedient, towards the extinguishment of the Indian Title to the lands in the Province, to appropriate a portion of such ungranted lands, to the extent of one million four hundred thousand acres thereof, for the benefit of the families of the half-breed residents, it is hereby enacted, that, under regulations to be from time to time made by the Governor General in Council, the Lieutenant-Governor shall select such lots or tracts in such parts of the Province as he may deem expedient, to the extent aforesaid, and divide the same among the children of the half-breed heads of families residing in the Province at the time of the said transfer to Canada, and the same shall be granted to the said children respectively, in such mode and on such conditions as to settlement and otherwise, as the Governor General in Council may from time to time determine.

However, the area over which this regime was to apply, to be known as the Province of Manitoba, was dramatically smaller than the delegates’ first request, comprising only a small square of land including the Red River settlement and extending down to the Canada/U. S. border. Canada also reserved to itself the control of Manitoba’s public lands “for the purposes of

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55 The Provisional Government also requested that “treaties be concluded between Canada and the different Indian tribes of the Province of Assiniboia, by and with the advice of the Local Legislature of the Province”, although this was not incorporated into the *Manitoba Act*. “Third List of Rights”, March 1870, as reprinted in Morton, *Manitoba*, 245 – 247 [CR-009610].

Prime Minister Sir John A. Macdonald explained the “half-breed” land grant in the House of Commons as follows:

There shall, however, out of the lands there, be a reservation for the purpose of extinguishing the Indian title, of 1,200,000 acres [sic]. That land is to be appropriated as a reservation for the purpose of settlement by half-breeds and their children of whatever origin on very much the same principle as lands were appropriated to U. E. Loyalists for purposes of settlement by their children. This reservation, as I have said, is for the purpose of extinguishing the Indian title and all claims upon the lands within the limits of the Province...This Bill contains very few provisions, but not too few for the object to be gained, which is the quiet and peaceable acceptance of the new state of things by the mass of the people there and the speedy settlement of the country by hardy emigrants from all parts of the civilized world...58

Macdonald noted that other provisions in the Bill addressed the claims of non-Aboriginal existing settlers at Red River, leaving the details of how this was to be done “to the experience of the Local Legislature...subject to the sanction of the Governor General”, because of “absence of necessary information” in Ottawa on local landholding customs.59 This “absence of necessary information” may explain why Canada, after specifying the overall quantum to be used for “extinguishing the Indian title and all claims upon the lands within the limits of the Province”, and reserving the right to make regulations on the mode and conditions of the “half-breed” allocation, left the actual selection of lands to the local government.

The leader of the Liberal opposition, Alexander Mackenzie, objected to the allocation of land “for the purpose of extinguishing the Indian title”:

A certain portion to be set aside to settle Indian claims and another portion to settle the Indian claims that the half-breeds have. But these half-breeds were either Indians or not, (hear). They were not looked upon as Indians, some had been to Ottawa, and given evidence, and did not consider themselves Indians. They were regularly settled upon farms, and what the object could be in making some special provision for them that was not made for other inhabitants was more than he [Mackenzie] could well understand.60

Mackenzie’s description of the Métis as “regularly settled upon farms” in Manitoba, perhaps based on his experience of those who had “been to Ottawa, and given evidence”, was a very
incomplete view of the Métis in the North West at this time. The Roman Catholic Archbishop Taché of Saint Boniface wrote of his parishioners in 1868 that

The greatest social crime of our French half-breeds is that they are hunters. All cannot be accused of this fault, if we must thus designate a natural taste, for amongst them there are some who have never done anything else but cultivate the land...Born very often on the prairies, brought up in distant and adventurous excursions, horsemen and ready marksmen from their infancy, it is not very surprising that the Half-breeds are passionately fond of hunting, and prefer it to the quiet, regular and monotonous life of the farmer...

I know Half-breeds, excellent farmers and upright men, at Red River, whose brothers, brought up in the interior of the country, are only hunters differing little from Indians of the lowest stamp. The social condition of a certain number of the English half-breeds, similarly situated to our French Half-breeds, is in no way superior to theirs...61

Taché’s complaint was a continuation of criticisms levelled at the “wandering” and “restless” Métis (both French and British) by priests, non-Aboriginal settlers, and visitors to Red River since the arrival of Lord Selkirk’s Scottish and Irish settlers in 1812.62 Most Métis with houses in the vicinity of Red River63 had been involved in commercial and subsistence hunting for furs, meat, robes and other products since the origins of the population at beginning of the nineteenth century, but the proportion of time they spent away from the settlement increased during the 1860s as the buffalo herds stayed to the west and Red River went through a succession of agricultural failures and outbreaks of contagious disease.64 Red River retained its importance for Métis as a religious, social and educational centre, a refuge for the sick and frail, and a potential supplement to the hunt, but the majority of the Métis population in 1869 – 1870 was not

61 A. Taché, Sketch of the North-West of America, D. R. Cameron, translator (Montréal: John Lovell, 1870), 106 [CAP10898].
63 Including outlying settlements such as those at St. François Xavier on the Assiniboine River, and locations south of the Forks on the Red.
primarily dependent on farming and not “settled” year-round. Some of these Métis, as Taché and others observed, lived with and in a similar way to people identified as “Indians”, and many of them were later to take Treaty.

Sir George Cartier, the Minister of Militia and Defence, attempted to explain, in response to Mackenzie’s objections, that the “reservation” of land for the Métis was

held for the purpose of extinguishing the claims of the half-breeds, which it was desirous not to leave unsettled, as they had been the first settlers, and made the Territory. These lands were not to be dealt with as the Indian reserves, but were to be given to the heads of families to settle their children. The policy, after settling these claims, was to give away the land so as to fill up the country.65

Macdonald then referred to the possibility of an “Indian war” as a reason to send the Canadian militia to Winnipeg, noting that “across the line there were frequent wars, and the Indians were shot down by emigrants going West...there was a fear that emigrants from the American States, accustomed to deal with the Indians as enemies, would be shooting them down and causing great disturbance”.66 Sir Francis Hincks, the Finance Minister, attempted to return the discussion to Mackenzie’s criticisms of the land grant for “Indian title” by describing what he saw as the inevitable development of the province:

...the arrangement was made for the good of all. It was perfectly clear that when the difficulties were settled and the Queen’s authority established that a vast emigration would be pouring into the country, from the four Provinces but principally, there was no doubt, from Ontario, and the original inhabitants would thus be placed in a hopeless minority, and of this, they themselves had no doubt. If this were correct it was perfectly obvious that those who had been occupying the Territory all their lives would naturally take this view: That they were to be entirely swamped and their influence destroyed, that all their lands were to be taken...67

Macdonald then referred to the necessity of settling with the “Indians” of Rupert’s Land as a reason for retaining Dominion control of the public lands in the new province:

...it was impossible to hand over the country, to be legislated for the present inhabitants...the Territory had been purchased for a large sum from the H. B. Co., that settlement had to be made with the Indians, the guardianship of whom was involved, that the land could not be handed over to them, as it was of the greatest importance to the

65 Canada House of Commons Debates, 2 May 1870 [CR-009619], Sir George E. Cartier, 1299.
66 Canada House of Commons Debates, 2 May 1870 [CR-009619], Sir John A. Macdonald, 1300.
67 Canada House of Commons Debates, 2 May 1870 [CR-009619], Sir Francis Hincks, 1307.
Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it had to pass...\(^\text{68}\)

E. B. Wood, the member for Brant in Southern Ontario (home to the Six Nations Indian Reserve), asked for clarification as to whether the “Dominion Government intend[ed] to retain in its own hands the power of dealing with the Indians”, if the Dominion’s reservation of land for the Métis was “placed at the disposal of the Local Government of the Province for the extinction of the Indian titles”.\(^\text{69}\) Macdonald replied,

...the reservation of 1,200,000 acres which it was proposed to place under the control of the Province, was not for the purpose of buying out the full blooded Indians and extinguishing their titles. There were very few such Indians remaining in the Province, but such as there were, they would be distinctly under the guardianship of the Dominion Government. The main representatives of the original tribes were their descendants, the half-breeds, and the best way of dealing with them was the same as United Empire loyalists had been dealt with, namely giving small grants of land for them and their children.\(^\text{70}\)

Macdonald, in this debate, identified two key reasons why the Dominion Government needed to retain control of Manitoba’s public lands. One was that “settlement must be made with the Indians”, as part of the responsibilities Canada had inherited on the purchase of Rupert’s Land, including the “Indian title” of the “representatives of the original tribes...the half-breeds”, for whom a quantity of land was reserved by Canada in the *Manitoba Act*. After negotiations with representatives of the Provisional Government, Macdonald indicated that “the best way of dealing” with the “half-breeds” was to “give small grants of land for them and their children” from the total reservation of 1,400,000 acres, an administrative alternative to allocating communal lands held in trust as Indian Reserves as had been done in the Robinson Treaties. By doing this, Macdonald and his Government hoped that when “the original inhabitants [were] placed in a hopeless minority”, there would be a “quiet and peaceable acceptance of the new state of things by the mass of the people there”. The other reasons to retain Manitoba’s public lands were to effectively finance “the Pacific Railway...by means of the land through which it had to pass” with extensive land grants to the Railway company, and “to give away the land so as to fill up the country”.

\(^{68}\) Canada House of Commons *Debates*, 2 May 1870 [CR-009619], Sir John A. Macdonald, 1309.

\(^{69}\) Canada House of Commons *Debates*, 2 May 1870 [CR-009619], E. B. Wood, 1319.

\(^{70}\) Canada House of Commons *Debates*, 2 May 1870 [CR-009619], Sir John A. Macdonald, 1320.
Riel and the Provisional Government were not to be a part of the official transfer to Canada: he fled the settlement in advance of the summer 1870 invasion of the Canadian militia under Colonel Garnet Wolseley. Wolseley’s volunteers were the vanguard of large-scale immigration, predominantly from Ontario, in 1871 and subsequent years. The number of immigrants in 1875 equalled the entire population of the province in 1870, and many Métis were displaced to points west, north and south. 71

In 1871, negotiations were completed to admit the Province of British Columbia into the Confederation. Canada promised to build a transcontinental railroad connecting Montréal and Vancouver as part of the agreement, which would have the effect not only of strengthening the links between British Columbia and the rest of Canada, but accelerating the rate of settlement and resource development on the Prairies. British Columbia had its own method of dealing with Aboriginal claims, which did not include Treaties in the post-HBC period, but instead relied on the ad hoc allocation of Indian Reserve lands to address local issues between settlers and Indians. British Columbia wished to retain this system, and succeeded in having the following clauses inserted into the Terms of Union approved by an Order in Council of Great Britain dated 16 May 1871:

13. The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government shall be continued by the Dominion Government after the Union.

To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred for the decision of the Secretary of State for the Colonies... 72

71 Morton, Manitoba, 145, 148 - 159, 177 [CAP11115].
72 Canada Statutes, 1872, 35 Vic., p. xcii. The text of the Terms of Union is included in the document set to this report as a schedule to the Order in Council, as a Joint Address of the Canadian Senate and House of Commons and the British Columbia Legislative Council (1 and 5 April 1871) [http://www.solon.org/Constitutions/Canada/English/bctu.html](http://www.solon.org/Constitutions/Canada/English/bctu.html) (accessed February 2011) [CAP10937].
The differences between Canadian Treaty policy and the non-Treaty British Columbia approach were to give rise to many disputes between the Governments, and between Aboriginal people and the British Columbia Government, for well over a hundred years afterwards.⁷³

IV (3). Development of the “Numbered Treaty” system and Treaties One and Two, 1870 – 1871

In 1868, as part of the new Government of Canada’s planning for the acquisition of Rupert’s Land, engineer and surveyor Simon Dawson was sent to explore and report on a road route between present-day Thunder Bay and Red River (Winnipeg). Dawson was familiar with and knowledgeable about the Aboriginal peoples along the route, met with them about the proposed work, and reported on their attitudes and customs in some detail. Dawson recommended that Canada negotiate only for the right of way for the road, and not the whole territory, when it came time to begin construction.⁷⁴

The events of 1869 at Red River accelerated action on the construction of the “Dawson Route” road. In May of 1870, Wemyss Simpson, the Canadian member of Parliament for Algoma (a huge riding comprising most of the area north of Lakes Huron and Superior), was directed by the Canadian government to proceed to Fort Frances “to secure from the Indians the right of way for the troops about to be sent from Fort William [Thunder Bay] to Fort Garry”.⁷⁵ By mid-June, Simpson estimated that about 1,500 men, women and children (who usually gathered at the Rainy River in the spring to fish) had assembled to meet with him. After some days of fruitless negotiations he persuaded “the Indians” to “move off into the country” to replenish their food

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supplies. While “the Indians” were away from Fort Frances, Colonel Wolseley and his troops passed through without any incident with Aboriginal peoples.\textsuperscript{76}

In April and May of 1871, Wemyss Simpson, Simon Dawson and Robert Pither were appointed by Canada as Treaty Commissioners for the territory “from the water shed of Lake Superior to the North West Angle of the Lake of the Woods, + from the American border to the height of land from which the streams flow towards Hudson’s Bay”.\textsuperscript{77} After completing negotiations for this territory, Simpson was to proceed on to Fort Garry (the “Stone Fort” in present-day Winnipeg) as sole Commissioner to negotiate another Treaty with Indians in the Province of Manitoba.\textsuperscript{78} The Crown Treaty negotiators were give a mandate to offer “a certain annual payment”, presents such as suits of clothes, flags, provisions, and a one-time payment, and “reserves” “at certain localities where they fish for Sturgeon” (Rainy River/Rainy Lake/Lake of the Woods) and for farming (in Manitoba).\textsuperscript{79} The “Bands” along the route of the troops in 1870 were also to receive extra provisions at Fort Frances and Lake of the Woods, as they “conducted themselves peaceably, and offered no obstruction to the expeditionary force sent through their country last summer”.\textsuperscript{80}

However, the meetings in June and early July at Fort Frances, although attracting a large number of Saulteaux Indians, broke up after a distribution of presents and payments for the Dawson Route right of way without a Treaty being concluded. The Commissioners paid out three dollars

\textsuperscript{76} LAC, RG10, Vol. 448, file 1869-1870, W. Simpson to J. Howe, 19 August 1870 [CAP10917].
\textsuperscript{77} LAC, RG2, Series A-1-a, Vol. 45, Q/C 25 April 1871 [CAP10928]. Canada believed at this time that this territory was under its administration and control as part of the North West Territories. The Province of Ontario successfully challenged this view in litigation that concluded with a Judicial Committee of the Privy Council decision in 1884.
\textsuperscript{78} J. Howe to W. Simpson, 5 May 1871, reprinted in Canada \textit{Sessional Papers} 1872, no. 22, “Report of the Indian Branch of the Department of the Secretary of State for the Provinces for the year ended 30 June 1871” [CAP10934].
\textsuperscript{80} J. Howe to Governor General in Council, 17 April 1871, reprinted in Canada \textit{Sessional Papers} 1872, no. 22, “Report of the Indian Branch of the Department of the Secretary of State for the Provinces for the year ended 30 June 1871” [CAP10927].
per capita for the right of way, and submitted lists of names of those paid, including a separate list for forty-nine “Halfbreeds of Fort Frances”.  

Simpson then went on to Fort Garry. Adams Archibald, Lieutenant Governor of Manitoba and the North West Territories, and James McKay, a Métis member of the Manitoba Executive Council, met Simpson to assist him. Archibald, awaiting Simpson’s arrival, was impressed with the importance of the upcoming meetings, as he wrote to Joseph Howe, Canadian Secretary of State for the Provinces:

I look upon the proceedings, we are now initiating, as important in their bearing upon our relations to the Indians of the whole continent. In fact, the terms we now agree upon will probably shape the arrangements we shall have to make with all the Indians between the Red River and the Rocky Mountains...  

A few days later, when Archibald, McKay and Simpson started the negotiations at Fort Garry, ...the Indians from all the sections of the country to which the invitation extended were found present to the number of about one thousand. A considerable body of half-breeds and other inhabitants of the country were also present, awaiting with some anxiety to learn what should be announced as the policy of the Government...  

After about a week of discussions, agreement was reached on a Treaty containing three basic elements: land Reserves, in the amount of 160 acres for each family of five or 32 acres per person; a one-time gratuity of three dollars per person plus a perpetual annuity of three dollars per person; and a variety of presents and agricultural necessities such as suits of clothing, domestic animals, ploughs, wagons, and schools. To assist in distributing Treaty benefits, a paragraph in the Treaty provided that “Her Majesty’s Commissioners shall, as soon as possible, after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families”. The Treaty stated that “the Indians” had “been notified...by Her Majesty’s...Commissioner that it is the desire of Her Majesty to open up to settlement and immigration a tract of country...and to obtain the consent thereto of her Indian subjects inhabiting the said tract, and to make a treaty...with them so that there may be peace and good will between them and Her Majesty”. The “Chippewa and

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82 Adams Archibald to J. Howe, 22 July 1871, reprinted in Morris, Treaties, 32 [CAP10943].
83 Adams Archibald to J. Howe, 29 July 1871, reprinted in Morris, Treaties, 33 [CAP10944].
Swampy Cree Tribes of Indians and all other Indians inhabiting the district” were to “cede, release, surrender and yield up to Her Majesty...all the lands included”, by the Treaty. This Treaty, the first of the “numbered Treaties”, was christened Treaty One. The Treaty party then travelled to Manitoba Post on Lake Manitoba and signed a Treaty with similar provisions (except for a reduced range of presents and agricultural goods) covering land outside the Province of Manitoba, to be known as Treaty Two. The party continued on to visit other locations such Portage la Prairie and Rivière Marais to explain the Treaties and make payments. With some adjustments, the basic pattern of these Treaties was to be repeated across Western and Northern Canada until the signing of Treaty Eleven in 1921.

Simpson recognized there were many potential claimants who had not attended the Treaty meetings, as well as claimants who might have had the choice between Métis scrip and Treaty:

During the payment of the several bands, it was found that in some, and most notably in the Indian settlement and Broken Head River Band [in Treaty One], a number of those residing among the Indians, and calling themselves Indians, are in reality half-breeds, and entitled to share in the land grant under the provisions of the Manitoba Act. I was most particular, therefore, in causing it to be explained, generally and to individuals, that any person now electing to be classed with Indians, and receiving the Indian pay and gratuity, would, I believed, thereby forfeit his or her right to another grant as a half-breed; and in all cases where it was known that a man was a half-breed, the matter, as it affected himself and his children, was explained to him, and the choice given him to characterize himself. A very few only decided upon taking their grants as half-breeds. The explanation of this apparent sacrifice is found in the fact that the mass of these persons have lived all their lives on the Indian reserves (so called), and would rather receive such benefits as may accrue to them under the Indian treaty, than wait the realization of any value in their half-breed grant...

The project of settling the “claims of the Indian tribes to compensation for lands required for purposes of settlement...in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines” “upon the transference of the

84 W. Simpson to J. Howe, 3 November 1871, reprinted in Morris, Treaties, 37 – 39 [CAP10965]. See also text of Treaties One and Two reprinted in Morris, Treaties, 313 – 320 [CAP10946, CAP10949].
85 W. Simpson to J. Howe, 3 November 1871, reprinted in Morris, Treaties, 40 – 42 [CAP10965].
86 Although hunting and fishing rights, a key element of later numbered treaties, were not explicitly mentioned in Treaties One and Two, Adams Archibald promised them verbally to people assembled at the Stone Fort; see his speech of 27 July 1871 quoted in Morris, Treaties [CAP12496], 29. A number of other “outside promises” were made verbally at the meetings for Treaties One and Two and led to a revision of the Treaties in 1875.
87 W. Simpson to J. Howe, 3 November 1871, reprinted in Morris, Treaties, 41 [CAP10965].
territories in question to the Canadian Government”, as described in the Joint Address of 1867, was well underway by 1871, despite a few early setbacks. Canada adapted the Robinson and Manitoulin Treaty models to meet the requests and conditions of Prairie Aboriginal populations, and offered some Aboriginal peoples a choice between the revised Treaty package and the “half-breed grant” provided under the *Manitoba Act*.


In 1872, another attempt was made to negotiate a treaty for the area between Treaties One and Two and the Robinson-Superior Treaty. However, Dawson, Simpson and Pither had once again to report in mid-July 1872 that their efforts had failed. Simpson had been instructed by Canada to secure another treaty west of Treaties One and Two after completing Treaty Three, but he did not go, believing that “it would be inadvisable and probably useless to proceed to the Saskatchewan, until Treaties had been concluded with the Bands...at Fort Francis”.

In June of 1873, Canada appointed Alexander Morris, the Lieutenant Governor of Manitoba and the North West Territories, Lindsay Russell, the Assistant Surveyor-General of Dominion Lands and Dominion Lands Agent in Manitoba, and J. A. N. Provencher, the Indian Agent in Winnipeg, as Treaty Commissioners for Treaty Three. Although the Commissioners were authorized to increase the amount of gratuity, annuity and Reserve land offered in order to secure a Treaty, they were urged by the Minister of the Interior to remain consistent with Treaties One and Two, so as not to “occasion dissatisfaction” among the signatories to those Treaties or to “raise the expectations of the Indians in the far West with whom Treaties have yet to be made”.

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89 LAC, RG10, Vol. 3576, file 378, W. Spragge, “Memo relative to the intended Treaties with the Indians of the Saskatchewan”, 16 October 1872 [CAP10983].
91 LAC, RG10, Vol. 1904, file 2235, Minister of the Interior to A. Morris, 5 August 1873 [CAP11010]; LAC, RG2, Series A-1-a, Canada Order in Council 962, 6 August 1873 [CAP11017]; see also telegrams of A. Morris to A. Campbell, 19 September 1873 [CAP11021], and Dennis to A. Morris, 20 September 1873 [CAP11022], reprinted in
The Treaty meetings, held at North West Angle on Lake of the Woods in late September and early October 1873, were attended by Saulteaux or Ojibwa Indian people from Rainy Lake (Fort Frances), Rainy River, Lake of the Woods, the Winnipeg and English River systems and Lac la Croix; Métis people from Rainy Lake, Lake of the Woods and Red River; and the Treaty Commissioners accompanied by a detachment of soldiers. The question of who was to be included in the Treaty was raised late in the negotiations. According to Dawson, the leading chief Mawedopenais from Rainy River asked Morris “not to neglect some of our children who are scattered. We wish our children back again and we want you to count them with us”.

Morris replied that “if their children live here they will be counted in”. Mawedopenais asked, “in future I may see a person that may be in want, can I help him? I would not like that one of my children could not eat of the same food with me”; to which Morris stated that he was “dealing with British and not with American Indians”, but that “any children of British Indians who come in within 2 years will be received”. Mawedopenais then asked about “our half breed children”, to which Morris replied that he would refer the issue to the Government.

Joseph and August Nolin, Red River Métis who interpreted for the Ojibwa at the Treaty negotiations and produced a written description of the Treaty terms, recorded these promises as “If their children that are scattered come inside of two years and settle with you they will have

“Book of Documents”. Morris later noted that Treaty Three had been important not only in itself but as a pattern for subsequent numbered Treaties, as the Indian population further west rapidly became familiar with its terms (Morris, Treaties [CAP12496], 45). See also LAC, RG2, Series A-1-a, Canada Order in Council 821, 16 October 1872 [CAP10988]; LAC, RG2, Series A-1-a, W. Spragge to Governor General in Council, 31 May 1873 [CAP10991], and Canada Order in Council 705, 16 June 1873 [CAP11002]; W. Spragge to Governor General in Council, 5 June 1873 [CAP10996], and Canada Order in Council 707, 16 June 1873 [CAP11004].


93 LAC, MG29, C67 (diary of S. J. Dawson), 3 October 1873, 31 [CAP11028].

94 LAC, MG29, C67, 3 October 1873, 31 – 32 [CAP11028].

95 LAC, MG29, C67, 3 October 1873, 31 – 32 [CAP11028].

96 LAC, MG29, C67, 3 October 1873, 32 [CAP11028]. See also PAM, MG12, B1 (Lieutenant Governor’s collection), no. 675, Maw ne do pe nes, Chief, Fort Frances, to Lieutenant Governor Morris, 22 March 1873, in which he informed Morris that “there are fifteen families of half breeds living on Rainy River I have spoken to all of them and they are anxious [sic] to be (if possible) included in the Treaty. The families vary from three to six children each, and have been brought up hereabouts” [CAP10990].
the same privilege as you have”, and that Morris was to recommend to Canada that “Half Breeds that are living with you, to have the same privileges as you have”.97

A shorthand reporter attending the negotiations recorded the exchange regarding “Half Breed” Treaty beneficiaries as follows:

CHIEF—I should not feel happy if I was not to mess with some of my children that are around me – those children that we call the Half-breed – those that have been born of our women of Indian blood. We wish that they should be counted with us, and have their share of what you have promised. We wish you to accept our demands. It is the Half-breeds that are actually living amongst us – those that are married to our women.

GOVERNOR—I am sent here to treat with the Indians. In Red River, where I came from, and where there is a great body of Half-breeds, they must be either white or Indian. If Indians, they get treaty money; if the Half-breeds call themselves white, they get land. All I can do is to refer the matter to the Government at Ottawa, and to recommend what you wish to be granted.

CHIEF—I hope you will not drop the question; we have understood you to say that you came here as a friend, and represented your charitableness, and we depend upon your kindness. You must remember that our hearts and our brains are like paper; we never forget... 98

Morris was not quite accurate in his characterization of the situation at Red River. “Half-breeds” had been legislated for in the land grant referred to in the Manitoba Act. The arrangement made with them was different from both that made with original non-Aboriginal settlers, who were to be confirmed in the lands they occupied up to a certain maximum, and the arrangements made with “Indians” under Treaty. A “Half-breed” had to call himself a “Half-breed” in order to qualify for land under the Manitoba Act.

At the conclusion of the negotiations, according to the shorthand reporter, a Chief emphasized to Morris that “I wish you to understand you owe the treaty much to the Half-breeds”. Morris replied, “I know it. I sent some of them to talk with you, and I am proud that all the Half-breeds from Manitoba, who are here, gave their Governor their cordial support”.99

98 Notes of shorthand reporter reprinted in the Manitoban newspaper, 18 October 1873, reprinted in Morris, Treaties, 68 – 69 [CAP11047].
99 Notes of shorthand reporter reprinted in the Manitoban newspaper, 18 October 1873, reprinted in Morris, Treaties, 74 [CAP11047]. As well as interpreting for the parties, several Métis were invited into the Ojibwe leadership’s meetings to offer their advice and assistance. These Métis were from Red River, but at least one
In his report to Canada on the Treaty and the negotiations, Morris stated that he had promised that “any bona fide British Indians of the class they mentioned [“their children...married in the States”] who should within two years be found resident on British soil would be recognized”, and that he would recommend the “ten to twenty families of half-breeds who were recognized as Indians, and lived with them” “be permitted the option to taking either status as Indians or whites, but that they could not take both”. In concluding his report, Morris noted “I have much pleasure in bearing testimony to the hearty co-operation and efficient aid the Commissioners received from the Métis who were present at the Angle, and who, with one accord, whether of French or English origin, used the influence which their relationships to the Indians gave them, to impress them with the necessity of their entering into the treaty”.  

The terms of the written Treaty included a Reserve land allotment not exceeding one square mile (640 acres) for each family of five, “or in that proportion for larger or smaller families”; a “present” of twelve dollars for “each man, woman and child belonging to the bands here represented, in extinguishment of all claims heretofore preferred”; an annuity “to each Indian person the sum of five dollars per head yearly” in perpetuity; a census clause similar to that in Treaties One and Two; and other items such as allotments of agricultural equipment and livestock for each family or group of families. Other clauses addressed issues such as hunting and fishing rights, schools, and salaries for Chiefs and councillors. The written Treaty did not make reference to a two-year period for adding absentees to the paylists, or any special provisions for “half breeds”.

family, the Nolins, had worked in the Rainy Lake district since at least 1822 (HBCA, B.105/a/8, Lac la Pluie post journal 1822 – 1823) [CAP10738]. Other Métis, such as George McPherson of the Hudson’s Bay Company post on Lake of the Woods and Nicholas Chastelain of Rainy Lake, were also very influential among the Ojibwe (see for example LAC, RG10, Vol. 3830, file 62423, E. McColl to L. Vankoughnet, 18 November 1889 [CAP11073]). The shorthand reporter present at the Treaty meetings observed that many Treaty beneficiaries did not spend their money right away, but left it with “white men and Half-breeds on whose honor they could depend” to collect and spend later (Morris, Treaties, 75 – 76) [CAP11047].

100 A. Morris to [Minister of the Interior], 14 October 1873, reprinted in Annual Report of the Department of the Interior, Indian Affairs Branch, Canada Sessional Papers 1875, no. 8, 17 [CAP11043].
101 A. Morris to [Minister of the Interior], 14 October 1873, reprinted in Annual Report of the Department of the Interior, Indian Affairs Branch, Canada Sessional Papers 1875, no. 8, 18 [CAP11043].
102 Written Treaty reprinted in Morris, Treaties, 320 – 324 [CAP11024].
The Order in Council approving Treaty Three, issued on 31 October 1873,\(^\text{103}\) was one of the last acts of the Liberal-Conservative government under Sir John A. Macdonald. On 5 November, the Government fell, as a result of the allegations of the “Pacific Scandal” regarding arrangements for construction of the transcontinental railroad to British Columbia. Early in 1874, prior to the critical date of the spring opening of the waterways for navigation, the Treaty Three Chiefs, S. J. Dawson, and Morris all pressed the new Government to implement the new Treaty quickly. On 4 February 1874, Morris called Minister of the Interior David Laird’s attention to “the necessity of making arrangements for carrying out the provisions of the North West Angle Treaty”. He identified the selection of Indian Reserves and the Métis at Fort Frances as two priority issues:

A There are a few families of Half Breeds who live with the Indians and have adopted their habits chiefly about Fort Frances. They were very desirous that these should be included in the Bands and treated as Indians. They said “it was the Half Breeds that are actually among us, those that are married to our women” that they desired to include. I would like the point to be decided.\(^\text{104}\)

Shortly afterward, Dawson wrote to Laird requesting early action on the selection and survey of Indian Reserves, and the “taking of an accurate census...necessary seeing that the payments are to be on the basis of a certain sum per head”.\(^\text{105}\) He also referred to the “few half breed families living among the Saulteaux [who] certainly expressed a desire to be treated as Indians”, but proposed that some time be allowed to pass for them to fully consider the legal implications (i.e. becoming legal minors) of their decision.\(^\text{106}\) On 19 March, twenty Chiefs assembled at Lake of the Woods petitioned Morris requesting agricultural equipment so they could locate their farming lands, and reminded him that “You required Halfbreeds to make the Treaty and they helped you – well today we want you to help us”.\(^\text{107}\) The petition, which is written in French, may have been committed to paper by one of the French-speaking Métis with whom the Ojibway Chiefs were on good terms. In the letter forwarding this petition to Laird, Morris noted that he had received a letter from Mawedopenais informing him that “there are fifteen families of Half

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\(^{103}\) LAC, RG10, Vol. 1918, file 2790B, Canada Order in Council 483C, 31 October 1873 [CAP11062]; also LAC, RG2, Series A-1-a, no. 483C, 31 October 1873 [CAP11062].

\(^{104}\) A. Morris to Minister of the Interior, 4 February 1874, reprinted in “Book of Documents”, 250 [CAP11066]; also PAM, MG12, B1, LB “G” (Lieutenant Governor), no. 124 [CR-003319].


\(^{107}\) LAC, RG10, Vol. 1928, file 3277, Note-na-how-aw and nineteen other Chiefs to A. Morris, 19 March 1874; also reprinted in “Book of Documents”, 255 [CAP12124].
Breeds, residing on Rainy River, who are anxious to be included in the Treaty, if possible, according to the terms of my despatch of Oct 12th 1873.\textsuperscript{108}

On 21 April 1874, Laird responded to Morris’ February query about the Métis of Treaty Three by forwarding a copy of a letter written by his Deputy Minister, E. A. Meredith, to J. A. N. Provencher on the same day:\textsuperscript{109}

There is reason to believe that many of the half-breeds in Manitoba, especially in the Parish of St Peters, have identified themselves with the Indians and have taken the Treaty money as such, and that elsewhere half-breeds have claimed the right to receive money as Indians.

It is probable that in doing this the half-breeds were ignorant that they thereby forfeited their own and childrens’ claim to consideration in the allotment of lands to the Half-breeds under the Manitoba Act, a claim probably of much more value to them than any annuities or presents they would receive by declaring themselves Indians.

It will therefore be well that you should take the opportunity, when paying the Indians their next Treaty-money, of fully explaining to any half-breeds who have heretofore received such money or who may then claim to do so for the first time, that they must at elect whether they shall be treated as Half-breeds or Indians and that they cannot at the same time share in the allotment of lands as Half-breeds and in the payments and presents made to the Indians, and that, in future any half-breed who receives any annuity or presents as an Indian thereby disqualifies himself and his children from receiving the allotment of lands as a half-breed.

It should be stated at the said time that half-breeds who have heretofore received annuities and presents as members of an Indian Band, not being aware that they thereby forfeited their claim to Allotments of land as half-breeds, may, if they see fit, now elect to be struck off the strength of such band, and such half-breeds shall thenceforth be treated as other half-breeds who have never received Indian money, and be similarly entitled to share in the allotment of lands under the Manitoba Act.

It is further represented that outside of Manitoba, especially about Fort Frances, there are a few families of half-breeds who have married Indian women and adopted the habits of Indians and who desire to be included in the band and treated as Indians.

There can be no objection to allowing these half-breeds to elect whether they shall be treated as half-breeds or Indians, but it should be explained to them that in the event of their electing to be considered Indians, altho’ they will not thereby forfeit a claim to an allotment of land like the half-breeds of Manitoba, they would render themselves minors.


\textsuperscript{109} PAM, MG12, B1 (Lieutenant Governor’s Collection), no. 711, D. Laird to A. Morris, 21 April 1874 [CR-003240].
and be unable to acquire or alienate property except with the consent of the Band and the Government, and would also lose the right of voting at elections.\textsuperscript{110}

Morris was also concerned about the territory west of Treaties One and Two, and the continuation of a consistent programme of Treaty negotiations across the West.\textsuperscript{111} Intertribal conflict, shrinking buffalo herds, the appearance of settlers and surveyors, and the incursions of American whiskey traders into the border areas west of Red River were causing increasing disturbances in the population. The new Liberal Government, while taking a more cautious approach to railway construction and the promotion of settlement in the West than the Conservatives, adhered to the previous Government’s objectives for nation-building, and increased non-Aboriginal occupation and development appeared inevitable. In June of 1873, American whiskey traders killed a number of Assiniboine camped in the Cypress Hills, prompting the Conservative Government to expedite plans for a paramilitary police force to bring order to the plains.\textsuperscript{112} During the winter, Morris shared Fort Garry with this police force, christened the North West Mounted Police, as they waited for better weather to proceed. However, in a letter of 4 December 1873 to David Laird, Morris emphasized that sending the police was not sufficient: “Treaties should be made”.\textsuperscript{113} Morris was also concerned that the Métis, especially around Fort Qu’Appelle, were disturbed over land and governance issues, still sympathetic to Louis Riel (most of them were Red River Métis), and very influential among the Indians.\textsuperscript{114} As the Métis had been instrumental in the success of the negotiations for Treaty Three, Morris believed they could undermine negotiations for treaties further west.\textsuperscript{115}

\textsuperscript{110} PAM, MG12, B1 (Lieutenant Governor’s Collection), no. 711, E. A. Meredith to [J. A. N. Provencher], 21 April 1874 [CR-007863]; see also LAC, RG10, Vol. 1922, file 2970, E. A. Meredith to J. A. N. Provencher, 21 April 1874 [CR-003940].
\textsuperscript{111} See for example PAM, MG12, B1 (Lieutenant-Governor’s Collection), letterbook 10 March 1873 – 8 June 1874, A. Morris to Minister of the Interior, 2 August 1873, 34 – 36, 68 – 69 [CAP12113].
\textsuperscript{112} For more information on conditions in the North West at this time, see (for example) PAM, MG12, B1 (Lieutenant Governor’s collection) Edward McKay, “The state of affairs in the North-West”, attached to letter Pascal Breland to A. Morris, 18 May 1873 [CAP12108]; Walter Hildebrandt and Brian Hubner, The Cypress Hills: An Island by Itself (Saskatoon: Purich Publishing, 2007 [NO IMAGE]), 65 – 73.
\textsuperscript{113} PAM, MG12, B1, (Lieutenant-Governor’s Collection), letterbook 10 March 1873 – 8 June 1874, A. Morris to Minister of the Interior, 4 December 1873, 105 [CAP12120].
\textsuperscript{114} PAM, MG12, B1, (Lieutenant-Governor’s Collection), letterbook 10 March 1873 – 8 June 1874, A. Morris to Minister of the Interior, 23 October 1873, 89 [CAP12118].
\textsuperscript{115} See also Ray, Miller and Tough, Bounty and Benevolence [CAP11396], 99 – 102.
In July, the Cabinet passed Orders in Council approving both the appointment of Commissioners (Dawson and Pither) to select Indian Reserves in Treaty Three, and the appointment of Commissioners to negotiate Treaty Four. The Order in Council authorizing the negotiation of Treaty Four referred to the entry of the Mounted Police, the operations of the Boundary Commission surveying the 49th parallel, and the “steps which are being taken in connection with the proposed Telegraph Line from Fort Garry westward” as being “calculated to further unsettle and excite the Indian mind, already in a disturbed condition”. The sole instruction in the Order in Council regarding the content of the Treaty was that “in the event of permanent annuities being granted to the Tribes with whom the Treaties may be made, such annuities should not be fixed at a higher rate than those sanctioned by the Treaties already concluded with the Indians of the North West”. Morris was appointed a Treaty Commissioner, together with William Christie, the former Hudson’s Bay Company chief trader at Fort Edmonton, and David Laird, the Minister of the Interior.

At the end of August, Morris, Christie and Laird set out to meet the Aboriginal people of the Lac Qu’Appelle region. They were met at Lac Qu’Appelle by a large gathering of Cree, Saulteaux and Métis people from Fort Pelly and the Qu’Appelle district. At the beginning of the negotiations, Morris was reproved by one of the leading Saulteaux chiefs at the negotiations for “being slow in taking the hand of a Half-breed” when “you see sitting out there a mixture of Half-breeds, Crees, Saulteaux, and Stonies [Assiniboines], all are one”. Morris had to explain:

We have here Crees, Saulteaux, Assiniboines and other Indians, they are all one, and we have another people, the Half-breeds, they are of your blood and my blood. The Queen cares for them, one of them is here an officer with a Queen’s coat on his back [Pascal Brelan]. At the Lake of the Woods last winter every Half-Breed who was there with me was helping me, and I was proud of it, and glad to take the word back to the Queen, and her servants, and you may rest easy, you may leave the Half-breeds in the hands of the Queen who will deal generously and justly with them. There was a Half-breed came forward to the [Treaty Commissioners’] table. He was only one of many here. I simply wanted to know whether he was authorized by you to take any part in the Council, as it is the Indians alone we are here to meet. He told me you wanted him here as a witness. We have plenty of witnesses here, but when I heard that, I welcomed him as I had done you, and shook hands with him, and he ought to have told you that...

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116 LAC, RG2, Series A-1-a, Canada Order in Council 841, 8 July 1874 [CAP12133 NEW NUMBER].
117 LAC, RG2, Series A-1-a, Canada Order in Council 944, 23 July 1874 [CAP12144].
118 Notes of shorthand reporter (M. G. Dickieson, secretary to the Treaty Commission), 12 September 1874, reprinted in Morris, Treaties, 98 – 99 [CAP12149].
While the Treaty meetings were underway, “the half-breeds of the Lakes Qu’Appelle and environs...in their name and in the name of all their brethren scattered all over the prairies” petitioned Morris to “remember them in the various arrangements that the Government may make with the Indians”, to grant them lands along the Qu’Appelle River, “the right of fishing in all lakes of the above mentioned river”, and “the right of hunting freely in the prairies west and south-west of the Lakes Qu’Appelle, without being arbitrarily hindered by the Indians”, and to establish “an authority composed of persons who have the confidence of the people of the place, and charged to manage the affairs of the country”, including acceptable regulations on buffalo hunting.¹¹⁹ Morris responded in writing:

With regard to your petition to keep the lands that you have taken along the river, I shall present it before the Privy Council of Canada, in Ottawa, and I have communicated your wishes to the Minister of the Interior, who is here with me.

I can, however, assure you that I am confident the Government will, with great pleasure, respect the rights of the half-breeds to the land which they have claimed and cultivated, because it has always been the custom to regard the rights of actual possessors of the lands...

With regard to the chase, you have the same rights that the other subjects of the Queen have, and I shall be happy to put before the North-West Council, charged, as that Council is, with the government of these territories, your views on the chase, so as to see if it be necessary to make some good laws and provision for the regulation of buffalo hunting. This subject is of great importance to the half-breeds, the Indians and the whole country...¹²⁰

After discussions on a number of issues, in Morris’ words,

The Chiefs then agreed to accept the terms offered and to sign the treaty, having first asked that the Half-breeds should be allowed to hunt, and having been assured that the population in the North-West would be treated fairly and justly, the treaty was signed by the Commissioners and the Chiefs...

¹¹⁹ “The half-breeds of Lake Qu’Appelle”, Augustin Bralant and others to Alexander Morris, 11 September 1874, reprinted in Canada Sessional Papers, 1885, no. 116(e), 7 [CAP12159].
¹²⁰ Alexander Morris to Augustine Brabant and others, 16 September 1874, reprinted in Canada Sessional Papers, 1885, no. 116(e), 8 [CAP12160].
...I also add, that the Half-breed population were I believe generally desirous of seeing the Treaty concluded and used the influence of their connection with the Indians in its favor... 121

The provisions of Treaty Four were similar to those in Treaty Three. A new clause was added to the Treaty pattern, adding “all...rights, titles and privileges to all other lands wheresoever situated within Her Majesty’s North-West Territories” to the description of the lands included in the Treaty. This clause was intended to address overlapping Aboriginal claims to the Cypress Hills and to allow some Indian people who had been missed in Treaties One and Two to come in to Treaty Four, and also generally to avoid issues of future territorial claims from Treaty signatories. 122

Meanwhile, in the Treaty Three area, S. J. Dawson and Robert Pither were travelling through the region meeting with as many Aboriginal representatives as possible about the size and location of their Reserves. Dawson wired Laird on 9 October 1874 that the

Halfbreeds of Rainy River numbering about one hundred desire to join the Indians and have elected a Chief. Are they to be treated as an Indian band in the matter of reserves 123

He received the response that “there was no objection to allowing for families of halfbreeds outside of Manitoba who have married Indian women and adopted Indian habits to choose whether they shall be treated as halfbreeds or Indians”. 124 Amendments to the Indian Act passed in May of 1874 had stipulated that the definition of “Indian” in the 1868 and 1869 Acts was to continue:

8. An Indian is hereby defined to be a person within the definition contained in the fifteenth section of the thirty-first Victoria, chapter forty-two, as amended by the sixth

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121 Morris to Secretary of State, 17 October 1874, reprinted in Morris, Treaties, 83 [CAP12170]; also notes of shorthand reporter (M. G. Dickieson, secretary to the Treaty Commission), 15 September 1874, reprinted in Morris, Treaties, 123 [CAP12149]. James McKay, influential at the negotiations for Treaty Three, also assisted the Commissioners in winning over the future signatories to Treaty Four. Métis interpreters and emissaries also played an important role in Treaties Six and Seven. See Miller, Compact, Contract, Covenant [CAP11537], 161 – 162.
122 See Morris to Secretary of State, 17 October 1874, reprinted in Morris, Treaties, 84 [CAP12170]; and LAC, RG18, Series A-1, Vol. 5, file 213-75, E. A. Meredith to Minister of Justice, 23 April 1875 [CAP12207].
123 LAC, RG10, Vol. 3604, file 2790, S. J. Dawson to Minister of the Interior, 9 October 1874 [CAP12173].
124 LAC, RG10, Vol. 3604, file 2790, telegram to S. J. Dawson, 9 October 1874 [CAP12174]; see also PAM, MG12, B1, no. 711, E. A. Meredith to J. A. N. Provencher, 21 April 1874 [CR-007863].
section of the thirty-second and thirty-third Victoria, chapter six, and who shall participate in the annuities and interest moneys and rents of any tribe, band or body of Indians.125

Legislation assented to on the same day provided for “extinguishing the Indian title” of “half-breed heads of families residing” in Manitoba by declaring them to be entitled to a land grant of 160 acres or scrip for the same amount, “at the discretion of and under regulations to be made by the Governor General in Council”.126 The children of these “half-breed heads of families” had been entitled to 240 acres of land under the authority of the Manitoba Act.

In a report of 31 December 1874 on priority areas for the Treaty Three Reserve surveys, Dawson noted that lot surveys were required soon at Fort Frances, “to prevent confusion...among the squatters who are becoming numerous at that place”.127 Dawson submitted a comprehensive memorandum on the Reserves selected by Treaty Three chiefs on 17 February 1875. In this memorandum, Dawson observed that “the Half-breeds in the Rainy River District, numbering about 90 persons, have decided on joining the Indians. They will require a Reserve laid out for them next summer”.128 This memorandum was attached to a submission by David Laird to the Privy Council that was endorsed by an Order in Council dated 27 February 1875.129

In July of 1875, Provencher and Morris received further instructions from the Department of Interior on the admission of Métis to Treaty:

1. The practice inaugurated in Manitoba before the passing of the Act 37 Vic. Cap. 21, of paying annuity money to the Wife and children of a White man or of a half-breed not in receipt of annuity money, is contrary to 31 Vic. Cap. 42 Sec. 15, as amended by 32 + 33 Vic. Cap 6, Sec. 6, and should therefore be discontinued.

2. Any half-breed who did not withdraw from the Treaty when the opportunity was offered by the Indian Commissioner [Provencher] at the time of the payment of the annuity money last year, should not now be allowed to withdraw from the Treaty; and his Wife and children, of course, are entitled to draw their annuities with him, or by themselves should

125 Canada Statutes, An Act to amend certain laws respecting Indians, and to extend certain laws related to matters connected with Indians to the Provinces of Manitoba and British Columbia, 37 Vict., Cap. 21, 1874 [CA-000117].
126 Canada Statutes, An Act respecting the appropriation of certain Dominion Lands in Manitoba, 37 Vict., Cap. 20, 1874 [CR-009705].
127 LAC, RG10, Vol. 1918, file 2790D, S. J. Dawson to E. A. Meredith, 31 December 1874 [CAP12175].
129 LAC, RG2, Series A-1-a, no. 164, 27 February 1875, David Laird to Privy Council, 11 February 1875 [CAP12177].
he decline to accept his share, providing he does not become wholly separated from the Band.

3. Every half-breed who withdrew from the Treaty before or at the time of the payment of the annuity money in 1874 has, (unless otherwise disqualified) been allowed to participate in the distribution of half-breed lands, consequently [sic] his Wife and children are entitled to the same privilege, and should not therefore receive annuity money, nor be allowed...any share in the Indian Reserve; but any land which he held by occupation before the Treaty either inside or outside of the bounds of the Reserve, he will be entitled to deal with as if he were a white man settled on such land.

4. ...no Indian has the right of disposing of a property within the bounds of the Reserve even though he held it before the negotiation of the Treaty...

Provencher, however, reported to Laird on 20 July that he had tried to follow the instructions given on 21 April 1874, with unexpected consequences:

I have last summer given notice to all the Half breeds, having their names on the Indian pay lists, that they might then be struck off the strength of such Bands, and be thenceforth treated as other Halfbreeds, who had never received any Indian money, and would be similarly entitled to share in the allotment of land under the Manitoba Act.

In conformity with these instructions, many halfbreeds have availed themselves of the occasion offered to them of resuming their rights to a share of the Halfbreed grant, by formally giving me notice of their intention of never receiving any annuity money in the future.

I am now informed that the Commissioners appointed to investigate the claims of the Halfbreeds have notified these parties that the fact of having once received Indian money, or presents, deprives them from sharing in the Halfbreed Grants...

The Department responded by writing to the Commissioner allocating Métis land under the *Manitoba Act* to clarify:

...the fact of a Half-Breed having received treaty money is not to be allowed to disqualify him from sharing in the Half Breed Land Grant, provided that he was struck off the Indian pay list, at or previous to the time of the payment of the annuity money last year.

Those Half-Breeds, however, who accepted the treaty money at the time of payment last year (even though they may have, some weeks afterward, returned such money) are

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130 PAM, MG12, B1 (Lieutenant Governor), no. 1049, E. A. Meredith to J. A. N. Provencher, 16 July 1875 [CR-003244].
disqualified, no authority having been given to the Commissioner to receive it from them...132

In September 1875, J. S. Dennis, Surveyor General of Dominion Lands (who was in the area laying out Indian Reserves) met with Nicholas Chatelaine at Fort Frances, “who informed [me] that he had been appointed Chief of the Half Breeds [of] Rainy Lake and River”. Chatelaine, Dennis explained in his report to David Laird, “had expressed...a desire to come into the [Treaty] which was made in...1873...and to be considered as Indians”. Dennis told Chatelaine that “it would be necessary [for] the Half Breeds to enter in[to] a formal writing respecting their joining in the Treaty”, and read over the Treaty to him. After meeting with the “principal men of the Half Breed families” (“very respectable-looking men”, noted Dennis), Chatelaine returned the following day and expressed his general agreement with the Treaty. “Two of the Chiefs” of Treaty Three were also present at Dennis’ meeting with Chatelaine and his “principal men”. After promising some extra Treaty money for ammunition and twine for the Métis, Dennis “consented to enter into the agreement...subject, of course, to the approval of the Government”.133

The “Adhesion by Halfbreeds of Rainy River and Rainy Lake” was signed by Nicholas Chatelaine on behalf of the Métis, and J. S. Dennis on behalf of the Crown, on 12 September 1875. The Adhesion stated that

...the Half-breeds above described [of Rainy River and Rainy Lake], by virtue of their Indian blood, claim a certain interest or title in the lands or territories in the vicinity of Rainy Lake and the Rainy River, for the commutation or surrender of which claims they ask compensation from the Government.

...having fully and deliberately discussed and considered the matter, the said Half-Breeds have elected to join in the treaty...

...they hereby fully and voluntarily surrender to Her Majesty the Queen...any and all claim, right, title or interest which they, by virtue of their Indian blood, have or possess in the lands or territories...

In consideration of which Her Majesty agrees...

133 LAC, RG10, Vol. 1918, file 2790D, J. S. Dennis to David Laird, 1 November 1875 [CAP12345], 3 – 9.
That the said Half-Breeds...shall receive compensation in the way of reserves of land, payments, annuities and presents, in a manner similar to that set forth in the several respects for the Indians in the said treaty...that the said Half-breeds shall be entitled to all the benefits of the said treaty as from the date thereof, as regards payments and annuities...as if they had been present and had become parties to the same at the time of the making thereof...

A sketch was attached to the Adhesion of two parcels of land near Fort Frances totalling 18 square miles, “desired” by the Métis as Reserves “to which they would be entitled under the provisions of the Treaty” if the Adhesion was approved by the Government.

The fall of 1875 saw the ratification of the next numbered treaty, Treaty Five. This Treaty included an area north of Treaties Two and Four, around Lakes Winnipeg and Manitoba. Alexander Morris was once again appointed a Treaty Commissioner, with James McKay. Minister of the Interior David Laird’s instructions to Morris indicated that the Treaty was to be similar to the previous numbered Treaties, but “in view of the comparatively small area of the Territory proposed to be ceded and of the fact it is not required by the Dominion Government for immediate use either for railroad or other public purposes, it is hoped that it will not be found necessary to give the Indians either as present or as annuity a larger amount than five dollars”.

Morris was also limited to offering Reserve lands to a maximum of 160 acres per family of five, or 32 acres per capita, matching the quantity allocated under Treaties One and Two. Although there was some resistance to these terms on the part of the Aboriginal signatories, Morris was successful in concluding a Treaty with these provisions, including the promise of “an accurate

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135 No Order in Council or other document has been located confirming Canada’s approval of the Adhesion. Indian Reserves 16A and 16D were surveyed in 1876. They are now known collectively as Couchiching Indian Reserve 16A. See Section IV (5); also LAC, National Map Collection (NMC), RG10M, 78903/78, E. C. Caddy, D. L. S., “Plan of Indian & Half Breed Reserves on Rainy Lake Nth Wt Territory”, 14 July 1876 [CAP12361].

census of all the Indians inhabiting the tract”.¹³⁷ Morris did not refer to the presence of any “half breeds” in his reports on Treaty Five, although many of the signatories and annuitants in 1875 and subsequent years carried names common among the Métis population such as Garrioch, McKay, Berens, Ross, Sinclair, Sanderson, Bird, Cook, Bell, Flett, Spence, Hardisty and Sayer.¹³⁸

Indian Commissioner Provencher, in his report for the fiscal year 1874 – 1875, summarized his understanding of the way the claims of Aboriginal peoples were being administered under the numbered Treaty system:

By the treaties concluded to this day with the Indians, no steps have, as yet, been taken in reference to the position of the Halfbreeds. The common law settles that matter.

From the second section of clause 15 of the Act 31 Vict., Cap. 42, are to be considered as Indians, “all persons residing among those Indians of whom their parents from either side were descended from Indians, or reputed Indians, belonging to the Nation, Tribe or particular people of Indians interested in real estate, or their descendants.”

The question of residence has always received a very liberal interpretation, as was necessary in a country whose inhabitants lead such a wandering life.

Trusting to this system, a great many Half-breeds and Indians now return from the North-West, and claim their place among the Indians of this Province [Manitoba].

They maintain that their absence was a temporary one, and that they never have ceased to belong to the Tribe of which they formerly were members...

It is true that the settlement of Half-breed claims in Manitoba has resulted in doing away with that difficulty, insomuch as it refers to the inhabitants of this Province; but it again occurs in that part of country covered by Treaties 2 and 3, and even, in part, under Treaty No. 1.

I have even reason to believe that this difficulty assumes a special feature in localities where Half-breeds are in numbers; they wish to be acknowledged as special Bands, distinct


¹³⁸ See copy of Treaty reprinted in Historic Treaties; also online at DIAND website http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/t5/trty5-eng.asp (accessed June 2010) [CAP12315]. Treaty Five included a key part of the Hudson’s Bay Company’s historic transportation route from their main supply depot at York Factory to all inland posts, and by 1875 this region had been home to generations of English and Scottish HBC employees and their Métis families.
from the Indian Bands which surround them, taking, at the same time, their share of the privilege granted the Indians, and claiming under the two heads of White and of Indian descendants.

All those among the Half-breeds wishing to avail themselves of the law above quoted, have all facilities for so doing, and the law has always been broadly interpreted in the most favorable meaning to this class of claimants. The parties concerned have only been given to understand that their joining an Indian Tribe, with the intention of sharing in the benefits accruing to them as an Indian Tribe constituted a complete abandonment of the privileges granted to White citizens or to Half-breeds.

If the new claims which I have now mentioned were entertained, the result would be the springing up of a new class of inhabitants, placed between the Whites and the Indians – having, in a political and legal point of view, special and separate rights, or, at least, this is the interpretation which will certainly be given to that measure – and this acceptance of their rights, far from being considered as a final decision, will only be a starting point for them to prefer new claims as issue of the first White settlers of this country...

Provencher identified the St. Peters Band in Treaty One as “more than half” Métis, “for many years settled on the banks of the Red River”.

In making Treaties One through Five in the eight years following Confederation, Canada encountered a mixed Aboriginal population including groups it named “Crees”, “Swampy Crees”, “Saulteaux”, “Assiniboines”, “Chippewa”, and “Halfbreeds”. To “extinguish” the “Indian title” of these people, and to fulfil Canada’s “duty to make adequate provision for the protection of the Indian tribes, whose interests and well-being are involved in the transfer”, for which the central Government had been “authorise[d] and empowere[d]...to arrange any details that may be necessary to carry out the terms and conditions of the...agreement”, as the Senate and House of Commons had stated in acquiring Rupert’s Land, Canada offered Treaty, or Treaty and “halfbreed” scrip in the Province of Manitoba. Canada developed these administrative options to meet the local conditions of the North West: a type of Treaty adapted

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141 Joint Address of the Senate and the House of Commons (Canada), 29 and 31 May 1869, reprinted in Great Britain, “Canada (Rupert’s Land)”, 8 – 9 [CAP10886].
(but different) from Upper Canadian Treaties, and a new “scrip” option, developed in negotiations with “halfbreed” representatives in 1869 -70. Many “halfbreeds”, widely recognized as such by Indian Branch administrators and Treaty Commissioners, chose to take Treaty, and in the case of Treaty Three, signed a separate Adhesion which addressed “any and all claim, right, title or interest which they, by virtue of their Indian blood, have or possess in the lands or territories”. In the Province of Manitoba, “halfbreeds” were to “elect whether they shall be treated as Half breeds or Indians” and were instructed that “they cannot at the same time share in the allotment of lands as Half breeds and in the payments and presents made to the Indians”.

In 1874, some Manitoba Métis were permitted to change their election, withdraw from Treaty without penalty, and apply for scrip for the lands allocated by Canada “towards the extinguishment of the Indian Title”. In both the North West Territories and Manitoba, any “Halfbreed” who elected to take Treaty was “treated as an Indian”, was entitled to all Treaty benefits, and assumed the same legal status as any other “Indian” under the Indian Act. This was a continuation of pre-Confederation Canadian practices and policies that had taken “halfbreeds” into the Robinson Treaty paylists and “Indian” legal status. Outside the Province of Manitoba, the “Halfbreeds” who did not take Treaty and were waiting to have their claims to existing landholdings confirmed were told, in Morris’ words at Treaty Four, that they were “in the hands of the Queen who will deal generously and justly with them”.

IV (5). The Indian Act, 1876; and Treaties Six and Seven, 1876 - 1877

On 12 April 1876, a new Act to amend and consolidate the laws respecting Indians was given Royal Assent. The definitional clauses regarding “Indians” and “Bands” were altered and expanded by this legislation:

3.1 The term “band” means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible...

3.2 The term “irregular band” means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown,

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142 PAM, MG12, B1 (Lieutenant Governor), no. 711, E. A. Meredith to [J. A. N. Provencher], 21 April 1874 [CR-007863]; see also LAC, RG10, Vol. 1922, file 2970, E. A. Meredith to J. A. N. Provencher, 21 April 1874 [CR-003940].
who possess no common fund managed by the Government of Canada, or who have not had any treaty relations with the Crown.

3.3 The term “Indian” means
First. Any male person of Indian blood reputed to belong to a particular band;
Secondly. Any child of such person;
Thirdly. Any woman who is or was lawfully married to such person:
a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof of the band, if such proceeding be sanctioned by the Superintendent-General:
b) Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof, and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such:
c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time at ten years’ purchase with the consent of the band...
e) Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty...

4. The term “non-Treaty” Indian means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even though such person be only a temporary resident in Canada.\(^{143}\)

In the House of Commons debates on the revised Indian Act, Laird had the opportunity to explain some of these clauses. He summarized, in introducing the bill:

The term “Indian” meant any person holding land, the title of which the Government possessed, and with whom treaties existed. The term “Non-Treaty Indian” denoted any person of Indian blood who was reported to belong to an irregular band, or who follows the Indian mode of life, even though only a temporary resident of Canada. The word “reserve” was defined to mean any tract of land set apart for the benefit of a particular band of Indians. A special reserve meant any tract of land set apart for the use of Indians, the title

\(^{143}\) Canada Statutes, 39 Vic., cap. 18 [CR-009733].
of which was vested in a corporation or community legally established. It was also provided that any Indian who had resided five years in a foreign country, and not associated with his band, might sever that connection. It also provided that that connection might be resumed with the consent of the Government. Another provision of the Bill was that an [sic] woman who married a white man should continue to receive the annuity and retain all her privileges. There was another provision in the clauses enabling the band to give her a ten years purchase for her privilege, after which she would be for ever separated from them. Another clause put into force the theory they were carrying out last Session with regard to the half breed and full blooded Indians, as it was considered better that it should be sanctioned by law.  

John Schultz, the MP for Winnipeg, former proprietor of the Nor’Wester, and a leader of the anti-Riel residents during the 1870 Resistance, objected to the definitions presented in the Bill:  

It would be found impracticable to make this Bill operative in the North West. Any one having an intimate knowledge of the tribal relations of the Indians of the West would see this. The Act did not define with sufficient clearness what an Indian was. It declared that any one who accepted treaty money should be considered an Indian. Now, he considered this unfair. Many of the half-breeds who had accepted lands and moneys under former arrangements would never have done so if they had supposed for a moment it would have classed them among the Indians.

Schultz, who though unsympathetic with Riel had lived for a number of years in close proximity to Aboriginal peoples near Winnipeg, thus emphasized that the legal status of “Indian” did not affect “half-breed” identity, or their identification by others as “half-breeds”, and that the choices of Aboriginal peoples from the options labelled “Indian” and “half-breed” on offer by Government at this time did not always link to their identity.

Mr. Paterson, an MP from Ontario, pointed out the weaknesses of the existing enfranchisement process by which an “Indian” could apply to become legally non-Indian, noting that the one instance in which this had occurred since 1860s had resulted in the Indian Department deciding “although they had the power to make an Indian a white man, they had no power to make him an Indian again”. Paterson also objected to the provisions of the 1868 Act regarding Indian women ceasing to be “Indians” upon marriage to a non-Indian, characterizing them as “a penalty for doing so” and arguing that the children of these marriages should retain their “rights and

144 Canada House of Commons Debates, D. Laird, 21 March 1876, 749 [CA-001003].
145 Canada House of Commons Debates, J. Schultz, 21 March 1876, 750 [CA-001003].
privileges” as Indians. In reply, Laird assured the House that the Bill “merely gives a clear definition of the classes of Indians existing” and that, with respect to Indians absent for five years, “this Bill admits of their coming back”.

In subsequent debate, Paterson again pressed to remove the “penalty on an Indian woman for marrying a white man”, and to remove the word “male” from section 3.3, to which Laird replied that “it made no difference, because when an Indian man married a white woman she became a member of the band, but when an Indian woman married a white man, her children did not share in the lands”. Laird further explained that “at present...any Indian woman marrying a white man was entirely cut off from her former rights. This amendment was added at the request of the Indians, who were greatly pleased with it”. He also clarified that the five-year absence clause was intended to prevent Indians from drawing Treaty annuities on both sides of the U. S./Canadian border, but “in our experience, when an Indian returns and really wishes to live with the band again, he is generally received with open arms” and reinstatement would not be a problem.

Regarding section 3.3(e), Laird gave “the reason for introducing this provision”:

Persons of mixed blood had desired to join in the benefits of treaties made, and had attained their object, receiving their annuities annually. Lands had been given to the half-breeds in order to extinguish their titles.

Schultz pressed Laird on his conflation of “Treaty” with “Indian”:

...there were some men in the North-West who were almost pure whites, who had taken treaty money under the belief that they would not thereby be placed in the position of Indians. He [Schultz] believed they should not be so classed...these men were not Indians and it would be a hardship to give them no opportunity to withdraw from this treaty.

Laird replied,
...they could have withdrawn under the Act of 1874. Those who did not choose to withdraw had to be treated as Indians. He did not see why half-breeds in Manitoba should be treated differently from half-breeds in other provinces...

and further, that “Indians who were not half-breeds were always allowed to come into the treaties, and some who had lately come in were even given back pay”.154

In the 1876 Indian Act, Canada continued its categorization and management of Aboriginal populations. Laird explained to the House that the Act was intended to “[give] a clear definition of the classes of Indians existing”, which included Treaty and non-Treaty Indians (anyone “of Indian blood” who belonged to an “irregular band”, or who lived an “Indian mode of life”), and also, in his view, clarified the relationship between the legal categories of “half-breed” and “Indian” in Manitoba, where Aboriginal family heads had been offered a choice of categories and benefits. In Manitoba, Laird recalled, “persons of mixed blood had desired to join in the benefits of treaties made, and had attained their object, receiving their annuities annually. Lands had been given to the half-breeds in order to extinguish their titles”. He resisted John Schultz’s attempt to distinguish the “half-breeds” in Treaty from “Indians”, not denying that they were “half-breeds”, but saying that “they had to be treated as Indians”. In other instances, such as for former Band members who had been absent for five years or more, he emphasized that the legal “connection might be resumed with the consent of the Government”.

Following the passage of this Indian Act, the Indian Affairs Branch at Ottawa wrote to Provencher in August of 1876 to ask the Agent (Pither)

to report how many Halfbreeds at Fort Frances have been admitted into the Treaty by being paid Annuity money in past years, and whether they would be willing to join “Little Eagles” Band. For this purpose Mr. Pither should meet the Halfbreeds and explain to them that the Department cannot recognize separate Halfbreeds Bands

It should be borne in mind that Halfbreeds who were paid as Indians prior to the passing of the Act of 1876 must continue to be so paid and receive cattle and farming implements as Indians.155

154  House of Commons Debates, D. Laird, 28 March 1876, 872 [CA-001004].
155  LAC, RG10, Vol. 3558, file 30, L. Vankoughnet to J. A. N. Provencher, 30 August 1876 [CAP12385].

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Indian Reserves 16A and 16D had been surveyed for the Métis in July of 1876,\(^{156}\) totalling 11,360 acres or an implied Band population of 88.75, close to the 90 persons Dawson had estimated in his memorandum of 17 February 1875. The Little Eagle or Mickiseese Indian Reserve 18B, adjacent to IR 16D, was surveyed at the same time.

The Fort Frances Métis agreed to join Little Eagle’s much smaller Band,\(^{157}\) which became predominantly made up of historic Fort Frances Métis families such as Jourdain, Mainville, Ch[as]telain, Morrisseau and Guimond. However, Pither reported to Provencher in early 1877 that the Métis had stated that they “will not accept of any further payments” unless they were recognized as a “Seperate Band” and received all the annuities and implements promised to them at the time of the Treaty. Pither quoted Chief Mawintoobinasse, speaking for the “Half Breeds” at their request, as saying that the Métis “were paid as Indians for two payments, but now they wish to be seperate [sic]”.\(^{158}\) However, the Fort Frances Métis continued to be classed as part of the Little Eagle/Mickiseese Band, which was renamed the Couchiching Indian Band in 1885. This was in accordance with Laird’s interpretation of the 1876 Indian Act, by which “Half Breeds” in Treaty regardless of identity “had to be treated as Indians”. Members of the Bruyere family from Fort Alexander, and the fur-trade Métis families of Sanderson and Vincent were added to the Little Eagle/Couchiching Band in the 1870s, 1880s and 1890s, and members of the Jourdain, Morrisseau and Chastelain families also appeared on the Treaty Three Long Sault #1 and #2, Hungry Hall, and North West Angle Bands’ paylists in the nineteenth century.\(^{159}\)

Further west, as early as 1870, HBC trader Ric Hardisty at Edmonton had warned his superiors that “for the last few years a great many dissatisfied Halfbreeds have lived among the Indians and done all they could to sow seeds of discord in the Indian minds” regarding non-Aboriginal

\(^{156}\) LAC, (National Map Collection), RG10M, 78903/78, “Plan of Indian & Half Breed Reserves on Rainy Lake Nth West Territory”, E. C. Caddy, 14 July 1876 [CAP12361].

\(^{157}\) LAC, RG10, Vol. 3558, file 30, R. Pither to J. A. N. Provencher, 15 October 1876 [CAP12391].

\(^{158}\) LAC, RG10, Vol. 3558, file 30, R. Pither to J. A. N. Provencher, 3 January 1877 [CAP12401].

\(^{159}\) LAC, RG10, Vols. 9351 – 9374, Treaty Three annuity paylists for the Mickiseese, Couchiching [CAP12262], Hungry Hall [CAP12214], Long Sault No. 1 (Manitoubiesse) [CAP12222], Long Sault No. 2 (Neeshotai) [CAP12252], and North West Angle #33 Bands [CAP12426], 1875 – 1899. Paylists after 1899 are not open to researchers without permission of the Band.
encroachment on their lands. In 1871, Aboriginal people in present-day Alberta and central Saskatchewan had requested that Canada negotiate a Treaty with them. The HBC Chief Factor William Christie at Edmonton, in reporting this request to North West Territories Lieutenant-Governor Adams Archibald, highlighted both the potential hostility of the “Indians” and the example of social disturbance in Montana in urging both the “establishment of law and order” and the “making of some treaty or settlement with the Indians” in the territory along the North Saskatchewan River.

In 1874, the arrival of the North West Mounted Police in southern Alberta and Saskatchewan calmed some of the disorder caused by whiskey traders and intertribal warfare, but in 1875 the Cree and Plains Assiniboine were resisting the activities of Canadian Pacific Railway and other surveyors, land speculators, and telegraph contractors. George McDougall, a missionary stationed on the Bow River in the Rocky Mountains, was sent by Canada to meet with as many Cree and Assiniboine as he could find in the early fall of 1875 to defuse tensions by assuring them that a Treaty would be made with them the following year.

The Order in Council appointing the Treaty Six Commissioners (Laird {to be replaced by James McKay}, Morris and William Christie, now retired to Brockville) referred to the “discontent reported to prevail among the Indians of the Saskatchewan”, McDougall’s visit to them, and the projected “line of the Canadian Pacific Railway and...the Railway telegraph line”, which pointed to “the absolute necessity of the Government obtaining early control over this Territory”. The

160 R. Hardisty to W. Christie, 28 December 1870, HBCA, D.12/1, quoted in Ray, Miller and Tough, Bounty and Benevolence [CAP11396], 97 – 98. Hardisty’s comments should not be interpreted as indicating that Métis people had only recently been associated with Indian people in this area, as scrip records, genealogies and descriptions from missionaries, travellers and traders show intermarriage and mixed travelling and camping groups from the early decades of the nineteenth century. These close relationships were made evident in the mid-1880s when many Métis, formerly recognized as Indians, attempted to withdraw from Treaty.

161 W. J. Christie to A. Archibald, 13 April 1871, reprinted in Morris, Treaties, 169 – 170 [CAP12106]. The four Chiefs were Sweetgrass, Little Hunter, Kehewin (the Eagle), and Kiskiou (Bobtail, or Alexis Piché). See also “Messages from the Cree Chiefs of the Plains, Saskatchewan, to His Excellency Governor Archibald, our Great Mother’s representative at Fort Garry, Red River Settlement”, attached to W. J. Christie to A. Archibald, 13 April 1871, reprinted in Morris, Treaties, 170 [CAP12106]; and W. Simpson to Secretary of State, 3 November 1871, reprinted in Morris, Treaties, 168 [CAP10965].

162 See G. McDougall to A. Morris, 23 October 1875, reprinted in Morris, Treaties, 173 – 175 [CAP12328].
terms of the proposed Treaty with the “Indians” were, “unless...very special circumstances” required it, not to exceed the terms for Treaty Four.  

Laird, Morris and Christie met the Cree, Métis, Assiniboine and Saulteaux at Forts Carlton and Pitt in August and September 1876. The provisions of the new Treaty were similar to Treaty Four, with promises of per capita allotments of land (128 acres per person), annuities (five dollars per person), agricultural implements, schools, a “medicine chest”, recognition of hunting and fishing rights, “an accurate census”, and other items. As in previous Treaties, Métis people acted as translators and facilitators, and the names of many Métis appear on the Treaty as witnesses. Some of the Cree Chiefs asked about “the Half-breeds, who wish to live on the reserves”, and requested that “the claims of the Half-breeds who had settled there [Battle River] before the Government came...be respected”. Morris told them:

The Queen has been kind to the Half-breeds of Red River and has given them much land; we did not come as messengers to the Half-breeds, but to the Indians. I have heard some Half-breeds want to take lands at Red River and join the Indians here, but they cannot take with both hands. The Half-breeds of the North West cannot come into the Treaty. The small class of Half-breeds who live as Indians and with the Indians, can be regarded as Indians by the Commissioners, who will judge of each case on its own merits as it comes up, and will report their action to the Queen’s Councillors for their approval...

In his report to Minister of the Interior David Mills on the Treaty negotiations, Morris wrote further about the “Half-breeds”:

There is another class of the population in the North-West whose position I desire to bring under the notice of the Privy Council. I refer to the wandering Half-breeds of the plains, who are chiefly of French descent and live the life of the Indians. There are a few who are identified with the Indians, but there is a large class of Metis who live by the hunt of the buffalo, and have no settled homes. I think that a census of the numbers of these should be procured, and while I would not be disposed to recommend their being brought under the treaties, I would suggest that land should be assigned to them, and that on their settling down, if after an examination into their circumstances, it should be found necessary and

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163 LAC, RG2, Series A-1-a, O/C P/C 660, 21 July 1876 [CAP12362].
165 A. Morris to [D. Mills], 4 December 1876, reprinted in Morris, Treaties [CAP12392]: Mist-ow-as-is, 186; Red Pheasant, 193; also “Narrative of the proceedings connected with the effecting of the treaties at Forts Carlton and Pitt, in the year 1876, together with a report of the speeches of the Indians and Commissioners”, A. G. Jackes, reprinted in Morris, Treaties, 222, 242 [CAP12372].
166 Jackes, “Narrative”, reprinted in Morris, Treaties, 222 [CAP12372].
expedient, some assistance should be given them to enable them to enter upon agricultural operations.

If the measures suggested by me are adopted, viz., effective regulations with regard to the buffalo, the Indians taught to cultivate the soil, and the erratic Half-breeds encouraged to settle down, I believe that the solution of all social questions of any present importance in the North West Territories will have been arrived at...167

In his report, Treaty Commissioner and Lieutenant-Governor Morris emphasized that Canada needed to do three things to solve the “social questions” of the North West Territories, whose population was overwhelmingly Aboriginal: to conserve the buffalo on which all the population depended, to teach the “Indians” (including the “Half-breeds” identified with the “Indians”) a settled agricultural life, and to assign land to the “wandering Half-Breeds [or “Metis”], who...live the life of the Indians”, and encourage them to “settle down” by offering agricultural assistance. Although he did not specifically recommend the introduction of a Métis scrip system such as had been implemented in Manitoba, he recommended that Canada continue to offer administrative options tailored to the differing needs of the population of “Indian blood”. In 1880, in a book on Canada’s Treaties with the “Indians”, he expanded on these comments, describing the “Half-breeds in the territories” as being “of three classes – 1st, those who, as at St. Laurent, near Prince Albert, the Qu’Appelle Lakes and Edmonton, have their farms and homes; 2nd, those who are entirely identified with the Indians, living with them, and speaking their language; 3rd, those who do not farm, but live after the habits of the Indians, by the pursuit of the buffalo and the chase”. The first group, he thought, could “be recognized as possessors of the soil, and confirmed by the Government in their holdings, and will continue to make their living by farming and trading”. The second had “been recognized as Indians, and have passed into the bands among whom they reside”. The third “class”, he thought, was “more difficult”, and he reiterated his 1876 recommendations to deal with this category.168 By one means or another, Morris urged Canada to use its power to give Aboriginal peoples the tools to give up their “wandering mode of life” and become safely and peacefully integrated into the new agricultural settler world of the North West,169 as envisaged by the speakers in the Confederation Debates.

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169 Morris, Treaties [CAP12496], 288, 297.
Although Morris had claimed that the case of each Métis person who wished to enter Treaty would be individually examined and referred to the Government for a decision, in fact no such examination took place when the first gratuity and annuities were paid in Treaty Six. The Indian Branch’s Treaty paymaster at the Treaty Four payments in the summer of 1876, M. G. Dickieson, had attempted to do some sorting of the Aboriginal population before him, refusing to pay annuities to some Métis not already under Treaty. Dickieson’s rationale for this action was that the “policy of the Government [was]...to elevate the Indian...not to degrade the White to the position of savage”. However, he found classifying Aboriginal people was not straightforward:

The question as to who is or who is not an Indian is a difficult one to decide, many whose forefathers were Whites, follow the customs and habits of the Indians and have always been recognized as such...the question then arises – where shall the line be drawn to decide who is or who is not an Indian?170

As later events proved, it was far from a “small class” of Métis who took Treaty with the Indians, but almost the entire membership of some Bands. In Treaties Two through Seven, there was no other option offered at the time of Treaty for Métis people to secure land, money and recognition of their rights as Aboriginal people. Many Métis, however, chose to remain outside Treaty. The decisions of Métis people and families at this time likely have more to do with personal economic and social relationships, and individual calculations of benefit, than a firm commitment to a legal identity the future ramifications of which were entirely unknown.

Preparations for the last of the numbered Treaties of the 1870s, Treaty Seven, were underway by the end of June 1877. David Laird had been appointed the Lieutenant-Governor of the North West Territories in October 1876, and David Mills had taken his place as Minister of the Interior. Mills explained in the Annual Report of the Minister of the Interior for the year 1877 that Morris had passed on information from those familiar with the Blackfoot “as to the desirableness of having...a treaty made at the earliest possible date, with a view to preserving the present friendly disposition of these tribes, which might easily give place to feelings of an unfriendly or hostile

nature, should the treaty negotiations be much longer delayed. In view of these facts, and in order to satisfy these important tribes, and to prevent the difficulties which might hereafter arise through the settlement of whites...[the Government] decided that these Indians should be treated with this year”.  

Mills included no instructions in the Order in Council appointing Laird and North West Mounted Police Commissioner James Macleod as Treaty Commissioners, expecting that the Treaty would follow the pattern already established.  

In early September, the Commissioners met the Blackfoot Confederacy (Blackfoot, Blood, Piegan and Sarcee) and their allies the Stoney (Mountain Assiniboine) at Blackfoot Crossing. Although there were some Métis intermarried with and allied to Blackfoot families, a Blood chief took the opportunity to express Blackfoot Confederacy frustration with other Métis hunting in their territories by requesting that “the Crees and Half-breeds...be sent back to their own country”. Laird replied that “the Commissioners could not agree to exclude the Crees and Half-breeds from the Blackfoot country...they were the Great Mother’s children as much as the Blackfoot and Bloods”. The terms of the Treaty were similar to those of Treaty Six, except for a greater emphasis on livestock than on agricultural equipment.

While the negotiations for Treaty Seven were underway, Laird took an Adhesion to Treaty Six from “a Cree Chief” named Bobtail, “with the larger portion of [his] band”. In 1886, Bobtail (Alexis Piché) and his family, with other members of his Band, were to withdraw from Treaty and take Métis scrip. Laird also received a petition from “a deputation of Half-breeds...expressing the hope that the buffalo law might not be stringently enforced during the approaching winter, and praying that they might receive some assistance to commence farming”, which he promised to set before the Privy Council in Ottawa.

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171 Quoted in Morris, Treaties [CAP12496], 246.
172 LAC, RG2, Series A-1-a, O/C P/C 650, 12 July 1877 [CAP12410].
173 D. Laird to [D. Mills], [undated], reprinted in Morris, Treaties, 257 [CAP12403].
174 D. Laird to [D. Mills], [undated], reprinted in Morris, Treaties, 258 [CAP12403].
175 Morris, Treaties [CAP12496], 246 – 247.
176 D. Laird to [D. Mills], [undated], reprinted in Morris, Treaties, 256 – 257 [CAP12403].
177 D. Laird to [D. Mills], [undated], reprinted in Morris, Treaties, 259 [CAP12403]. See also LAC, RG15, Series D-II-1, Vol. 341, file 89436, John Munro and others to Mr. Laird, 19 September 1877 [CAP12413]; D. Laird to John
With the signing of Treaty Seven, Canada completed part of its task of settling the “claims of the Indian tribes to compensation for lands required for purposes of settlement...in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”, in the areas of Rupert’s Land that were most immediately required for infrastructure development and settlement. However, as Morris pointed out in 1876 and 1880, there was unfinished business with Aboriginal peoples who had not chosen to take Treaty. They had not been offered the scrip option that had been provided in Manitoba, and this inequity in treatment was to become a spark for the disorder that Canada had tried to avoid in implementing the Treaty and scrip systems. Canada had recognized from 1870 onwards that the Treaty model was not appropriate or appealing for all those with “Indian title”, but after seeing the negative effects of scrip distribution in Manitoba was reluctant to present the same choice again. However, its delays in putting forward another option eventually created a need for immediate action, as once more Aboriginal inhabitants feared that “they were to be entirely swamped and their influence destroyed, that all their lands were to be taken”, instead of being protected as Canada had promised in 1869.

IV (6). Managing Treaty paylists, the North West “Halfbreed” scrip Commission, and the North West Rebellion, 1876 - 1885

While the Commissioners were in the field completing the Treaty fabric on the Prairies, Indian agents and administrators were struggling to interpret and implement Treaty annuity payment policies and the 1876 Indian Act. After the passage of the 1876 Indian Act, individuals and families began to be struck off Treaty paylists. In Treaty Three, “Indian Women, particularly at the region of Lake of the Woods and Rainy Lake, [having] married American Indians, and nevertheless [insisting] for being paid with the band to which they formerly belonged”, were deemed in the fall of 1876 to be ineligible for Treaty payments, regardless of whether they had married before or after the Treaty. 178

178 LAC, RG10, Vol. 3637, file 7082, J. A. N. Provencher to Minister of the Interior, 25 September 1876 [CAP12387]; E. A. Meredith to J. A. N. Provencher, 6 October 1876 [CAP12389].
In the Robinson Treaty areas, however, the Indian Affairs Branch allowed otherwise ineligible women and families to remain on paylists. In 1878, Indian Agent Charles Skene at Parry Sound investigated the histories of several Métis families on the Henvey Inlet paylist who were related to other Band members through the female line, and asked for “some instructions applying to such cases”.179 Lawrence Vankoughnet, the Deputy Superintendent General of Indian Affairs, replied that

It is pretty clear that the...family have no right to be placed on the Pay Lists. For, according to an old prevailing custom among the Indians, which was duly recognized by the Dept + was subsequently confirmed by Statute, the children were and are always classed with the Father whether he was a white man or an Indian...

...it is evidently not desirable to strike off the Pay List the names of those still living who were not [Indians] at the date of the revision to the Annuity to $4.00 [1875]...But the annuity should not be paid to any one who was not then on the Pay Lists, or whose Father was or is not an Indian... 180

Indian Agent Amos Wright, in the Robinson-Superior Treaty, reported in July 1879 that

I have found in several instances, half breeds, whose fathers were White men, who, had married Indian women; the Children of whom were included in the old Pay list; they consider themselves Indians, and live and associate with them; they are generally poor, and, in some instances, are Widows with their Children.

Being of the opinion, that, the statute makes no provision for such payments, I have refused to pay these their annuities, but, as this has caused some dissatisfaction with the parties interested, I have thought it well to write to the Department, and, ask for instructions on the matter. 181

Vankoughnet responded to Wright as follows:

...Indian women...who have married White men...and their children are not entitled to share in annuity or other moneys payable to Indians.

The Dept. does not intend however to interfere with the persons of that class above referred to by you who have heretofore been participating in the Robinson Treaty moneys and whose names are now on the Pay List. But no new names of persons who are not Indian within the meaning of the Act must be added to the Pay [Lists]. 182

181 LAC, RG10, Vol. 2090, file 14455, A. Wright to J. S. Dennis, 16 July 1879 [CAP12494].
182 LAC, RG10, Vol. 2090, file 14455, L. Vankoughnet to A. Wright, 1 August 1879 [CAP12495].
It thus appears that the Indian Affairs Branch exercised some discretion over the application of the directives of the *Indian Act*; in particular allowing Aboriginal people who did not qualify as “Indians” within the meaning of the *Indian Act* to remain on paylists in Robinson Treaty areas, while apparently removing women married to people who were not Treaty Indians and their children from paylists in Treaty Three.183

For the first few years after Treaties Six and Seven were signed, there was little change in the way of life of Aboriginal and non-Aboriginal peoples on the plains. Aboriginal people continued to follow the buffalo, which provided all the meat and leather families required plus valuable hides and meat for sale and trade; and to trap furs, gather wild plant products, and assemble in groups and at locations of their own choosing. In the boreal forest areas of Treaties Three and Five, Aboriginal groups continued to hunt, fish, trap and garden almost undisturbed. However, in 1879 the long-predicted collapse of the bison population in Canada created an immediate catastrophe for all plains peoples, eliminating their food supply and the economic base of their societies. In the spring of 1879, the Canadian Government, now back in the hands of Sir John A. Macdonald’s Conservatives, appointed Edgar Dewdney (a veteran colonial administrator) Indian Commissioner for the North West Territories, with a mandate to distribute large-scale relief and to encourage “the Indians by every possible means to engage in the cultivation of the soil and the raising of cattle”.184

Dewdney went on his first tour of his new jurisdiction in the summer and fall of 1879, assisting in making the Treaty payments in Treaties Six and Seven. As part of Canada’s attempt to feed the Indians by teaching them to farm, Indian Branch officials were pressing their charges to select agricultural reserves as specified under the Treaties and begin to settle on them. For their part, although the Aboriginal peoples in the numbered Treaties were to find the transition to a sedentary life very difficult (if not impossible), they were anxious to receive the agricultural...

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183 In 1880, Departmental paymaster T. P. Wadsworth was still paying Treaty Six women married to people who were not Treaty Indians, and their children, who were not eligible under the *Indian Act* (T. P. Wadsworth to E. Dewdney, 30 September 1880, in report of E. Dewdney to Superintendent General of Indian Affairs, 31 December 1880, reprinted in Annual Report of the Department of Indian Affairs for the year ended 31 December 1880, in Canada Sessional Papers, 1881 [CAP12527], 87).

implements and livestock promised to them under Treaty and to be instructed in farming practices. ¹⁸⁵

Métis people, too, wanted to find alternatives to the buffalo economy and secure lands prior to a massive influx of non-Aboriginal settlers. In 1878, in addition to the petition from the Métis at Treaty Seven, Canada received a petition from residents of Prince Albert (most of whom were Métis) for land and scrip such as had been granted to the Métis in Manitoba. ¹⁸⁶ In 1878, a similar petition was forwarded from Métis in St. Laurent (in present-day Saskatchewan), ¹⁸⁷ and Métis “living in the vicinity of the Cypress Mountains” petitioned the North West Territories Council in mid-1878 for relaxation of hunting restrictions and a reserve of land. ¹⁸⁸ Canada took the first step in addressing the claims of Métis who did not qualify for grants under the *Manitoba Act* in 1879 by inserting a clause in the *Dominion Lands Act* empowering the Government to “satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, [1870], by granting land to such persons, to such extent and on such terms and conditions, as may be deemed expedient”. ¹⁸⁹

The *Indian Act* was amended in 1879 by adding to s. 3.3(e) the words “and any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said treaty, or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed as such be entitled to

¹⁸⁵ See for example LAC, RG10, Vol. 8594, file 1/1-11-2, pt. 1, M. G. Dickieson to D. Laird, 9 October 1878 [CAP12448], in which Dickieson reported that “all the Indians are very persistent in asking for more help in farming”.
¹⁸⁶ Petition of the settlers and residents at Prince Albert Settlement to the Governor-General, reprinted in Canada *Sessional Papers*, 1885, no. 116(e), 29 – 31 [CAP12424].
¹⁸⁷ Gabriel Dumont and others to Lieutenant-Governor of the North West Territories, 1 February 1878, reprinted in Canada *Sessional Papers* no. 116(e), 28 [CAP12423].
¹⁸⁸ LAC, RG15, Series D-II-1, Vol. 341, file 89435, David Laverdure and others to the President and the Honorable members of the Privy Council for the North West Territories, attached to D. Laird to Minister of the Interior, 30 September 1878 [CAP12432].
¹⁸⁹ Canada Statutes, *An Act to amend and consolidate the several Acts respecting the Public Lands of the Dominion*, 15 May 1879, 42 Vic., Cap. 31, s. 125(e) [CR-009771].
receive from the Government”. However, very few Métis in Treaty chose to withdraw under the conditions of this Act.

In May of 1880, a new consolidated Indian Act was passed. This Act created a Department of Indian Affairs separate from the Department of Interior, and re-ordered some clauses of the 1876 Act. The clauses pertaining to the definitions of “Indian” and membership in Treaty or Bands were reconfigured as follows:

2.1 The term “band” means any tribe or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible…

2.2 The term “irregular band” means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, or who have not had any treaty relations with the Crown.

3. The term “Indian” means
First. Any male person of Indian blood reputed to belong to a particular band;
Secondly. Any child of such person.
Thirdly. Any woman who is or was lawfully married to such person.

4. The term “non-Treaty Indian” means any person of Indian blood who is reputed to belong an irregular band, or who follows the Indian mode of life, even though such person be only a temporary resident to Canada…

10. Any illegitimate child, unless having shared with the consent of the band whereof the father or mother of such child is a member in the distribution of moneys of such band for a period exceeding two years, may, at any time be excluded from the membership thereof by the Superintendent-General.

11. Any Indian having for five years continuously resided in a foreign country without the consent of the Superintendent-General or his agent, shall cease to be a member of the band of which he or she was formerly a member, or become a member of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained.

12. Any Indian woman marrying any other than an Indian or a non-Treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this

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190 Canada Statutes, An Act to Amend “The Indian Act, 1876.”, 42 Vic., Cap. 34, 1879 [CR-009772].
income may be commuted to her at any time at ten years’ purchase with the consent of the band…

12.2 No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family (except the widow of an Indian or a half-breed who has already been admitted into a Treaty) shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be admitted into any Indian Treaty; and any half-breed who may have been admitted into a Treaty shall be allowed to withdraw therefrom on refunding all annuity money received by him or her under the said Treaty or suffering a corresponding reduction in the quantity of any land, or scrip, which such half-breed, as such, may be entitled to receive from the government…

By 1881, the Department of Indian Affairs was implementing a number of policies to keep Indian people on “their” Reserves, for a variety of reasons including creating a sense of security for new non-Aboriginal settlers and supporting the objective of converting Plains Aboriginal peoples to sedentary agriculturalists tied to land, crops and livestock. General food shortages in the years between the collapse of the bison herds and the establishment of viable agricultural production meant that government was issuing rations to most Treaty and some non-Treaty people at least part of the time. Rations were given out to the sick, destitute and helpless, and also to reward and assist Treaty people willing to work on Indian Reserves and the Indian Department farms set up to feed and train the population. In July of 1881, E. T. Galt, Assistant Indian Commissioner for the North West Territories, instructed T. P Wadsworth, Inspector of Indian Agencies for the North West Territories, that

It is the policy of the Government to keep the Indians on their Reservations as much as possible, + to that end to feed there only – and if they choose to roam about the Country they must not be permitted to think that they can go to any Post and receive a similar Ration to those Indians who belong there...

...establish a fixed Ration for those who are settled on their Reservations and also a meagre ration for those who don’t belong to the District and who won’t go home...

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191 An Act to amend and consolidate the laws respecting Indians, 43 Vic., Cap. 28, 1880 [CR-009786].
193 On conditions during this period, see for example HBCA, B.60/b/3 (Edmonton Correspondence Book, 1878 – 1886), Ric Hardisty to James Grahame, 15 February 1881 [CAP12949], fols. 63 – 65 verso.
You must use your discretion in these matters keeping down the expenditure as much as possible, while at the same time making sure that peace and order will be preserved. You are on the spot, and in a position to judge how far we can go in endeavouring to insist upon these Northern Indians going Home, without causing trouble.194

“Peace and order” was a priority not only within Canada, as a prerequisite for non-Aboriginal settlement, but to maintain good relations with the United States. Indian and Métis people from north of the 49th parallel followed the buffalo into their last refuge in Montana’s Judith Basin, provoking hostility among hard-pressed Indian peoples, U. S. Indian Department and military personnel, and non-Aboriginal settlers. Canada also gave refuge to Sitting Bull and his Sioux people after the battle of Little Big Horn in 1876, irritating the U. S. Government and western settlers. A. G. Irvine, Commissioner of the North West Mounted Police, wrote in his report for the year 1881 that “the press of Montana has again and again published articles, denouncing in the strongest possible terms anything in the shape of depredations said to have been committed by our Indians south of the international boundary line. Such articles were no doubt fair expressions of the natural sentiment entertained by the settlers of Montana, U. S.”.195 Irvine felt so strongly about the delicate state of affairs in central and southern Alberta and Saskatchewan, with starving Aboriginal people moving about the country and inexperienced non-Aboriginal settlers moving in in larger numbers, that he felt compelled to reprint a large section of his 1880 report in the annual report of the Mounted Police for 1881:

As long as the buffalo lasted the Indian was self-supporting, independent and contented. Now, however, he is in a very different position, his only means of support is virtually gone, and he has to depend on the Government for assistance, being forced, in so doing, to remain about the Police Posts, Indian Agencies or other settlements.

...the Indians that do hunt for a living only manage to eke out a most miserable existence. Ere long they will be unable even to do this, and will then return to this country. Thus the Indian population will, to all intents and purposes, be increased. This population, too, will,


irrespective of the aid received from Government, be a starving one, a dangerous class requiring power, as well as care, in handling...

The experience of our neighbors to the south of the international boundary line cannot be without its lesson to us. In their case the military had no trouble with the Indians until settlers appeared on the scene.

These settlers, unaccustomed to the Indian manner and habits, do not make due allowances and exhibit that tact and patience necessary to successfully deal with Indians...  

In 1882 and 1883, large numbers of Indians and Métis were driven from the United States by the U. S. Army. To further discourage Aboriginal people from gathering off Reserves and close to the U. S. border, the NWMP Fort Walsh in the Cypress Hills was closed in the summer of 1883.

In late 1883, Indian Department expenditures, most markedly on North West field staff and Indian rations, were cut back significantly, exacerbating already poor conditions on Treaty Reserves. At the same time, the Indian Department responded to complaints from “Towns and Villages” in the North West about “Indians being allowed indiscriminately to encamp in the

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vicinity...without any permit from the Indian Agent” by asking the Mounted Police to send any Treaty people found off-Reserve without a permit back to their Reserves. The Mounted Police agreed only to “remove the Indians frequenting Towns + Villages...for improper purposes” but in 1884 the Indian Department requested the Police take “strenuous and immediate efforts” “to prevent Indians from congregating in large numbers” between Victoria mission and Battleford and in the Qu’Appelle valley. As Treaty people not working as directed by the Agent or living off their Reserves were not issued rations, the Indian Department anticipated they might raid storehouses or kill cattle for food.

Despite these conditions, or perhaps because of them, very few Métis people applied to take advantage of section 12.2 of the 1880 Indian Act permitting them to withdraw from Treaty. Outside Manitoba, no Métis scrip was available, and Métis across the Prairies were growing increasingly anxious about the security of their small farms and settled areas as surveys and infrastructure development progressed westward. In April of 1884, a package of amendments to the Indian Act was passed into law, including the removal of the stipulation to repay annuities on withdrawing from Treaty, requiring only that the applicant signify his or her “desire” to withdraw in writing and sign such a document before two witnesses. The purpose of this clause, according to Prime Minister Sir John A. Macdonald, was that “it has been represented to the Department that it is desirable that half-breeds who are able and willing to support themselves should be allowed to give up their treaty relations with the Government, and by taking away the annuity, as was provided in the old Act, the Government considered it was a bar to enterprise, for the half-breed would not have the same inducement to become self supporting if obliged to give up his annuity”. However, without any positive incentive to withdraw in terms of money or guaranteed land allotment, Métis response to this amendment was negligible.

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200 LAC, RG18, Series B-1, Vol. 1009, file 628-1883, L. Vankoughnet to Sir John A. Macdonald, 15 November 1883 [CAP12638]; L. Vankoughnet to F. White, 14 December 1883 [CAP12642]. Macdonald was the Minister responsible for both the Indian Department and the Mounted Police until mid-October 1883.

201 LAC, RG18, Series B-1, Vol. 1009, file 628-1883, F. White to Lt.-Col. Irvine, 6 June 1884 [CAP12644]. The Mounted Police did not believe the permit system was legally enforceable.

202 LAC, RG18, Series B-1, Vol. 1012, file 854-1884, L. Vankoughnet to F. White, 2 May 1884 [CAP13005]; F. White to Lt.-Col. Irvine, 10 May 1884 [CAP13008].

203 Canada Statutes, An Act further to amend “The Indian Act, 1880”, 19 April 1884, 47 Vic., Cap 27, s. 4 [CR-009807].

204 Canada House of Commons Debates, 7 April 1884, 1400 [CR-009806].
Discontent in the North West was reaching dangerous levels. Although Canada had renewed in 1883 the provision of the *Dominion Lands Act* of 1879 respecting Métis “claims existing in connection with the Indian title” outside Manitoba, Sir John A. Macdonald was reluctant to implement another scrip programme, writing to Governor General Lord Lansdowne that

...the French Half breed wont farm (the English & Scotch Half Breed will) – They sold their scrip [in Manitoba] at a great sacrifice, and spent the money in debauchery.

The Indians & Half Breeds on the N W plains -- West of Manitoba had never any holdings and were mere nomads roaming over the province with the Indians and living by hunting & as Carriers of goods in their little Carts – Both hunting & carting have ceased & they are starving -- Among them are the Red River Half Breeds, who, impatient of civilization left Manitoba after having squandered their land scrip & are now on the plains. They have told the others of the scrip & the enjoyment they had on the proceeds of sale, & have incited them to make claim for Scrip – Now these plain Half Breeds have been told that they have the choice of going with Father or Mother as whitemen or Indians, -- If they claim as whitemen, they can get their homestead of 160 acres free on cultivation – If as Indians they can join their mothers Band, & get their share of its Reserve and of the annuities & presents secured to them by Treaty -- The Land sharks that abound in the N W urge on the Half Breeds to demand in addition – Scrip to the same amount as granted to those in Manitoba – the scrip is sold for a song to the sharks & spent in whiskey and this we desire above all things to avoid...

Meanwhile, according to Bishop Vital Grandin of St. Albert, even the most moderate of the Métis in the vicinity of St. Laurent in present-day Saskatchewan were “as dissatisfied as they can possibly be”. They had sent for Louis Riel, then teaching school in Montana, to help them put their grievances forward. Macdonald had hoped to defuse unrest by sending officials to disputed areas such as St. Laurent to mark out allotments for Métis residents, but the petitions forwarded

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205 Canada Statutes, *An Act further to amend and consolidate, as so amended, the several Acts respecting the Public Lands of the Dominion therein mentioned*, 25 May 1883, 46 Vic., Cap. 17, s. 81(e) [CR-009802].

206 Instructions were drafted on 19 May 1884 from Indian Department headquarters to Hayter Reed, Acting Assistant Indian Commissioner of the North West Territories, regarding the question of whether “the children of Half breed fathers as were admitted to Treaty by the Commissioners who negotiated the Treaty are to be included among those to whom annuity and other privileges under the Treaty are to be refused”. Headquarters’ advice was that “the Treaty binds the Govt. in such cases and the Dept. must comply with the stipulations then made as regards all parties to whom the Treaty applies, but any Indian woman connected with a Treaty who marries a Half breed or a White man who has no Treaty relations with the Govt. [illegible] she can draw her own annuity, [illegible] is barred by the law from drawing annuity for her children issue of such marriage”. LAC, RG10, Vol. 3677, file 11504 [CR-000419].

207 LAC, MG27 I B6 (Lansdowne Papers), A-624, John A. Macdonald to Lord Lansdowne, 12 August 1884 [CR-003841].

by the Métis show that issues of governance and recognition were at least as important to them as land.209 Whether inside or outside of Treaty, simply allowing the Métis to apply for homesteads on the same basis as the non-Aboriginal population was not enough; as Macdonald noted to Lord Lansdowne, the Métis wanted “in addition – Scrip to the same amount as granted to those in Manitoba”. Treaty people were also petitioning Indian Department officials for relief from the widespread famine and poverty that followed repeated failures of both the hunt and the crops.210

In January 1885, Canada issued an Order in Council noting that “it is desirable with a view to settling equitably the claims of Half-breeds in Manitoba and the North-West Territories” and authorizing an enumeration of people entitled to land either under the Manitoba Act or some equivalent scheme.211 Three Commissioners were appointed to commence this task. However, in mid-March, events overtook the administrative preparations when the Métis from St. Laurent and Batoche began military skirmishes, including a defeat of the Mounted Police at Duck Lake, and Louis Riel proclaimed a provisional government in the North West. At Frog Lake, Onion Lake, and Peace Hills (present-day Hobbema), Treaty people broke open storehouses, sacked houses, and killed some particularly unpopular Indian Department employees, settlers and priests.212

As Canada was mobilizing the militia against the rebels, an Order in Council issued under section 18(e) of the Dominion Lands Act providing for the confirmation of lands occupied by “half-breed” heads of families resident in the North West Territories prior to 15 July 1870, up to 160 acres; or scrip for 160 acres or dollars redeemable in land (160 dollars in Dominion Lands, at one dollar per acre) if the head of family was not occupying any land. Children of half-breed family heads were to be entitled to scrip for 240 acres or 240 dollars. The mandate of the three

211 LAC, RG2, Series A-1-a, no. 135, 28 January 1885 [CAP13029].
212 Events of the Rebellion are described in detail in Beal and Macleod, Prairie Fire (Toronto: McClelland & Stewart, 1994).
Commissioners appointed to enumerate “the half-breeds resident in the North-West Territories” was expanded to allow them to report on who was entitled to a land grant or scrip, which practically gave them the power to issue documents confirming entitlement on the spot. As simply confirming Métis people in the occupation of their lands would not have given them anything more than a non-Aboriginal original settler was entitled to, Commissioner W. P. R. Street asked if the policy could be changed “to grant scrip, either one sixty or two forty dollars, permitting them to acquire title to land in occupation through possession? Otherwise, Government really gives nothing for Indian title”. David McPherson, the Minister of the Interior, replied he had “no objection” to this adjustment. McPherson clarified that the scrip as an additional grant “in extinguishment of Indian title”.

The issue of title was an important one. Sir John A. Macdonald, in a speech defending the actions of his government in managing Métis and Indian issues in the North West prior to the Rebellion, pointed out that the previous Liberal government under Sir Alexander Mackenzie had denied the necessity of extinguishing the “Indian” title of the Métis. Macdonald indicated that he agreed with the Liberal Government’s views on this issue, explaining his actions in 1870 as follows:

Whether they [the Métis] had any right to those lands or not was not so much the question as it was a question of policy to make an arrangement for the inhabitants of that Province, in order, in fact, to have a Province at all – in order to introduce law and order there, and assert the sovereignty of the Dominion...after a careful calculation, 1,400,000 acres would be quite sufficient for the purpose of compensating these men for what was called the extinguishment of the Indian title. That phrase was an incorrect one, because the half-breeds did not allow themselves to be Indians. If they are Indians, they go with the tribe; if they are half-breeds they are whites, and they stand in exactly the same relation to the

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213 LAC, RG2, Series A-1-a, no. 688, 30 March 1885; also attached to LAC, MG29, E16, Vol. 1, file 3, A. M. Burgess to W. P. R. Street, 30 March 1885 [CAP13031].
214 W. P. R. Street to D. L. McPherson, 4 April 1885, reprinted in Canada Sessional Papers, 1885, no. 116, 5 [CAP13077]. See also W. P. R. Street to D. L. McPherson, 5 April 1885, in Canada Sessional Papers, 1885, no. 116, 4 [CAP13078].
215 D. L. McPherson to W. P. R. Street, 6 April 1885, reprinted in Canada Sessional Papers, 1885, no. 116 [CR-004653], 3.
216 D. L. McPherson to W. P. R. Street, 10 April 1885, reprinted in Canada Sessional Papers, 1885, no. 116 [CR-004653], 2. See also LAC, RG2, Series A-1-a, no. 821, Canada Order in Council 821, 18 April 1885 [CAP13079].
217 Canada House of Common Debates, 6 July 1885 [CR-004654], Sir John A. Macdonald, 3111 – 3112. Mackenzie, it may be recalled, had questioned the necessity of setting aside the 1.4 million acres of land “to settle the Indian claims that the half-breeds have” (see page 37 of this report).
Hudson Bay Company and Canada as if they were altogether white. That was the principle under which the arrangement was made and the province of Manitoba was established.218

Macdonald went on to point out that after five years of Liberal denial of Métis petitions in the North West, his Conservative government had inserted an enabling clause in the *Dominion Lands Act* of 1879 to deal with the Métis (when he was Minister of the Interior). He did not point out that this clause specifically described the objective as to “satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba”. This was a reflection of the language of the *Manitoba Act*, and the language Macdonald himself had used when introducing the *Manitoba Act* in the House of Commons in 1870: “a reservation for the purpose of extinguishing the Indian title...for the purpose of settlement by half breeds and their children”. Macdonald was also the Minister of the Interior when this language was repeated in the *Dominion Lands Act* of 1883. The phrase “extinguishment of the Indian title” also appeared in all the 1885 Orders-in-Council establishing the Half-Breed Commission except for the first one mandating only an enumeration. It was to be repeated again in the Orders-in-Council extending the work of the Commission in 1886. His ministers and officials all operated on the assumption that their task was related to extinguishing the “Indian” title of the Métis. Macdonald’s remarks on title in this speech stand in isolation from the overall stated legislative framework, policy and actions of his Government.219

The “Half-breed Commissioners” began working their way across Manitoba and the North West Territories, holding hearings at locations including Winnipeg, Fort Qu’Appelle, Regina, Maple Creek and Calgary. By the time they were making their way into present-day Alberta, in mid-May, Riel had surrendered to General Middleton’s Canadian militia. Chief Big Bear and his

218 Canada House of Commons Debates, 6 July 1885 [CR-004654], Sir John A. Macdonald, 3113.

219 This speech is also remarkable for Macdonald’s blistering criticism of the scrip policy his Government was implementing. He told the House that everyone familiar with the Métis of the North West had advised him to implement alternative policies instead of issuing scrip similar to Manitoba scrip, and that the only people who were benefiting were unscrupulous land speculators. He described his decision to go ahead as made with “the greatest reluctance. I do not easily yield, if there is a better course open; but at the very last moment I yielded, and I said: ‘Well, for God’s sake let them have the scrip; they will either drink it or waste it or sell it; but let us have peace’.” Canada House of Commons Debates, Sir John A. Macdonald, 6 July 1885 [CR-004654], 3116 – 3118. See also LAC, MG27 I B6 (Lansdowne Papers), A-624, John A. Macdonald to Lord Lansdowne, 12 August 1884 [CR-003841].

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group of followers were not to surrender until 2 July, but the “end game” was not in doubt: when the Commission was working in Edmonton in mid-June, the keeper of the Hudson’s Bay Company post journal there recorded that “Lawn tennis is the rage with the soldiers at present”. The Edmonton post journalist also recorded the welcome addition of cash into the local economy as the Métis sold their scrip documentation to non-Aboriginal buyers.

The Government’s process of determining whether an Aboriginal person was a “halfbreed” was more elaborate than that to identify an “Indian” (see section V for descriptions of how people were identified as “Indians” to be put on Treaty paylists). In order to be recommended for a grant of scrip, an applicant had to provide suitable answers on a standard form (which was usually filled out by the clerical staff of the Commission), swear to their veracity, and supply two witnesses to swear that they knew the applicant and would attest to the accuracy of the answers. Applicants were asked their name, current residence, where they were born, the names and ethnicity of their parents (one “halfbreed” parent of either sex was sufficient, as was a mixed marriage between an “Indian” and a non-Aboriginal person), where they were living on 15 July 1870, their occupation, names of spouses and children alive or dead, whether they had ever made a homestead entry or held land or scrip in Manitoba or the North West, the value of their personal and real property, and whether they had ever received annuity as an Indian. Birth or death certificates (in the case of heirs) were requested but not mandatory. The form was then read over to the applicant in English or French, and the applicant and witnesses signed, usually with an X. It was not uncommon for some fields to be left blank. Local Indian Agents were required to attend the Commission’s hearings, to identify persons who had received annuities. Métis who had received annuities had to attest to a simple statement before two witnesses indicating that they wished to withdraw from Treaty, and be formally discharged by the Agent. However, until mid-May, when the Commissioners were in Calgary, this process had not

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220 HBCA, B.60/a/42, entry for 16 June 1885 [CAP13243].
221 HBCA, B.60/a/42, entries for 9 and 15 June 1885 [CAP13243].
222 Under the Indian Act, it may be recalled, legal status was determined only through the husband or father.
223 Sample scrip applications, 1885: LAC, RG15, Series D-II-8-b, Vol. 1330, Christine Munro (Desjarlais), Fort Macleod, 18 May 1885 [CAP13230]; LAC, RG15, Series D-II-8-b, Vol. 1325, Jean Baptiste Amiot, Willow Bunch, 22 August 1885 [CAP13240].
been established, and between May and August the Commissioners were still mistakenly
telling applicants for withdrawal from Treaty that they were required to repay all of their
annuities. Street explained that he had thought this was reasonable given that “when a
halfbreed took treaty his Indian title was ipso facto extinguished and he certainly could not
complain if here were only allowed to have it revived upon the terms that he should refund what
he had received for its extinguishment”. The consent of the Band was also sometimes
required.

By the end of the season in September 1885, the Commissioners had issued 1,710 certificates for
entitlement to “money” scrip and 232 certificates for “land” scrip. Approximately 200
applications had been received for discharge from Treaty, almost all in Edmonton-area Bands
such as the Edmonton Stragglers, Michel, and Samson. Only a few were refused, because the
applicant could not prove he or she was a “half breed” or because he or she was a minor. It is
not possible to be precise about how many people were actually discharged from Treaty as a
result of these applications, as each application could cover several family members. The
common Aboriginal practice of multiple naming also makes linking names on withdrawal
applications to paylists impossible in many cases. In their final report, the Commissioners

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225 LAC, RG15, Series D-II-1, Vol. 574, file 175917, W. P. R. Street to A. M. Burgess, 9 May 1885 [CAP13082]; John R.
Hall to W. P. R. Street, 19 May 1885 [CAP13235].
226 LAC, RG15, Series D-II-1, Vol. 574, file 175917, John R. Hall to W. P. R. Street, 14 August 1885 [CR-007123]; also
John R. Hall to W. P. R. Street, 15 August 1885 [CR-007127].
227 LAC, RG15, Series D-II-1, Vol. 488, file 138133, W. P. R. Street to Minister of the Interior, 27 August 1885
228 There was internal Departmental confusion about whether this consent was required (as it was in the case of a
commutation), and in most cases consent was not requested. “Stragglers” Bands had no Chief or Council and
therefore the requirement did not apply. LAC, RG15, Series D-II-1, Vol. 488, file 138133, R. Sinclair to A. M.
Burgess, 31 August 1885 [CAP13251]; LAC, RG13, Vol. 83, file 1885-873, R. Sinclair to G. Burbidge, 17 September
1885 [CAP13249].
229 LAC, RG15, Series D-II-3, Vol. 178, file HB1166, W. P. R. Street, R. Goulet, and A. E. Forget to Minister of the
Interior, 26 September 1885 [CR-002658].
230 LAC, RG10, Vol. 10040, “Register of Halfbreeds who have applied to withdraw from Treaty”, 1 – 8 [CAP13083].
231 1885 annuity payments in areas where there had been unrest during the Rebellion were also disrupted by
investigations and arrests made around the payment time, fear among the Aboriginal population of reprisals
related to the Rebellion (some families, for example, fled over the international boundary to Montana to avoid
either the Rebellion or its aftermath), and the refusal of annuity payments to those thought to have been involved
in Rebellion activities. At Peace Hills (Hobbema), for example, 140 or 250 fewer people (depending on which
numbers are used) were paid in 1885, when 516 were paid, than in 1884. Indian Agent Lucas estimated the
number missing in 1885 from all of these causes, but added that “it is impossible to account satisfactorily for the
large decrease in the number of Indians paid”. See G. C. D. Jones, “Erasing the Bobtail Band: A Case Study in
warned that there were many outstanding claims, from people who could not attend the hearings, from a large Métis population at Lac la Biche that the Commissioners had not had time to visit, and from “many Halfbreeds taking the Indian Treaties who have expressed to us their desire to withdraw from the Treaty and obtain certificates for scrip, but who have been unable at the time to obtain their discharge”. \(^{232}\)

The Department of Indian Affairs had been advised in August of 1885 by the Department of the Interior of an impending flood of applications to withdraw from Treaty, when the Secretary of the Department of the Interior, John R. Hall, forwarded information from the Dominion Lands Commissioner at Winnipeg. Commissioner Smith, the Secretary noted, had reported that “a number of Indians in the St. Peters Reserve and elsewhere” were “desirous to withdraw from Treaty and participate in the Half Breed grant”. Hall paraphrased Smith’s astonishment that the *Indian Act* of 1884 really allowed “Halfbreeds” to withdraw from Treaty without refunding annuities, writing:

> The Commissioner can scarcely believe that this was the intention, but thinks that if it is, and it becomes generally known, numerous applications will be made by Halfbreeds now under Treaty. He goes onto say that possibly such wholesale relinquishment of Treaty rights may not be unprofitable if the Department should not thereafter be called upon to contribute to the support of these people; but it is not unlikely that many of them, after spending the proceeds of their grants as Halfbreeds would return to the Indian Reserves, where they have been residing, and become a burden, not only on the land but on the Government. \(^{233}\)

The Department of Indian Affairs, however, did not foresee a problem:

> ...the idea being that section 14 of the Indian Act 1880 requiring repayment of Treaty money... operated as a bar to the withdrawal of many enterprising Halfbreeds who might otherwise cease to be Indians and become self-supporting citizens. Having once withdrawn from Treaty and accepted Half-breed grants, these Half-breeds become to all intents and purposes Whites, and as such could not be permitted to reside upon an Indian Reserve; while their names having been erased from the pay list would prevent the likelihood of their ever again receiving annuity money as Indians... \(^{234}\)

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\(^{233}\) LAC, RG10, Vol. 3700, file 17092, John R. Hall to L. Vankoughnet, 21 August 1885 [CR-004541].

\(^{234}\) LAC, RG10, Vol. 7515, R. Sinclair to A. M. Burgess, 31 August 1885 [CR-007128].
Pressed by rising discontent and eventual armed rebellion among Aboriginal people whose claims in the North West had not been addressed, Canada moved in 1885 to offer a “halfbreed” scrip option for the “extinguishment of Indian title” as it had done in Manitoba in the 1870s. Following the Manitoba model, Canada devised criteria and processes for determining if an Aboriginal person was “halfbreed” and therefore entitled to this form of compensation for their “Indian title”. Although this offer was aimed primarily at “halfbreeds” who had not yet accepted any compensation for their “Indian title”, Canada also made the scrip choice available to “halfbreeds” who had already accepted Treaty, as in Manitoba in 1874. The option to withdraw from Treaty and take scrip without penalty also recognized that many “halfbreeds” had entered Treaty outside Manitoba as no other choice of benefits for Aboriginal people had been available, although scrip and non-“Indian” legal status might have been better suited to them. Despite warnings from some observers of an impending mass exodus from Treaty of people who would “return to the Indian Reserves, where they have been residing, and become a burden, not only on the land but on the Government”, Canada was confident in 1885 that only “enterprising Halfbreeds who might...cease to be Indians and become self-supporting citizens” would elect to change the form of their compensation and their legal status.

IV (7). “Halfbreed” scrip and withdrawals from Treaty, 1886

Events during the 1886 working season of the scrip commission forced the Department of Indian Affairs to reconsider aspects of its management of the Aboriginal population in the numbered Treaty areas of Manitoba and the North West Territories, most particularly the assignment of individuals of “Indian blood” to the legal categories offered: Treaty (“Indian”) and scrip (“Halfbreed”). When Aboriginal people responded to the choices and incentives offered in unpredicted ways, the Superintendent General (Prime Minister Sir John A. Macdonald) and his senior officials intervened to assert more Governmental control over the process, removing the ability to choose from some applicants. The assertion of control tended to emphasize the elements of wardship and dependency as sorting devices for the Aboriginal population.

Over the winter of 1885 – 1886, according to a Department of Indian Affairs register of applications for withdrawals from Treaty, about a hundred discharges from Treaty were issued
by agents, most in Treaty Six. The family names of those discharged, like those of people discharged in the summer of 1885, were common among the Métis population in the North West (Cardinal, Collins, and Desjarlais, for example). However, this register is not complete, as additional applications and discharges from Bands in Treaties One and Two not shown in the register are referred to in Department of Indian Affairs files from this time period.

Prior to the Half-Breed Commission taking to the field in 1886, the Department of Indian Affairs and the Department of the Interior attempted to resolve some policy issues that had arisen in 1885. The changes in the definition of “Indian” in 1869 and 1876, and the implementation of scrip and Treaty withdrawal policies, were resulting in increasingly tortured readings of the supposedly exclusive legal categories of “Indian”, “Halfbreed” or “Métis”, “non-Treaty Indian”, and “white” that administrators attempted to overlay on a mixed Aboriginal population. As observers in the Robinson Treaty and numbered Treaty areas had frequently pointed out, the legal term “Indian” had never been limited to persons of exclusively “Indian” ethnicity or identity. Efforts to circumscribe the “Indian” legal category only served to highlight the divergence between legal labelling and personal ethnicity or identity. This was true of families identified as “Halfbreed” or “Métis” who for various reasons adopted the legal status of “Indians”, and created particular difficulties of implementation in mixed-ancestry populations for whom identity could shift across kinship connections, occupational and economic strategies, cultural manifestations and short-term incentives and exigencies.

235 LAC, RG10, Vol. 10040, “Register of Halfbreeds who have applied to withdraw from Treaty”, 8 – 13 [CAP13083]. Chief Peeaysis was also known as François Desjarlais. See also LAC, RG10, Vol. 3728, file 25717, John Mitchell to Indian Commissioner, Regina, 27 November 1885, with attached petition, Patrick Pruden and others to Thomas White, 17 November 1885 [CAP13275].
237 At a meeting between Canada, Ontario and Québec in 1884 on financial issues arising from Confederation, Québec had challenged the payment of Treaty annuities in the Robinson and numbered Treaty areas to “Half-breeds or Quarter breeds”, declaring that “if you stick to the letter of the Treaties you have to pay only Indians”. According to an observer, Vankoughnet replied that “those who are recognized by the Government, are Indians...Half-breeds are by the law of Ontario Indians – as long as they have Indian blood in their veins they are Indians legally”. Quoted in AO, F1027, item 27/32/08, report attached to E. B. Borron to O. Mowat, 31 December 1891, 9, 22 [CAP13594]; see also notes from this meeting reprinted in AO, F1027, item 71/15, “1893. Arbitration Interest Question Exhibits”, 100 [CAP13010].
The Department of Justice at Ottawa was presented with some examples of these complicated realities in the winter of 1885 – 1886, as part of preparing instructions for a continuation of the work of the Half Breed Commission. In April of 1886, two legal opinions were prepared based on fact situations forwarded by the Department of Indian Affairs. On April 2, George Burbidge, the Deputy Minister of Justice, advised that

The Indian Act does not in terms define the status of the family of a half-breed who withdrew from the Treaty. By reference to the definition of an Indian, however, it would appear

(I) That the Indian or half-breed wife of a half-breed who withdraws from the Treaty ceases to be an Indian, except for the purposes outlined in section 12.

(II) That the children of such half-breed, which should probably be construed as the minor children of the Half-breed, at the time of the withdrawal, cease to be Indians.

(III) That a half-breed woman married to an Indian is an Indian and not a half-breed. 239

On 7 April, Burbidge refined his views:

...in the case of Half-breeds who have withdrawn from the Treaty and left their families in the Treaty...those left in the Treaty should be dealt with in the same manner as other Indians of the Band...

In addition to this I am asked to express an opinion upon the following questions: --

(a) Is the daughter of Half-breeds who now withdraw from Treaty, and who was admitted to treaty by the Commissioners that made it, to be regarded, subsequent to their withdrawal, as an Indian woman having the right to commute her annuity upon marriage to a non-treaty man, or as a Halfbreed who may or may not withdraw from the Treaty, as she elects?

But for the statement in this question that the daughter was admitted to the Treaty by the Commissioners that made it, I should be of opinion that by the withdrawal of her parents from the Treaty she would, if a minor, cease to be an Indian, but if she was of an age to act for herself, and was allowed by the Commissioners to act for herself, and to become a party to the Treaty, it is I think at least open to doubt as to whether the withdrawal of her parents would affect her status. If she is to be considered an Indian she could on her marriage to a non-Treaty man commute her annuity, or she might withdraw from the Treaty or not, as she should elect.

(b) Is a half-breed woman, who was admitted to Treaty by the Treaty Commissioners, being married at or prior to the time, to a non-treaty man, to be allowed to commute her annuity, or has she only the privilege [sic] of withdrawal as a Halfbreed?

This question is not very intelligible. I do not know whether by the term “non-treaty man” the Assistant Commissioner [of Indian Affairs for the North West Territories, Hayter Reed] means a non-treaty Indian or a person who is neither an Indian nor a non-treaty Indian. If by the expression non-treaty man he means a nontreaty Indian, then I think the answer to the question should be that the half-breed woman married to the non-treaty Indian is an Indian and not entitled to withdraw from Treaty. She may however with the consent of the Band under section 13 of the Indian Act commute the income to which she is entitled.

If by a non-treaty man, the Assistant Commissioner means a man who is neither an Indian nor a non-treaty Indian, then I unable to understand the grounds on which the Commissioners admitted her to Treaty; but if properly admitted, she ceased at once to be an Indian, but was entitled to her share in the distribution, and with the consent of the Band to a commutation.

It is obvious that from the absence of specific legislation difficulties will arise with reference to this question. I therefore beg to suggest that you should in a consultation with the Deputy Minister of the Interior draw up rules and regulations to govern the matter, and give them effect by legislation.240

Roger Goulet, a member of the 1885 Half Breed Commission, was appointed on 1 March 1886 as the sole Commissioner to “speedily dispose” of “claims preferred under sub clause E of clause 81 of the Dominion Lands Act, 1883, by Half breeds within the ceded territory”.241 He was given detailed instructions by Deputy Minister of the Interior Burgess on 17 May 1886. Among these instructions, which incorporated the clarifications and refinements in process and policy developed over the previous year, were rules regarding the acceptance of claims from people who had been Treaty beneficiaries:

15. Half breed heads of families or children of half breed heads of families who are participating in the payments to the Indians shall not be entitled but such Half-breeds on their withdrawal from Treaty, and on their producing a certificate from the Indian Agent to that effect you shall treat the claims preferred by such Halfbreeds in the same manner as if they had never accepted Treaty money. It should, however, be very distinctly explained to such Half-breeds who may withdraw from any Indian Treaty to which they belong in order to participate in the Halfbreed grant referred to, that once they have received scrip as Halfbreeds they would not again be allowed to receive any annuity payments as Indians or be permitted to live on an Indian Reserve.

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240 LAC, RG10, Vol. 3721, file 23593, George Burbidge to L. Vankoughnet, 7 April 1886 [CR-007154].
241 LAC, RG2, Series A-1-a, no. 309, 1 March 1886 [CAP13305].
16. A halfbreed woman married to an Indian is an Indian within the meaning of the Act and she cannot withdraw from the Treaty, and therefore cannot participate in the grant...  

Although printed forms were developed by the Departments of Justice and Indian Affairs for withdrawals from Treaty and sent to the Agents, no additional instructions accompanied them.  

The Department of the Interior, recalling its warnings of August 1885, attempted to convince Indian Affairs to tighten up its procedures for withdrawals before Goulet left for the season’s work, asking for an amendment to the *Indian Act* “providing that no treaty-taking half-breeds shall be allowed to retire from the treaty and claim the rights of a non-treaty half-breed unless upon a report from the Indian Agent or the Indian Inspector, that he has for a certain number of years previous to his application been self-supporting”.  

Goulet left Winnipeg on 31 May and headed to Swift Current, Maple Creek and Calgary. Just before he left, the Department of Indian Affairs at Ottawa received a report from Winnipeg that at least 49 “Sandy Bay Halfbreeds”, or most of the Band, had withdrawn from Treaty Two.  

At Calgary, Goulet dealt with about twice as many applications as he had up to that point, including 35 (of 91) from people who had been discharged from Treaty. However, on 19 June, he reported from Calgary that he had been able to deal with less than half of the people who had appeared at his hearings. At Swift Current, he had reviewed twelve applications, but fifteen “Half breeds” showed up without certificates of discharge from Treaty and could not be considered for scrip.  

At Maple Creek, seventy came (only thirty-three applications were processed). At Calgary, a “large number” could not be dealt with “as most of these Half Breeds are what are termed stragglers...who have abandoned the band of Indians with which they

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243 LAC, RG13, Vol. 83, file 1885-873, E. Dewdney to Superintendent General of Indian Affairs, 10 August 1885 CAP13246 [see also CR-007212]; R. Sinclair to G. Burbidge, 17 September 1885 [CAP13249].  
244 LAC, RG15, Series D-II-1, Vol. 488, file 138133, A. M. Burgess to H. H. Smith, 8 April 1886 [CAP13314].  
245 LAC, RG10, Vol. 3742, file 29187, E. McColl to Superintendent General of Indian Affairs, 22 May 1886 [CAP13356], with attached petition, François Desmerais and others to Sir John MacDonald, 26 April 1886 [CAP13317].  
247 LAC, RG15, Series D-II-1, Vol. 501, file 140682, R. Goulet to A. M. Burgess, 19 June 1886 [CR-007168]. The numbers of applications reviewed or considered is drawn from the “Detailed Schedule” appended to Goulet’s final report of 12 January 1887 [CR-002655].
formerly received annuities, it is almost impossible for them to appear before the Indian Agent for the district to which they belong as Indians, and the fact that, for this reason, they cannot obtain Scrip Certificates causes a great deal of dissatisfaction amongst them”. However, Dewdney refused Goulet’s request to allow Indian Agents to grant discharges to people outside their district.

Goulet headed north from Calgary on 21 June, through the small settlements of Red Deer River and Battle River. He held hearings at the Peace Hills Indian Agency (present-day Hobbema) on 29 and 30 June. Indian Agent Lucas had been working to prepare for Goulet’s arrival since 25 June, when he recorded in his diary that he had been

taking evidence and writing applications for discharge from Treaty for [Chief] Bobtails party. Had to refuse to take any more as we have no forms and many Indians are waiting to be discharged all claim to have Indian blood...

However, Lucas wrote out applications for withdrawal from Treaty and discharges from Treaty by hand on plain pieces of paper for several people, including Chief Bobtail (Alexis Piché) and eight other members of his immediate family. Meanwhile, large numbers of people were massing at Edmonton waiting for discharges from Treaty and the Scrip Commissioner. On 29 and 30 June, Bobtail and his family, and several other members of the Hobbema Bands, completed approved scrip applications. On 1 July Inspector Wadsworth called a stop to the whole process, ordering Lucas not to issue any more discharges until he could get further instructions from headquarters. He travelled to Edmonton and telegraphed Indian Commissioner Dewdney (who was in Regina) on 4 July:

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249 LAC, RG15, Series D-II-1, Vol. 501, file 140682, R. Goulet to A. M. Burgess, 19 June 1886 [CR-007168]. The Department of Indian Affairs again refused Goulet in August 1886, on the grounds that people not known to Indian Agents granting discharges could return to their own districts and claim annuities, or could falsify answers to the questions asked as part of the discharge process after late July 1886 and “eventually be necessarily thrown back for support on the hands of the Government”. See pages 88 and 89 of this report; and LAC, RG10, Vol. 3724, file 24303-2A, Hayter Reed to Superintendent General of Indian Affairs, 28 August 1886 [CR-007294].
250 Glenbow Archives, Lucas family fonds, M5986, file 2, transcript of diary of Samuel Lucas for the year 1886, 11 [CAP13283].
251 LAC, RG10, Vol. 3594, file 1239, pt. 1A (withdrawal) [CAP13360, CAP13358]; LAC, RG15, Vol. 1363 (discharge) [NO IMAGE].
Are all Indians who represent or can prove they are halfbreeds but lead same life as Indians to be allowed discharges, if so there will be a perfect exodus from Bears hills [Hobbema] and probably other places, Agents require positive and immediate instructions...252

Wadsworth explained his concerns in a letter sent to Dewdney a few days later:

1st the number of applications were in my opinion quite beyond any anticipations of the Deptmt 2nd Agents appeared to have no option but to grant a discharge upon the alleged half breed making his application in proper form 3rd they appeared to have no difficulty in proving themselves half breeds, this evidence being only in the form of statements by friends

I had already (on 1st inst. [July]) before leaving Peace Hills requested the Agent not to grant anymore discharges until I could communicate with you, this course caused great dissatisfaction among those wishing to withdraw, and it was increased by the action of some of the scrip buyers, who are interested in having as much as possible issued.

Already there have been discharges granted to some who as Indians were quite unable to provide a living for themselves and families...253

Dewdney wired Wadsworth on 7 July declaring that “no discharges by agents should be granted until have consulted Superintendent General”,254 and on the same day telegraphed Deputy Superintendent General Vankoughnet in Ottawa repeating Wadsworth’s question and commenting, “might be well to refuse withdraw [sic] in many cases”.255 Also on 7 July,

Dewdney wrote a letter to Vankoughnet providing more information:

Applications for permission to withdraw from Treaty, are being made in the Peace Hills, and Edmonton District, by persons that have always followed an Indian mode of life. They have never been regarded as being anything but Indians, and it was not to be expected that they would claim to be anything else, nor, it is thought, was it the intent of Parliament that legislation, enacted for half breeds should extend to them.

White blood, however, is admixed to such an extent with the native...that few Indians have difficulty in showing that they possessed of such a strain, which when they so desire, enables them to term themselves halfbreeds, and [it] is such the [they] are now in consider[able] numbers applying for discharge from Treaty...

The question now arises therefore as to what extent it is proper to permit the withdrawals from Treaty of this class referred to. If they are allowed to withdraw indiscriminately,


\[255\] LAC, RG10, Vol. 3724, file 24303-2A, R. Goulet to A. M. Burgess, transcript of telegrams, 12 July 1886 [CAP13405]. This was to apply to the Edmonton, Peace Hills and Victoria (N. W. T.) agencies.

\[255\] LAC, RG10, Vol. 3724, file 24303-2A, E. Dewdney to L. Vankoughnet, 7 July 1886 [CAP13364].
some, probably, will be able to sustain themselves no better than they have done, in the past, what is to become of them? Can such as are unable to make a living be permitted to starve?...it is likely that many who now desire to leave the Treaty will fall back upon the hands of Government as destitute persons, or as offenders against the law...

Discrimination therefore seems to be necessary in granting withdrawals, and I desire to be informed as to how this may be exercised, under the Act?²⁵⁶

Sir John A. Macdonald, the Superintendent General of Indian Affairs, was travelling across Canada by train at the time. On 8 July, Vankoughnet wired Dewdney:

Minister says defer action respecting Peace Hills Indians withdrawing until he reaches Regina and then speak to him about it.²⁵⁷

After Macdonald arrived in Regina, Dewdney spoke with him and issued a telegram to Goulet stating

Superintendent General instructs me to say that Treaty Half Breeds who clearly show that they are Half Breeds and who do not lead the same mode of life as Indians should be allowed to withdraw from treaty. Others should not be allowed. Every person accepting discharge should be informed at the time that he forfeits all Indian rights, that he must leave the Reserve and give up house and all other improvements without compensation and also cattle and implements given to him as belonging to the Band.

Half Breeds consent to conditions should be written on discharge and signed by him. Wadsworth can act with you...²⁵⁸

The register of withdrawals shows that sixteen discharges in the Edmonton District, mostly from the Edmonton Stragglers and Passpaschase Bands, were granted between the end of June and 7 July 1886, after which there was a pause until 21 July.²⁵⁹ On July 27, Wadsworth sent a telegram to Dewdney proposing that “no treaty halfbreed, who has been receiving rations regularly, or pursuring [pursuing] hunting, or leading a vagrant life, shall be discharged, exceptional cases may afterwards be taken into consideration by the Department”.²⁶⁰ In a letter expanding on the telegram, Wadsworth added, “almost every Indian wishes to withdraw”.

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²⁵⁶ LAC, RG10, Vol. 3724, file 24303-2A, E. Dewdney to Superintendent General of Indian Affairs, 7 July 1886 [CAP13366].
²⁵⁷ LAC, RG10, Vol. 3724, file 24303-2A, L. Vankoughnet to E. Dewdney, 8 July 1886 [CAP13371].
²⁵⁸ LAC, RG10, Vol. 3724, file 24303-2A, Hayter Reed to Superintendent General of Indian Affairs, 26 July 1886 [CAP13412].
including those who had been living on Reserves and were “no fit subject to be turned loose to care for himself and family”:

...an Indian hunter is an unreclaimed Indian, + is he whom the Department has been after to settle down upon a reserve ever since the buffalo disappeared, if given his discharge it authorizes his mode of life, should an accident befal him he is helpless to support his family; a vagrant Indian is he who hangs around settlements doing odd jobs, his women are immoral, within the treaty he can be sent to a reserve, outside he can only be sent to gaol; those who have been refused discharge declare they will never again live on any reserve, they behave very badly...261

At the end of July, W. Anderson, the Indian Agent for the Edmonton Agency, wrote in his monthly report that “a large number applied for discharges, however we refused most of them; some who could not prove being halfbreeds, and some who would not have been able to support themselves if they got free from the Treaty, they gave much trouble and it took much time in arguing the points with them”.262 The register indicates that at least 43 discharges were granted in the Edmonton District between 21 and 31 July, and six more in the first week of August, comprising most of the Passpaschase Band as well as members of Enoch, Michel and others.263

Goulet reported that he had issued 96 Métis scrip certificates in the Edmonton District in 1886.264 In early August, he wrote to Burgess that the sheer number of Treaty “Half Breeds” submitting applications for scrip had delayed his progress:

After reaching Peace Hills applications from treaty Half Breeds who lead the same mode of life as Indians became so numerous that Mr. T. P. Wadsworth Inspector of Indian Agencies, in accordance with the conclusion that we had both arrived at on the subject, telegraphed to the Indian Commissioner for specific instructions...pending his reply thereto no further discharges were granted...

...Half Breeds who lead the same mode of life as Indians are not to be granted discharges from treaty. This has created very great dissatisfaction amongst a large number of person who although living like Indians are Half Breeds...

I have consulted a great many prominent persons of this part of the country relative to this question and they all agree that were these Treaty Half Breeds allowed to leave the

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263 LAC, RG10, Vol. 10040, “Register of Halfbreeds who have applied to withdraw from Treaty”, 39 – 47 [CAP13083].
Reserves on which they are now fed by the Government they would become a burden to the community and would no doubt eventually be a cause of great annoyance to the Government, but on the other hand they fear, to some extent, that refusing them what they so earnestly ask for: their discharges, and their scrip might make them very discontented.

However, quite a number of these Half Breeds were allowed their discharge before any distinction had been made between a treaty Half Breed leading a life identical with that of the Indians – living on the Reserve, receiving rations and treaty payments, and a treaty Half Breed receiving the Indian annuities and [illegible word] who provided for his subsistence by farming, freighting and by hiring out as a labourer + c...265

By the beginning of August, Wadsworth had developed a list of questions to ask applicants for discharge from Treaty to determine into which category they could be placed. The “examination” was to be witnessed by the Indian Agents, who were “generally sufficiently well acquainted with the circumstances ...to know if they tell the truth..some idea is also gained of the intelligence of the applicant from the manner he replies to the questions”. The questions were:

1. Produce your pay ticket
2. What is your name
3. Give your French and English names
3.2 Give the names of your Father + Mother
4. Where were you born
5. Where did you first take treaty
6. Where were you paid last
7. How many times have you taken treaty
8. How many were you paid for
9. Give the ages of your children
10. How many are married or have been married
11. What is your wifes name
12. Give your wifes fathers name
13. Where are you now living
14. Do you draw rations regularly
15. Have you any private stock
15.2 Do you live in a lodge [tent or tipi] -- Winter + Summer
16. How do you expect to make a living if you get a discharge
17. Will you sign a paper agreeing to give up all your Indian rights266

Goulet, Wadsworth and Anderson all referred to the anger expressed by people who were denied discharges. A member of the family of Chief Passpaschase (also known as Woodpecker or John

265 LAC, RG15, Series D-II-1, Vol. 501, file 14682, R. Goulet to A. M. Burgess, 4 August 1886 [CAP13428].
266 LAC, RG10, Vol. 3724, file 24303-2A, T. P. Wadsworth to E. Dewdney, 4 August 1886 [CAP13425]. This “paper” was written on the back of the discharge, and stated that the applicant agreed to give up all “Indian rights”, and any house, Indian Department tools and livestock, and other improvements on the Indian Reserve without compensation.
Gladieu Quinn) went so far as to telegraph Sir John A. Macdonald on July 15, asking indignantly, “Why cant we get same as Peace Hills half breeds taking Treaty we want our scrip”. 267 Indian Agent Lucas noted in his diary, after preparing a few more discharges in early August, that he had been warned not to travel the Reserve alone “as the Indians were threatening to kill me for not issuing discharges”. 268 However, some observers were not convinced that this revised process made much of a difference. The priests who lived and worked with these Aboriginal people were anxious to keep them on the Reserves, and the famous missionary Father Lacombe spoke to Vankoughnet in Ottawa at the end of July 1886 conveying his concern over the “indiscriminate withdrawal of Halfbreeds” near Edmonton. 269 Bishop Grandin in St. Albert wrote to Macdonald on 23 August 1886 stating his worry over the “mania of the Indians of this vicinity especially at Edmonton, who almost all claim to be descendants of Whites...on this assumption scripts are given to them...although they are as much Indians as the wildest Indian of the North West – They spend, without any profit to themselves the price of these scripts and have to suffer again the pangs of hunger or be supported by the Whites”. 270 Goulet professed to be comfortable with the decisions made in co-operation with Wadsworth and the Indian Agents after 21 July:

It will be observed that the majority of claims which have been preferred this year are from Half-Breeds who were previously in receipt of annuities as Indians. Apart from the claimants at Peace Hills, twenty-eight in all, who had obtained their discharges from Treaty before my arrival at that place, I am confident, in view of the great precautions which were taken by Mr. T. P. Wadsworth, Inspector of Indian Agencies...the Indian Agents and myself, to ascertain whether or not the applicant for withdrawal would be capable, in the event of his being allowed to leave the treaty, to support himself and family without the assistance of the Government, that no fear need be apprehended that this class of Half-breeds who have severed their connection with the Indian Treaties and have been granted scrip will have to be taken back on the Reserves. 271


268 Glenbow Archives, MS986, file 2, Lucas diary, entry for 4 August 1886; see also entries for 22 July to 3 August [CAP13283]. Lucas had been officially reprimanded by Headquarters in July for discharging “Indians you should not have”. Glenbow Archives, Hobbema Indian Agency fonds, M1825, BE31.116822, vol. 25, Register of Letters Received, 1885 – 1887, 10 [CAP13407].

269 LAC, RG10, Vol. 3724, file 24303-2A, L. Vankoughnet to A. M. Burgess, 30 July 1886; with attached letter L. Vankoughnet to A. Lacombe, 30 July 1886 [CAP13420]; see also LAC, RG10, Vol. 3724, file 24303-2A, A. Lacombe to L. Vankoughnet, 6 August 1886 [CAP13434], written after he had been briefed on the changes to the withdrawal process.


Goulet issued a total of 1,159 scrip certificates in 1886, reserving 203 for further consideration. He disallowed 44 applications. Six hundred and two of the approved applications were from “Treaty” Métis, compared to 290 from “Non-Treaty” and 267 made on behalf of deceased persons. He noted that he had not been able to visit places such as The Pas, Grand Rapids, and Fairford, “at which places, I am informed, many persons have been granted their discharge from Treaty”.

In August of 1885, the Department of Indian Affairs had been confident that opening the door to withdrawal and providing a positive incentive in the form of scrip would simply shed “many enterprising Halfbreeds” from Indian Treaty lists and allow them to “become self-supporting citizens”. The events of 1886 proved that the fault lines of ethnicity, identity and economic status in Treaty Bands were not nearly as clean as officials had assumed. The questions Indian Department officers devised to sort people of “Indian blood” into the categories of “Halfbreed” and “Indian” had nothing to do with blood quantum, historic affiliations, family histories past one generation, or cultural markers such as language or religion, but turned on an assessment of whether the applicants could live without rations and the resources and direction offered on an Indian Reserve. If, in the opinion of the Indian Agent, a “Treaty Half Breed” needed government assistance and wardship, he was kept in Treaty as an “Indian”: the people for whom the options were, in Wadsworth’s words, “within the treaty he can be sent to a reserve, outside he can only be sent to gaol”; the “vagrant” and “immoral”, “destitute” persons camping around “Towns and Villages”. If someone who was culturally “as much [Indian] as the wildest Indian of the North West” seemed capable of living without daily rations, and was willing to give up all his property on the Reserve without compensation, he could be classed as a “Half Breed” and have his “Indian title” addressed with scrip. Prior to the revision of the withdrawal and scrip processes in July of 1886, some applicants had been allowed to leave Treaty without scrutiny, by simply claiming a non-Aboriginal ancestor and expressing a desire to take the short-term

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financial incentive offered and escape the confines of the Reserves.\textsuperscript{274} After observing this unintended effect of their processes, Canada intervened to reduce the element of choice for the applicant and reassert control over the assignment of legal status. In attempting to determine the appropriate means of dealing with families in the Aboriginal population, Government officials began to develop the criteria of “[leading] the same mode of life as Indians”, with a series of questions on receipt of annuities and rations, private ownership of livestock, preferred type of housing, and means of support. The Aboriginal population was managed and classified by Canada at this time based on dependency relationships: potentially self-supporting (Métis scrip) or dependent on Government assistance (Treaty). In the case of married women, dependency was determined through their spouse.

IV (8). \textbf{Withdrawals and re-Admissions to Treaty, 1887 - 1895}

Wadsworth, writing in the interval between the stoppage of discharges in Edmonton and Peace Hills and the receipt of additional instructions from the Superintendent General, wrote of the people wishing to be discharged that

\begin{quote}
there is an idea among them that should those who have left the treaty ever require assistance they will compel the Govt to extend it to them. When some Indians (alleged halfbreeds) applicants for discharge were told by Mr Hardisty they would have to give up their cattle tools implements and leave the reserves they replied “let us first get our scrip and we will then see about that” implying there was some doubt about their having to leave their reserve...\textsuperscript{275}
\end{quote}

At Sandy Bay in Treaty Two, the people who had withdrawn from Treaty in the spring of 1886 petitioned Sir John A. Macdonald shortly afterward

\begin{quote}
to throw open this Sandy Bay Indian Reserve for settlement as there are no Indians now left on this Reserve. We being the only Treaty half-breeds who composed the Sandy Bay Band of Indians.

Most of us had taken up and broken up land built houses and stables before this place was surveyed and recognised as an Indian Reserve for our own benefit, and now that we have
\end{quote}

\textsuperscript{274} Both Wadsworth and Bishop Grandin observed that the Treaty people around Edmonton referred to their lives on the Reserves as “a state of slavery”. LAC, RG10, Vol. 3746, file 29690-4, T. P. Wadsworth to E. Dewdney, 8 July 1886, 31 – 32 \textsuperscript{[CAP13372]}; LAC, RG10, Vol. 3788, file 43943, Vital \textsuperscript{[Grandin]} to Sir John A. Macdonald, 23 August 1886 \textsuperscript{[CAP13435]}.

\textsuperscript{275} LAC, RG10, Vol. 3746, file 29690-4, T. P. Wadsworth to E. Dewdney, 8 July 1886, 32 \textsuperscript{[CAP13372]}.
withdrawn from the Indian Treaty We humbly beg the Dominion Government...to...[allow] us to keep our old houses by giving us this land.276

On the John Smith Reserve near Prince Albert (Treaty Six), Wadsworth found in 1887 that some individuals who had applied for discharges would be giving up “comfortable homes with very fair improvements” for scrip worth much less, and asked Dewdney if “each man of the band receiving discharge, would be allowed his river lot where he lives, as a homestead”.277

The response of the Department to each of these requests was clear. Dewdney forwarded Wadsworth’s request regarding John Smith’s Band to Headquarters with the observation that although “a large majority of these Indians are Half-breeds, and as intelligent and industrious as their friends and neighbors who have not taken Treaty”, he did not see “how the Government could grant the concessions” Wadsworth proposed.278 Ottawa confirmed that “they cannot be allowed [to take scrip] and remain on the Reserve or receive payment for their improvements”.279 Ebenezer McColl, the Inspector of Indian Agencies for Manitoba, pointed out the hazards of the Sandy Bay situation, where 16 families (45 people) remained on the paylist: “At all events it would be a dangerous experiment to attempt to diminish the quantity of land originally allotted to the band, or take away any of the cattle supplied in consequence of the withdrawal from treaty of a portion of it or on account of a decrease of their numbers from the fatality of an epidemic which might decimate their numbers”.280 Headquarters replied that “the land in the Reserve is the property of the members of the Band who have remained in Treaty; and therefore the request of the petitioners that the same be thrown open for settlement cannot be complied with”.281 Dewdney’s office authorized Indian Agent Anderson at Edmonton to evict

276 LAC, RG10, Vol. 3742, file 29187, François Desmarais and others to Sir John A. Macdonald, 26 April 1886 [CAP13317].
277 LAC, RG10, Vol. 3724, file 24303-3, T. P. Wadsworth to the Indian Commissioner [Regina], 14 April 1887 [CR-007326].
278 LAC, RG10, Vol. 3724, file 24303-3, E. Dewdney to Superintendent General of Indian Affairs, 18 April 1887 [CR-007323].
279 LAC, RG10, Vol. 3724, file 24303-3, [L. Vankoughnet] to E. Dewdney, 28 April 1887 [CR-007283]. See also LAC, RG10, Vol. 11194, file 4 (Legal Opinions), 25 – 1 – 2000, Geo. F. Burbidge to L. Vankoughnet, 10 March 1887 [CR-007387], in which Burbidge expressed the opinion that people who withdrew from Treaty could not retain land on which they had settled prior to the Reserve being surveyed, although they could be compensated for improvements made prior to taking Treaty.
280 LAC, RG10, Vol. 3742, file 29187, E. McColl to Superintendent General of Indian Affairs, 21 May 1886 [13320 NEW NUMBER].
people who had withdrawn from Treaty the previous year but were still on the Reserves preparing for another season of cultivation.  

Other people who withdrew from Treaty had misunderstood how scrip was to be allotted. At Cumberland House (Treaty Five), Albert Flett, the former Chief of the Band, complained that he and other people who had withdrawn had believed that their children would get scrip “the same as the parents”, but “now we understand they are not to get it”. Furthermore, the scrip commissioner had not arrived in the 1886 season, they had been refused their annuities and food assistance through the winter, and their children had been removed from the school until McColl intervened to have them reinstated. Shortly afterwards, Ottawa informed McColl that he could authorize immediate payment of the 1886 annuity to people who withdrew from Treaty Five in 1886 but did not receive scrip because the Commissioner had not visited them, estimating the number of people in this category at 470 “Halfbreeds”. However, if any of them had accepted an advance payment on the scrip entitlement, they could not re-enter Treaty or accept the 1886 annuities. However, by late spring of 1887, conditions in the Aboriginal population in Treaty Five had further deteriorated, and the Agent reported that a number of these who have been discharged and have not yet received scrip are most anxious to return to Treaty, not merely because their children are not be recognised, but now chiefly because they believe that not being able to support themselves like white men, their condition as Treaty Indians would be practically far better than as discharged Halfbreeds.

In the Treaty Six area, in May of 1887, the attention of the Indian Department and the North West Mounted Police was drawn to “some Cree Indians...camped about Calgary...a source of annoyance to the people”. Assistant Indian Commissioner Hayter Reed instructed the NWMP

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282 LAC, RG10, Vol. 3595, file 3239, pt. 12, L. Vankoughnet to E. Dewdney, 16 April 1887 [CAP13452]; Hayter Reed to Indian Agent, Edmonton, 20 April 1887 [CAP13454].
283 LAC, RG10, Vol. 3775, file 37267-1, Albert Flett to E. McColl, 27 January 1887 [CAP13443].
286 LAC, RG10, Vol. 3775, file 37267-1, J. Reader to E. McColl, 27 April 1887 [CAP13455]; see also A. Bélanger to E. McColl, 14 November 1887 [CAP13508].
that “it is our desire to have any Indians found hanging about the town, sent back to the Reserves”. The Officer Commanding at Calgary reported that there are...34 lodges in camp near the ‘Mission’, 20 are Crees, who claim to have given up their treaty, so can we prevent them from camping where they like...

Bob Tail is here, he says he is waiting for his son who is freighting. The only way to get rid of the Indians is to arrest those not working as vagrants, an example made would frighten the others...

On 29 June, Reed wrote to Macdonald informing him that a communication has been received from the Rev. Father Lacombe, to the effect that certain Indians whom he knows, amongst whom are ex-Chief Bobtail and his followers, from the Bears Hills, who withdrew as Half-Breeds, from Treaty No. 6, now regret the step they took in withdrawing, and would gladly return to their Reserves, and Treaty privileges.

The Rev. Gentleman states that he writes at the solicitation of Bobtail, who has been freighting for the Hudsons Bay Company, in order to make a living.

I am directed by the Commissioner [Dewdney] to state that, with regard to the discharge from Treaty of Half Breeds who followed an Indian mode of life, he would beg to refer you to his letter of July 7th, 1886, and to a telegram addressed to you upon the same date.

These communications informed you that in many cases, it might be well to refuse withdrawals...

Ex-Chief Bobtail and his followers are now represented to be destitute, and as was anticipated, desire to be permitted once more to enjoy the privileges that were theirs before they withdrew from Treaty...

In view of the circumstances of their condition, and of the obvious objections to leaving an indigent set of persons in a state of destitution away from controlling influences, the Commissioner is of opinion that it would be advisable to re-admit Bobtail and his followers to Treaty, or at least to allow them to reside upon their old Reserves, upon such terms as the Department may deem it proper to extend to them; and that if annuity money

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287 LAC, RG18, Series B-1, Vol. 1077, file 321-1887, Hayter Reed to Officer Commanding, North West Mounted Police, Calgary detachment, 11 May 1887 [CAP13459]. See also L. W. Herchmer to Officer Commanding, North West Mounted Police, Calgary detachment, 3 June 1887 [CAP13460].
288 LAC, RG18, Series B-1, Vol. 1077, file 321-1887, W. M. Herchmer to Commissioner, North West Mounted Police, Regina, 4 June 1887 [CAP13461].
is again paid to them, an amount should be retained, equivalent to the value of the scrip they received.  

Macdonald approved this course on 7 July 1887. Vankoughnet wrote to Dewdney on 11 July instructing him that “Bobtail and his followers should be re-admitted to the Treaty and that an amount should be retained from the annuity money payable to them to equivalent to the value of the Halfbreed land scrip they received”.

In August 1887, Reed met with Bobtail and his family. The purported marks of Bobtail and three members of his extended family appear on a handwritten document that reads as follows:

We, the undersigned, lately Indians of Bobtails Band No. 139 and Sampson Band No. 138, as shown in the annexed list, but discharged from Treaty obligations as Half Breeds at our earnest request, and against the wishes of the officials of the Indian Department, and received scrip and minors rights for ourselves, and such members of our families, as were entitled to the same, having since our discharges, found how difficult it is to earn a living among white men, desire to return to our old way of living again, on a Reserve, as Indians, and to recompense the Government in so far as in our power lies, the value of the lands and scrip received by us.

In consideration of being so allowed to return, we hereby bind ourselves, and our heirs, that until the Department of Indian Affairs may see fit to direct that we be allowed to draw any annuities none such shall be claimed by us, or our heirs.

Neither, do we lay claim to any of the lands, formerly held by us as a Reserve, nor to any of the cattle, implements etc. etc. which may be entrusted to us, or any of us, by the Department for the purpose of bettering our condition, unless specially authorized to do so, but desire that we may be treated, in such manner as to the authorities may seem best, subjecting ourselves, as we do, to the Department, and to all its officials, and agreeing implicitly to abide by their direction and guidance.

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290 LAC, RG10, Vol. 3724, file 24303-3, 29 June 1887 [CR-003522].
291 LAC, RG10, Vol. 3724, file 24303-3, 29 June 1887 (marginalia on document) [CR-003522].
292 LAC, RG10, Vol. 3724, file 24303-3, 11 July 1887 [NO IMAGE]. During this period, annuities were withheld to repay other types of debts, such as the value of property damaged during the Rebellion. See LAC, RG10, Vol. 3584, file 1130, pt. 1B, L. Vankoughnet to E. Dewdney, 28 October 1885 [CAP13259].
293 LAC, RG10, Vol. 3724, file 24303-3, handwritten document, 10 August 1887 [CAP13465].
Sixteen names on the “annexed list” are identified as being from the Bobtail Band, including Chief Bobtail, his wife, their grown children, grandchildren, a daughter-in-law and a nephew. Seven names are identified as being from the Samson Band.294

On August 18, 1887, Commissioner Dewdney sent Reed’s document to Ottawa, explaining that

This agreement, as will be observed, embodies a voluntary surrender on the part of the Indians of more than was included in the...Department’s letter [of July 11], but the Assistant Commissioner, when up in the north a few days ago, found the Indians in question, so desirous of returning to Treaty on any terms, that he judged it advisable to let them throw themselves as much as possible upon the mercy of the Department, and thus enable it to give such better terms as might to it seem fitting, entirely as a matter of grace. Of this, I feel sure that the effect will be good.

In re-admitting those whose names are attached to the enclosed document, great care has been exercised in receiving only such as we consider will be beneficially treated as Indians, and with regard to others who were not seen, but who will undoubtedly make similar application, the same discretion will be exercised, and none re-admitted without reference to this Office.295

It is not apparent that the Indian Department in Ottawa realized that Reed had changed the terms of re-admittance. In a letter to Dewdney of December 1887, Vankoughnet reminded him that Bobtail’s re-admittance was

a matter of Govt Policy which the Premier, who was then Supt General of Indian Affairs deemed proper to follow...You are aware that the Indians of this Band are to refund from the value of their annuities the value of the land scrip issued to them when they took the same as halfbreeds and that they are not to be paid such annuity in full until the amount of the land scrip has been refunded.296

Dewdney, in his report on the year 1887, described this episode as follows:

In my report of last year I touched upon the danger of and the precautions taken to prevent the withdrawal of those who were likely to squander the proceeds of their scrip, and then to return upon the hands of the Government or be impelled by their necessities to the commission of crime. That this fear rested upon solid ground, has now been amply proved by the experiences of the half breeds of Bobtail’s band, of Peace Hills Indians. These people were allowed to leave the treaty before I could take steps to prevent it, and rapidly

294 In September of 1887, Inspector Wadsworth noted that “Bob Tail and his followers”, being rationed under the terms of the August 10 document, numbered 23, as “given in by themselves”. LAC, RG10, Vol. 3785, file 41783-5, 30 September 1887, T. P. Wadsworth to E. Dewdney, 26 – 30 [CAP13471].
295 LAC, RG10, Vol. 3724, file 24303-3, E. Dewdney to Superintendent General of Indian Affairs, 18 August 1887 [CAP13469].
sank into a condition which means crime or starvation, or both. Their sense of helplessness to continue the struggle for existence in the changed circumstances of their position, unaided and without guidance, led to their petitioning to be restored to treaty privileges. This request was, as you are aware, acceded to, on condition that the value of the scrip given them, be deducted from annuity payments to come, and in my opinion the wisdom of this decision cannot be questioned by any one cognizant of the circumstances...  

The Bobtail people, an “indigent set of persons in a state of destitution away from controlling influences” were returned to their Reserves, where they could be kept away from “crime or starvation”, as Reed, Wadsworth and Dewdney had all recommended, but were not reinstated to any paylist. However, a policy and a precedent for re-admission of discharged “half breeds” had been developed by Ottawa for Bobtail and his followers, and was implemented in other cases in the 1890s.

“Half-Breed Commissions” were appointed in 1887 and 1889. Goulet was appointed the chair of both, and in 1887 his powers and instructions were similar to those of 1886. Indian Department Inspectors were required to attend every hearing. In 1887, the Commission revisited Prince Albert, St. Laurent (NWT) and Qu’Appelle, but spent most of the season visiting areas in Treaty Five. A later “run-out” took them to Green Lake and a few other Treaty Six locations. Goulet, in his final report, noted that Inspector McColl, in the Treaty Five and Two areas, “accompanied the Commission...for the purpose of dealing with the applications made by

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298 In fact Bobtail and the re-admittees, as well as former Bobtail Band members who had not been re-admitted to Treaty, were moved back to the Hobbema Reserves if they attempted to leave. In February of 1888, some former Bobtail Band members who had withdrawn from Treaty were found camping around Calgary and were sent back to “their Reserve” (LAC, RG10, Vol. 3793, file 46061, E. Dewdney to Superintendent General of Indian Affairs, 21 February 1888 [CAP13528]; Superintendent General of Indian Affairs to E. Dewdney, 28 February 1888 [CAP13530]; LAC, RG18, Series B-1, Vol. 1100, file 135-1888, W. McGirr to Commissioner, North West Mounted Police, 16 March 1888 [CAP13535]). In early 1889, Bobtail and “party” had camped just off the Reserves intending to cultivate land, but were moved back to the Reserves by order of Reed (LAC, RG10, Vol. 3762, file 32358, S. B. Lucas to Indian Commissioner, Regina, 30 April 1889 [CAP13545]; S. B. Lucas to Indian Commissioner, Regina, 20 July 1889 [CAP13551]; S. B. Lucas to Indian Commissioner, Regina, 15 September 1889 [CAP13553]).

299 The Bobtail Band paylist had been merged into Samson and Ermineskin Bands in 1887 for the administrative convenience of the Agent. Pierre Piché, Bobtail’s grand-nephew, was added the Ermineskin paylist in 1901. Ameliette and “The Wolf”, described as a daughter and son of Bobtail, were added in 1904. Another grandson, Robert Smallboy, not yet born in 1887, was placed on the Ermineskin paylist in the early 1920s.


301 LAC, RG15, Series D-II-1, Vol. 488, file 138133, L. Vankoughnet to A. M. Burgess, 16 April 1887 [CR-007281].
the half-breds attached to Indian bands to withdraw from treaty in order to participate in the half-breed grant...and exercised very great care in permitting only such of them to sever their connection with their respective bands as could satisfactorily show that if they were granted their discharge from treaty they would be in a position to support themselves and families without any further assistance from the Government”. Of a total of 563 Métis applications considered by the Commission, 321 were approved from people who had been discharged from Treaty. This was in addition to 178 claims approved from former Treaty Two people in Sandy Bay and nearby Reserves that had been dealt with in January of 1887. The Commissioners observed that “at Norway House, Fisher River, and Fort Alexander, there are large settlements of half-breeds residing on Indian reserves, and in receipt of Indian annuities, but who all preferred to remain members of the Indian bands to which they belong, and to continue to enjoy as such all treaty privileges”.

At the beginning of 1888, both McColl and Reed were reporting that many “Treaty Half Breeds” were still applying for discharges from Treaty. Burgess recommended that the issuing of discharges be stopped until a policy was developed on whether eligibility for scrip was to be a prerequisite for withdrawal. In early February, McColl and Reed issued instructions to cease all discharges. In April of 1888, amendments were introduced to the Indian Act requiring “half-breeds” to obtain the consent of the Indian Commissioner or the Assistant Commissioner prior to withdrawing from Treaty. Sir John A. Macdonald explained the amendments as follows in the House of Commons:

Many of the half-breeds have been accounted as Indians, because they have lived with a band for some time. When scrip is given to the half-breeds, they all become white men in

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307 LAC, RG10 Vol. 3724, file 24303-3, E. McColl to Superintendent General of Indian Affairs, 3 February 1888 [CAP13526]; Hayter Reed to Superintendent General of Indian Affairs, 6 February 1888 [CAP13527].
order to get it. Then they withdraw from the white men to get the advantage of the annuities, and then they want to get back into the band again...We wish to prevent them moving from one stage to another...

...the line between a pure blooded Indian and a half breed is very indistinct. If an Indian has some white blood in him, he remains an Indian, and remains in the band until it becomes an advantage to him to say that he is a white man and not an Indian. I take it that a very considerable percentage of Indians, even in the North-West, are not pure Indians; they are considered to be Indians, but they are really halfbreeds...  

The policy of refusing all discharges remained in place until February 1890, when an administrative process was approved whereby a discharge could be granted but revoked if the Department of the Interior ruled that the applicant was not eligible for scrip. Prior to granting a conditional discharge, the Indian Commissioner had to have “no doubt” “from the evidence” “that the applicant is a half-breed, and that he considers himself able to support himself and his family after being discharged”.  

The last scrip commission prior to the negotiation of Treaty Eight in 1899 was associated with an adhesion to Treaty Six at Green Lake and Montreal Lake signed in February 1889. Under the Order in Council appointing the Treaty and Halfbreed Commissioners, Goulet was “empowered on the execution of the Surrender by the Indians to investigate the claims of any Halfbreed that may be found to be residing within the territory thereby surrendered and to be entitled to be dealt with under...the Dominion Lands Act...[and] to issue scrip...to such of the above mentioned Half breeds as may be found entitled thereto in full and final settlement of any claim they may have by reason of their Indian blood”.  

Of a total of 56 applications considered by Goulet, most from Montreal Lake, twelve were from people discharged from Treaty. One hundred and sixteen scrip certificates were issued as a result of this Commission.

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308 Canada House of Commons Debates, 26 April 1888, Sir John A. Macdonald, 1007 – 1008 [CR-009871]. The amendment, implemented in Canada Statutes, An Act further to amend “The Indian Act,” Chapter forty-three of the Revised Statutes, 51 Vic., cap. 22, s. 1, was to replace the existing s. 13 (1) [CR-009862].
310 LAC, RG2, Series A-1-a, no. 2675, 14 December 1888 [CAP13540].
Although discharges had been stopped, applications for re-admission continued to come in during 1888 and 1889. “Gladieu has asked me to represent his case to you for the purpose of being taken on the Reserve again if possible by the Department as he is utterly destitute, with a large family to support and no means of doing it”, wrote a correspondent from Fort Pitt.312 Vankoughnet put forward his case to the Superintendent General (Thomas White), who advised “that these parties might be dealt with in the same manner as the Band of Bobtail...namely by restoring them to the membership of the Band on condition that the annuities which would otherwise be payable to them year by year be deducted until they have repaid to the Govt the cost of the Half breed scrip given them”.313 Gladieu and another person, François Maron, “laid up at the little Fishery with his family starving”,314 signed a re-admittance agreement in the spring of 1888 similar to that signed by Bobtail,315 and began paying back the value of their scrip.316 In January 1889, Hayter Reed, now the Indian Commissioner for the North West Territories (Dewdney’s successor), objected to a request from Chief Michel in Treaty Six for re-admission of “some discharged Halfbreeds”:

...while the department may see its way to allow the return to treaty of a few individual cases, great care must be observed in order to prevent such being quoted as precedents for whole sale re-admissions. The Halfbreeds who withdrew from Treaty were well warned at the time, by the Commissioners and an agent, of the consequences of such withdrawal, and the majority of them knew full well that they would thereby lose all claim upon the department for the future. Some may have been misled or foolishly carried along by the example of their relatives or friends. A measure of leniency may be extended to them – if found to be incapable of fending for themselves, but each such individual case must be carefully enquired into before action can be taken thereon. With regard therefore to applications made to you, I shall require to be informed of full particulars – such as the names of the applicants, number of their children, how they came to be induced to withdraw from treaty, their residences, mode and means of living, whether more Indian than Halfbreed and likely to become able to support themselves...317

312 LAC, RG10, Vol. 3794, file 46282, Angus McKay to Mr. Mann, 26 January 1888 [CAP13524].
313 LAC, RG10, Vol. 3794, file 46282, [L. Vankoughnet] to Indian Commissioner, Regina, 8 March 1888 [CAP13532].
314 LAC, RG10, Vol. 3794, file 46282, Angus McKay to Mr. Mann, 26 January 1888 [CAP13524].
315 LAC, RG10, Vol. 3794, file 46282, undated documents attached to E. Dewdney to Superintendent General of Indian Affairs, 15 June 1888 [CAP13537].
316 See LAC, RG10, Vol. 3794, file 46282, A. Forget to Deputy Superintendent General of Indian Affairs, 24 December 1890 [CAP13583].
317 LAC, RG10, Vol. 3595, file 1239, pt. 12, [Hayter Reed] to Agent, Edmonton, 10 January 1889 [CAP13543].
In May, Headquarters wrote to Reed supporting his views that re-admission should occur only “under very exceptional circumstances which should be fully reported to the Dept”.\(^{318}\) In June of 1890, after reports of poverty and distress among the “half breeds” who withdrew from Treaty Five around Cumberland House and The Pas, combined with lingering allegations that the people who withdrew incorrectly understood that their minor children would be eligible for scrip,\(^{319}\) the Department of Indian Affairs decided to re-admit those who so wished into Treaty, with the exception of “Half-breeds who are doing well”.\(^{320}\) The precedent cited was that of the Bobtail re-admittees, “who were allowed to resume their status as Indians, on the condition that their annuities should be taxed for the value of the scrip received by them”.\(^{321}\) The reasoning offered by senior Indian Department officials at Ottawa for re-admittance was that

…the Dept. …was actuated by humane motives, as these people no matter how lazy or improvident cannot be left to starve. The citation of their delinquencies in these particulars can therefore have very little bearing on the case as whether these people are Indians or Half Breeds in the legal meaning of these terms, the Govt will be compelled to assist them when they are destitute and starving. It was only in view of this responsibility that the Dept. took the steps…and the fact is…that the Half-breeds can be managed more satisfactorily in their tribal state as Indians than as individuals…\(^{322}\)

Other “half breeds” were re-admitted to Treaty in the early 1890s, under the criterion that they were “reported to be infirm, sick or destitute”.\(^{323}\) Conversely, “half breeds” were not allowed to withdraw from Treaty if they could not “provide for themselves”.\(^{324}\)

\(^{318}\) LAC, RG10, Vol. 3817, file 57336, [L. Vankoughnet] to Hayter Reed, 8 May 1889 [CAP13548].

\(^{319}\) See LAC, RG10, Vol. 3775, file 37267-1, J. Reader to E. McColl, 6 December 1886 [CAP13441]; J. A. Mackay to Deputy Superintendent General of Indian Affairs, 16 June 1890 [CAP13564]; A. M. Burgess to E. Dewdney, 3 June 1890 [CAP13556].

\(^{320}\) LAC, RG10, Vol. 3775, file 37267-1, L. Vankoughnet to E. Dewdney, 18 June 1890 [CAP13567], 5; also [L. Vankoughnet] to E. McColl, 17 July 1890 [CAP11643].

\(^{321}\) LAC, RG10, Vol. 3775, file 37267-1, L. Vankoughnet to E. Dewdney, 18 June 1890, 4 [CAP13567].


\(^{324}\) LAC, RG10, Vol. 3853, file 77142, memorandum by R. Goulet, 28 January 1891 [CAP11663, CAP11667]; also LAC, RG10, Vol. 3853, file 77138; LAC, RG10, Vol. 3852, file 76777, Lyndewode Pereira to L. Vankoughnet, 3 April 1891 [CAP11683]. However, prosperous “Indians” who did not claim to be “Half breeds” were not allowed to withdraw from Treaty (see LAC, RG10, Vol. 3778, file 38615, [Robert Sinclair] to E. McColl, 21 April 1887.
At the time of the re-admission of the Treaty Five “half-breeds” around Cumberland House and The Pas, McColl had warned that it would be necessary to also re-admit a large number of people in similar circumstances around Lakes Manitoba and Winnipeg, “for it is impossible to draw the line between them.” A large group of “half-breeds” at Sandy Bay, settled on the small farms on the Indian Reserve they had occupied as “Indians” under Treaty Two, were re-admitted to Treaty in 1891, after years of petitioning. Vankoughnet wrote to Superintendent General Dewdney on 8 January 1891 that the

Half-breeds who continue to reside upon the Indian Reserve at Sandy Bay...are in illegal occupation of the lands in the Reserve...

The Half-breeds referred to...ask that they be received back into treaty, alleging that they were deceived by false reports...and that they find themselves now in a worse position than they were as treaty Indians, owing to their becoming scattered and their young men being able to procure intoxicants...also that their children are growing up uneducated...

The number of Indian families [still in Treaty] consists of three, and there is nothing in the law...to deprive those Indians of their claim to the Reserve, nor could the same be thrown open to settlement...without a surrender being formally given...

The undersigned considers that, under all the circumstances, probably the best plan would be to allow the Halfbreeds to rejoin the Band and to remain in possession of their lands on the stipulation, that they refund the value of the scrip to the Government...  

This recommendation was approved by Dewdney. By June of 1891, accounts had been set up for at least twenty-six re-admittees (family heads) of the Sandy Bay Band to keep track of the balance of forfeited annuities against the face value of scrip received. This system was also applied to several Bands in The Pas Agency, and individual accounts were kept for re-admittees from other Treaty areas. An inquiry from Headquarters requesting “a statement of the Scrip rec. ...and the annuities withheld” for the Bobtail re-admittees was sent to Reed in July of 1891, but as no accounts had ever been kept for those people, he did not reply.

Beginning in 1887, Canada acted to undo some of the effects of its actions in offering scrip in 1885 and 1886. Finding that the outcome of this initiative worked against its other policy objectives for Aboriginal people, particularly the maintenance of order and security for non-Aboriginal settlers, Canada intervened to reassert control over the segment of the Aboriginal population that, in its view, needed ongoing assistance and supervision. “Destitute and starving” persons who had met Government criteria and accepted scrip as “half breeds” were taken back into Treaty as “Indians”, in cases where “Half-breeds can be managed more satisfactorily in their tribal state as Indians than as individuals”. Conversely, “half breeds” were not allowed to

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327 LAC, RG10, Vol. 3828, file 60717, L. Vankoughnet to E. Dewdney, 8 January 1891 [CA-001035]; see also W. McGirr, “Memorandum for the Deputy Minister”, 18 September 1895 [CAP11716 NEW NUMBER].
328 LAC, RG10, Vol. 3828, file 60717, L. Vankoughnet to E. Dewdney, 8 January 1891 (marginalia on document) [CA-001035].
329 LAC, RG10, Vol. 3828, file 60717. Annuities not received for the years 1886 – 1890 were counted towards the balance.
330 See for example LAC, RG10, Vol. 3775, file 37267-1 (The Pas Agency); LAC, RG10, Vol. 3794, file 46282, [L. Vankoughnet] to A. M. Burgess, 5 February 1891 [CAP11664]. After Reed became Deputy Superintendent General of Indian Affairs in 1893, he implemented his general opposition to the payment of Treaty annuities (in congruence with his treatment of Bobtail) by stopping the payment of annuities to re-admittees (see LAC, RG10, Vol. 3828, file 60717, H. R. to C. C., 6 March 1895 [CAP11715]; Deputy Superintendent General of Indian Affairs to E. McColl/A. Forget, 13 March 1895 [CAP11716]; Hayter Reed to T. Mayne Daly, 4 October 1895 [CAP11720]; Hayter Reed to Superintendent General of Indian Affairs, 15 November 1895 [CAP11723]; LAC, RG10, Vol. 3949, file 128270, pt. 1, A/Deputy Superintendent General of Indian Affairs to E. McColl, 17 December 1895 [CAP11726]). However, after his departure in 1897, the Department reinstated payments to re-admittees (see LAC, RG10, Vol. 3999, file 206070-28, D. C. Scott to Secretary, 15 February 1898 [CAP11731]; LAC, RG10, Vol. 3828, file 60717, Secretary to Indian Commissioner, Winnipeg, 6 April 1898 [CAP11753]).
withdraw from Treaty if they could not “provide for themselves”. Canada reserved to itself the right to adjust the means of extinguishing “Indian title”, more than once if necessary, to meet the broader needs of managing the Aboriginal population in the context of non-Aboriginal development of the North West.

IV (9).  Investigations into Robinson Treaty paylists, 1891 - 1899

In the early 1890s, Canada, Ontario and Québec were involved in arbitration proceedings regarding the allocation of various financial responsibilities left unresolved following Confederation. Many of these responsibilities were for Indian-related expenditures, such as the annuities paid under the Robinson Treaty and Treaty Three. In 1891 and 1892, Ontario undertook a review of the Robinson paylists and concluded that over half of the recipients of Robinson-Superior and Robinson-Huron Treaty annuities were from the unceded territory north of the height of land, included in the 1862 Manitoulin Island Treaty, or “Half-breeds”. In Ontario’s view, these people had been incorrectly added to or allowed to remain on the paylists after 1875 and were not entitled to the annuity.332

In an award dated 13 February 1895 (delivered 14 February 1895), the Board of Arbitrators ruled that Ontario was responsible for paying the annuities to Robinson Treaty beneficiaries.333 The Chair of the Board, Chancellor Boyd, stated in his reasons for this award that

...It would appear from the...letter of Mr. Robinson, the Commissioner...which accompanies the treaty that half-breeds were then embraced in and numbered with the tribe in the approximate totals given. The recognition of these half-breeds as members of Indian tribes by the government appears to be manifested in contemporaneous and subsequent statutes.

When the statute of Canada (13 & 14 Vic. ch. 74...1850), permitted none but Indians and those who may be intermarried with Indians to reside upon Indian lands (unless under special license from the government officer), and the act altogether seems to contemplate as Indians those of pure or mixed blood and those intermarried with and living among

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333 AO, F1027, item 71/15, Award of the Board of Arbitrators (“The Third Award”) re: Indian, Huron and Superior Treaties et al, 13 February 1895, 6 – 8, with a reference to Supreme Court of Canada decision, SCR XXV, 434, and Privy Council decision 9 December 1896 [CAP13664].
Indians (no distinction being made to sex). Then coming down to 1857, the statute of that year (20 Vic. ch. 26), gives a definition of Indians as meaning persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian bands, residing upon unsurrendered lands, or upon lands specially reserved for tribal use in common, and who shall themselves reside upon such lands; that is, one of other blood married to one of Indian blood, acknowledged as a member of the tribe and living on the tribal land with the tribe (whether man or woman) is accounted a member of that tribe. And the descendants of such marriage would be Indians as long as the tribal relation and residence lasted.

This appears to be a more comprehensive category than would be the case if the matter rested on common law or international law, for in such case, the maxim *partus sequitur patrem*, governs cases as to Indians. (See judgement of Parker J., in *Ex parte Reynolds* (1).

There is the observation also to be made that the government of Canada, before 1867, had always power to regulate the inhabitancy of Indian lands by excluding all whites therefrom, and their marriage and residency on the part of white people must have been with the sanction of the government.

I would therefore favour generally the application of the rule so as to include among Indians those of other blood who are not only married to Indians, but were adopted and acknowledged by the tribe as members, and as such lived in tribal relation with the other members at their common place of residence. If all these conditions did not exist (as to the males anyway) I should say the person of other blood and his descendants was and were not included in those entitled under the treaties...

On 7 January 1898, the Board of Arbitrators decided that the following persons could be considered entitled to be Robinson Treaty beneficiaries:

...in respect of Indians and persons entitled to the benefit of such treaties...for the purpose of ascertaining the number of individuals entitled...to the benefit of the Robinson Treaties...each of the persons hereinafter described, shall, if he or she is a British subject, resident in Canada, and follows the tribal life, be deemed and taken to be an Indian within the meaning of such treaties, and entitled to the benefit thereof respectively...
(a) Any member of any tribe or band who were parties to the treaty, and any lawful descendant of Indian blood of any such member of any such tribe or band;

(b) Any person intermarried with any such member of any such tribe or band, and any lawful descendant of Indian blood of any person so intermarried with any such member of any such tribe or band;

(c) Any person adopted and acknowledged prior to 1893 by any such tribe or band, and any lawful descendant of Indian blood of any person so adopted and acknowledged as a member of any such tribe or band.

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Descendants of Indian blood shall mean persons of at least one-fourth Indian blood...

The condition of “tribal relation” for Band membership appears to have been recognized by the Department of Indian Affairs in some instances outside Treaty areas. In March of 1896, Indian Agent A. McBride at Témiscamingue (in Ontario just north of the Robinson-Huron Treaty area) reported that “at a meeting held on the 3rd Inst. by the Indian of the Temiscamingue Band, James King Senr. and John King Senr. both halfbreeds, were taken by the full consent of the Band to reside and farm on the Temiscamingue Indian Reserve”. Reed replied that “the Department does not approve of...Half-breeds, being allowed to reside and farm on the Temiscamingue Reserve...as under the law none but Indians are entitled to reside upon an Indian Reserve unless they come in the same category as those mentioned in your letter of 16th May 1895”. The letter of 16 May 1895 has not been located. However, in 1898 when the Temiscamingue Indian Band voted to take other Aboriginal individuals into their Band, Headquarters determined that the only one of these individuals who “seems to have any right to be admitted to the Band” was a person who had lived on the Reserve for a year and a half and had relatives there. Headquarters recommended that he not be “received into membership until he shews by continued residence that he has thrown in his lot with the Temiscamingue Indians”. In 1900, Headquarters confirmed that James and John King had been allowed by the Department to reside on the Temiscamingue Reserve, had been allotted a small amount of Reserve land, and that “when the paylist was made up for the first interest distribution their names were included by consent of the Band and they are therefore now members of the Band”.

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335 AO, F1027, item 71/15, Award of the Board of Arbitrators re: Indian Claims arising out of the Robinson Treaties, 7 January 1898 [CAP13711].
336 LAC, RG10, Vol. 2838, file 171945, A. McBride to Deputy Superintendent General of Indian Affairs, 5 March 1896 [CAP11732].
337 LAC, RG10, Vol. 2838, file 171945, Hayter Reed to A. McBride, 12 March 1896 [CAP11733].
338 LAC, RG10, Vol. 2838, file 171945, A. McBride to Secretary, Department of Indian Affairs, 1 September 1898 [CAP11785]; J. D. McLean to A. McBride, 10 September 1898 [CAP11787]; A. McBride to Secretary, Department of Indian Affairs, 22 September 1898 [CAP11788].
339 LAC, RG10, Vol. 2838, file 171945, A. McBride to Secretary, Department of Indian Affairs, 22 September 1898 [CAP11788]; A. N. McNeill to A. McBride, 29 September 1898 [CAP11789].
340 LAC, RG10, Vol. 2838, file 171945, J. D. McLean to A. Burwash, 26 September 1900 [CAP12064]. Burwash, who was a newly appointed Indian Agent, had written to McLean to complain that “the majority of the Band claim that Mr. Chitty [Inspector of Indian Agencies] told them that any person with any Indian blood in them was an Indian and was entitled to live on the reserve” (A. Burwash to Secretary, Department of Indian Affairs, 12 September 1900 [CAP12063]). Per capita interest distributions were made periodically by the Department for some Bands.
In early 1896, the Department of Indian Affairs uncovered the “startling fact” that hundreds of Treaty Indian people on Manitoulin Island and on the mainland nearby were on paylists for both Robinson Treaty annuities and interest distributions from sales of land on Manitoulin Island surrendered in 1862.\(^{341}\) As the Department’s view was that the 1862 Treaty Commissioners “did not intend to include...any Indian who had already entered into treaty”, investigations into the paylists commenced at Ottawa and at the Manitoulin Indian Agency.\(^{342}\) In May and August of 1896, Departmental Corresponding Clerk A. N. McNeill was sent to Manitoulin Island to meet with the Indian people and the Agent to investigate “the antecedents of the families...who draw money from both sources”\(^{343}\), and “the claims of Indians to be restored to the Robinson Treaty Pay Lists”.\(^{344}\) McNeill proposed a restructuring of the Manitoulin and Robinson Treaty paylists eliminating the overlap between the two. On the subject of “claims of Indians to be restored to the Robinson Treaty Pay Lists”, McNeill submitted a report dated 26 November 1896, identifying two principal ways in which people had been removed from the lists: first, as punishment for resistance to the surrender of Manitoulin Island in 1862,\(^{345}\) and second, “the mistaken idea” of some Indian Agents that “the [Indian] Act of 1876, defining the meaning of the word ‘Indian’, was to apply to the children of men who under the Acts of 1850 and 57 were, through their marriage with Indian women and occupying lands set apart for Indians entitled to be recognised as Indians”.\(^{346}\) Of this second category, McNeill’s opinion was that “The Statute of 1876 was never intended to be retroactive, and our Agents under the belief that it was, have deprived many Indians of the Annuities to which they were justly entitled”.\(^{347}\) He quoted the opinion on entitlement to Robinson Treaty benefits given in the Arbitrators’ appeal decision on

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\(^{341}\) LAC, RG10, Vol. 2832, file 170073-1, [Hayter Reed] to B. W. Ross, 12 February 1896 [CAP13669].

\(^{342}\) LAC, RG10, Vol. 2832, file 170073-1, Hayter Reed to B. W. Ross, 7 April 1896 [CAP13672], 3.

\(^{343}\) LAC, RG10, Vol. 2832, file 170073-1, Hayter Reed to A. N. McNeill, 16 May 1896 [CAP13677].


the Robinson Treaty annuities, and based on this interpretation, recommended that at least 180 people be reinstated to Robinson Treaty paylists. Although the Department approved McNeill’s recommendations and paid annuities to some of these individuals in 1898, further action on outstanding cases was deferred pending an agreement between Ontario, Québec and Canada as to “who should be on the list”.

By November 1898, both McNeill and Hayter Reed were gone as part of a reorganization and political reorientation of the Indian Department. J. A. Macrae, the Headquarters Inspector of Indian Agencies and Reserves, recommended a reversal of McNeill’s work separating Manitoulin and Robinson Treaty recipients, as “any of the of the Robinson Treaty Indians who were occupying the Island in 1862 or who are descendants of Robinson Treaty Indians...must...be recognized as entitled to participate in the benefits secured by the Island Treaty”.

Although Robinson Treaty Indians resident on Manitoulin Island were then reinstated to Robinson paylists, Macrae was involved in a much more wide-reaching investigation into the Robinson lists as part of the Robinson Treaty litigation between Canada and Ontario. In February 1898, he had submitted a report on Robinson-Superior paylists in the Port Arthur (Thunder Bay) Agency. He examined the family histories and genealogies of many people on the paylists to decide on their entitlement to annuities, and developed an opinion on who had been considered “Indian” in the Robinson Treaties: persons of “Indian blood” who had belonged to the bands of chiefs who were parties to the Treaty, or who had “occupied and used the surrendered tract as Indians”, and persons not of “Indian blood” who had intermarried with the

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351 LAC, RG10, Vol. 2050, file 9444, [J. D. McLean] to B. W. Ross, 27 June 1898 [CAP11765]; B. W. Ross to Secretary, Department of Indian Affairs, 10 August 1898 [CAP11783].
352 LAC, RG10, Vol. 2050, file 9444, J. A. Smart, Memorandum, 10 January 1899 [CAP11822]; J. D. McLean to Accountant, 10 January 1899 [CAP11823].
353 LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae, Memorandum, 2 November 1898 [CAP11795].
354 LAC, RG10, Vol. 2832, file 170073-1, Reginald Rimmer and J. A. J. McKenna to the Minister, 7 November 1898 [CAP11799].
Indians and had “become attached by residence and common interest to any Indian society or community” within the surrendered tract, and their descendants. He did not consider that the Indian Act of 1868 was relevant to determining entitlement to the annuity, citing an 1891/1894 opinion of the Department of Justice that “that the definition of 1868 ‘was and was expressed to be for the purpose of determining what persons were entitled to hold, use or enjoy the land and other immovable property belonging to the tribe or band...the right of an Indian to share in the moneys belonging to the band depends rather upon treaty than upon statute’”. Macrae concluded that “it has appeared that persons who had no title of occupancy in 1850 and were certainly in no legal sense Indians at that time could only become entitled at a subsequent date...by favour of the Parliament or Government of the Dominion”.355

In late January and early February 1899, Macrae submitted a series of reports on paylists in the Robinson-Superior and Robinson-Huron Indian Agencies. Of 5,694 people who claimed Robinson annuities, 976 to 1,226 were deemed by Macrae to have “title so bad” that they should be struck off the paylists immediately or have their claims for annuities disallowed. For 369 to 619 other claimants, Macrae invented a category of “non-transmissible” title, for people who could be paid for their lifetimes but not transmit entitlement to annuity to their children. Three claims were recommended for addition to the Robinson lists.356

The “non-transmissible title” was characterized by Macrae as “a pure act of grace” in which he wished to avoid a situation in which “hundreds of annuitants would have besieged you [Clifford Sifton, the Superintendent General] with correspondence...and no little hardship would have been inflicted upon poor people”.357 In Macrae’s view, McNeill’s proposed revisions of 1896 had “upset...the old understanding” in the Manitowaning Superintendency by recognizing all male annuitants as “entitled to transmit a right in the annuity to the women they married and to the children”.358 As far as Macrae could understand, a custom had developed in the

355 J. A. Macrae to Superintendent General of Indian Affairs, 9 February 1898 [CAP13716].
356 LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 2 – 3.
357 LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 1, 2a.
358 LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 3.
Manitowaning Superintendency of recognizing entitlement to annuity as transmitted through the male line, except for the first generation of children of women who had married non-Treaty men. This first generation were paid annuity, but could not transmit this entitlement to spouses or children.\footnote{LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899 [CAP11829], 4. See also LAC, RG10, Vol. 2143, file 29703, J. C. Phipps to Superintendent General of Indian Affairs, 4 December 1881 [CAP12982], in which Indian Agent Phipps describes this practice, which he indicated had been in place since 1875.}

Macrae assigned non-transmissible title to “those who in a legal or other sense might...be held to be Indians without title to the annuity”, or “might...not be held to be Indians, without inherited right”, paid either from the time of the Treaty or prior to 1869 when the \textit{Indian Act} was changed to remove recognition as “Indians” from children of male non-Indians.\footnote{LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 5 – 6.} For example, Macrae disputed the entitlement to Robinson Treaty benefits of former American Indians who had emigrated after the War of 1812, and assigned these people and their descendants to the “non-transmissible title” group.\footnote{LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899 [CAP11829], 10 – 13.} Of claimants with mixed Indian and non-Indian ancestry, he wrote, “I...hazard the opinion that the value of the half-breeds’ title is proportioned to the value of the Indian title, as the extent of their Indian blood and length of occupancy of the Indian tracts is proportioned to full Indian blood and pre-historic occupancy”.\footnote{LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 7.}

Macrae expressed the opinion that the criteria for entitlement to annuity in the award of the arbitrators in the Robinson Treaty cases (leading a “tribal life” and “members of any tribe or band”) were “too vague to be applied to construe rights under existing conditions and there are many widely divergent views as to what these terms mean”. If these criteria were used, Macrae believed that “the arbitrators’ definition of persons entitled to the annuity will embrace many persons who by law and by past rulings of this Department...are not, and have not been, regarded as Indians or annuitants, whilst, on the other hand, if a narrow construction be put on the same terms numbers whose right to the annuity has been recognized without question...would become...
disentitled...The lists would no longer represent the Indians”.363 The lists, as Macrae pointed out, were important not simply because of the annuity, but because they had become a means for administrators to determine entitlements such as rights to reside on Reserves or share in Band funds.364

Unlike the approach taken in the numbered Treaties, where Indian Agents did not consider ties of kinship, historic affiliation or residency in deciding on who was “Indian”, Macrae took detailed histories and genealogies of “doubtful” Robinson Treaty annuitants and claimants to determine their entitlement to annuity.365 The current economic status and activities of the annuitants and claimants was considered by Macrae only as part of the evidence regarding a family’s connection to Indian people recognized as being entitled beneficiaries of the Robinson Treaties.366 In this geographic area, control of the Aboriginal population was of less importance than control of the Government’s expenditures on Treaty payments. On 24 April 1899, J. A. J. McKenna, Sifton’s private secretary, recommended that Macrae’s principles be adopted as a reasonable compromise between “purging” the lists of “unentitled annuitants” and creating “dissatisfaction among the Indians”, and Sifton approved this recommendation shortly afterwards.367

\[\text{363 LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899 [CAP11829], 6 – 8.}\]
\[\text{364 LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899 [CAP11829], 7 – 8.}\]
\[\text{365 See for example LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae, Memo “A”, “Memorandum of Indians now paid ‘Robinson’ Annuity in the Manitowaning Superintendency whose claim to it may be open to doubt.”, 30 January 1899 [CAP11844]. Macrae had been an Indian School Inspector based in Regina before moving to Ottawa to become Inspector of Indian Agencies and Reserves, so he had had experience in the Western Treaty system (although perhaps not with the withdrawal and re-admittance process).}\]
\[\text{366 See for example LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae, Memo “A”, “Memorandum of Indians now paid ‘Robinson’ Annuity in the Manitowaning Superintendency whose claim to it may be open to doubt.”, 30 January 1899 [CAP11844], 17 – 20 (King family). Requests for reinstatement to paylists on economic grounds appear to have been less common in the Robinson Treaty areas than in the West, and if the applicant was not legally an “Indian” because of marriage the request was refused. See for example LAC, RG10, Vol. 2141, file 29334, Rosalie Proulx to Superintendent General of Indian Affairs, 22 March 1881 [CAP12955]; [L. Vankoughnet] to J. C. Phipps, 23 August 1881 [CAP12967]; LAC, RG10, Vol. 2348, file 69635, Alex. Lamorandiere to S. J. Dawson, 24 January 1888 [CAP11609]; S. J. Dawson to L. Vankoughnet, 2 February 1888 [CAP11611]; T. Walton to Superintendent General of Indian Affairs, 29 February 1888 [CAP11612]; [L. Vankoughnet] to S. J. Dawson, 29 March 1888 [CAP11613].}\]
The principles for recognizing entitlement to inclusion on Robinson Treaty paylists were set out in a Departmental memorandum of June 1899. “Entitled persons” were defined as Macrae had proposed in his memorandum on the Port Arthur Agency of February 1898.368 “Non-transmissible” titles to annuity were assigned to people in the following subcategories:

5. Persons who inter-married with Indians of the surrendered tract and became attached by residence and common interest to any Indian society or community within the tract between the dates of the Treaty and of the Statute of 1869, which defined the term ‘Indian’ and any of the lawful descendants of such persons who were on the lists in 1895.

6. Persons who by the enactment of 1859 became Indians and the lawful descendants of such persons who were on the lists in 1895.

7. Indians and other persons who have no absolute and inherent title to annuity, but who were on the paylists in 1895; whether they are resident upon Indian reserves or non-resident.369

These people were described as “persons who are not entitled to annuity, but are now permitted to continue to receive it for life, only because it has once been accorded to them”. “Illegitimates born after 1895”, “persons not entitled whose names were added after 1895”, and those absent in a foreign country for over five years without permission were immediately struck from the paylists.370

On the direction of Headquarters, Robinson Treaty paylists were revised and reorganized according to Macrae’s reports and guidelines. Persons with non-transmissible title were identified as such in the paylists, and annuity was not paid to their children.371 However, by 1916, after changes at the administrative and political level, the Department of Indian Affairs had grown weary of attempting to defend the “non-transmissible” policy to Robinson Treaty claimants. The Departmental Accountant, Frederick Paget, wrote in a memorandum to the Deputy Superintendent General, Duncan Campbell Scott, that

The ever recurring complaint of the Indians, whose names are on the non-transmissible list in the Port Arthur Agency and who are not paid for their children born since 1895, was made at the recent payment of the Robinson Treaty Annuities that I attended last month.

This was the fourth occasion since 1911 that I have been present when these payments were made and each time the Indians have complained, grievously, of the payment having been withheld from them for their children. I therefore decided at the recent payments to represent to the Department the Indians’ complaints and so informed them. Besides causing general discontent amongst the Indians, the non-payment of these children is causing confusion in connection with the pay-lists at the present time and is bound to increase from year to year. Children who have not been paid since 1895 have grown up, many of them without the knowledge that their parents were not paid for them, and they are marrying others who have been paid and will continue to be paid...you have the name of the Mother of a family on the pay-list, but no record of the rest of the family, although they are still living on the reserve in the same way as other Indians...

From every point of view it would be good policy for the Department to pay these people in future, but not to pay any arrears...

Scott discussed the issue with the Superintendent General “very exhaustively”, and emerged with a decision “that we should not continue [non-transmissible title], but should treat children of Indians now on the non-transmissible list as having a right to the Robinson Treaty annuity as a matter of policy”. The Department then investigated the number of people that might be added to the Robinson Treaty paylists if this change were made (excepting the children of women who had married people not in Treaty), and came up with an estimate of 737, which was considered to be manageable within available funds. Instructions were issued to Agents in March of 1917, following consideration of “the question of abolishing ‘non-transmissible titles’”, to consolidate the transmissible and non-transmissible lists and add any eligible children of formerly non-transmissible persons to the paylists. The instructions emphasized that “this is a matter of grace on the part of the Department and that no arrears will be paid”. A clarification was issued shortly afterwards that any Band member included on interest distribution paylists as of March 1917 was now eligible to receive Robinson Treaty annuities.

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372 LAC, RG10, Vol. 2832, file 170073-1, F. Paget to Mr. Scott, 29 August 1916 [CAP12070].
373 LAC, RG10, Vol. 2832, file 170073-1, Duncan C. Scott to Mr. Paget, 27 September 1916 [CAP12072].
375 LAC, RG10, Vol. 2832, file 170073-1A, F. Paget to Mr. Scott, 14 March 1917 [CAP12075].
376 LAC, RG10, Vol. 2832, file 170073-1A, J. D. McLean to W. R. Brown and others, 19 March 1917 [CAP12078]; see also Duncan C. Scott to Mr. Paget, 17 March 1917 [CAP12077].
377 LAC, RG10, Vol. 2832, file 170073-1A, J. D. McLean to W. R. Brown, 27 March 1917 [CAP12080]; see also J. D. McLean to R. J. Lewis, 29 March 1924 [CAP12081].
Between 1896 and 1917, Canada made a series of attempts to manage the Robinson Treaty paylists in accordance with varying Departmental, quasi-judicial, and judicial interpretations of the *Indian Act*, precedents in practice, and policies. Under these interpretations, hundreds of annuitants or descendants of annuitants were deemed to be ineligible and then were later reinstated, and the Department reserved to itself the option to use its discretion, or “pure [acts] of grace”, for policy and practical reasons such as not inflicting “hardship” upon poor people”, or avoiding a situation in which “hundreds of annuitants would have besieged [the Superintendent General] with correspondence”. While the fact situations in the numbered Treaties and the Robinson Treaties were different, in both areas the legal designation “Indian” in the Aboriginal population, as represented in Treaty paylists, was managed to meet a variety of policy objectives and practical requirements. While policies on inclusion and exclusion may have changed over time, Canada operated on the clear conviction that it had the jurisdiction to make such decisions and bring people of “Indian blood” into Treaties and the *Indian Act*.

**IV (10). Treaty Eight, 1898 - 1899**

In 1898, as a response to the increasing traffic into areas north of Treaty Six, especially after the Klondike gold strikes of 1896, Canada began to consider the making of another numbered Treaty. Although requests for Treaty in this region, usually on the grounds of economic hardship, had been submitted to the government for about fifteen years, Canada had always refused the requests “until there is a likelihood of the Country being required for settlement purposes”.

However, in December of 1897, the Commissioner of the North West Mounted Police in Regina warned Ottawa that

> I...draw your attention to the advisability of the Government taking some immediate steps towards arranging with the Indians not under Treaty, occupying the proposed line of route [to the Yukon] from Edmonton to Pelly River. These Indians although few in number, are said to be very turbulent, and are liable to give very serious trouble when isolated parties of miners and travellers interfere with what they consider their vested rights.

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At the present time the Half-breeds of Lesser Slave Lake are dissatisfied with the presence of the Police in that District, and the numerous parties of Americans and others between that point and Peace River will not improve the situation. The Beaver Indians of Peace River and the Nelson are said to be inclined to be troublesome at all times, and so also are the Sicannies and Nahanie, and the Half-breeds are sure to influence them...379

The Indian Commissioner in Winnipeg, asked by Indian Department Headquarters to comment on this information, concurred in the NWMP Commissioner’s recommendation, stating that

I am convinced that the time has now come when the Indian and halfbreed title to at least a portion of the territory to the north of that ceded to the Crown under Treaty No. Six, should be acquired, i.e. those tracts which are already partially occupied by whites either as miners or traders and over which the Government has for some years past exercised some measure of authority.

I am aware that for some time past the extension of Governmental authority into the Lesser Slave Lake and Upper Peace River districts in advance of the acquisition of title to the territory has been regarded more or less jealously by the native population therein, more particularly by the large halfbreed population of the Lesser Slave Lake district...380

In April of 1898, as preliminary preparations were underway for the Treaty, Indian Commissioner Forget reported to McKenna, Sifton’s secretary, that the Roman Catholic Bishop of Athabasca had advised him that it was already too late to send out notices for Treaty meetings in 1898, but that plans could be made for 1899. As well, Forget noted “another point raised by His Lordship, which is of considerable importance...relative to the Half-breeds of that District. He strongly impressed upon me the necessity for the Government to be prepared to deal with the Half-breeds simultaneously with the Indians”.381 About ten days later, Forget forwarded information to Ottawa estimating the “Indian” population of the district to be covered by Treaty at 2,675, and the “halfbreed” population at 1,685.382

By mid-June 1898, the Department of Indian Affairs was ready to act. On 18 June 1898, R. W. Scott, acting for Clifford Sifton, submitted a report to Council recommending that the “Indians”

379 LAC, RG18, Vol. 141, file 579-97, L. W. Herchmer to Comptroller, North West Mounted Police, 2 December 1897 [CAP11743]; forwarded to the Deputy Superintendent General of Indian Affairs on 9 December 1897 [CAP11744].
380 LAC, RG10, Vol. 3848, file 75236-1, A. E. Forget to Secretary, Department of Indian Affairs, 12 January 1898 [CAP11745].
381 LAC, RG10, Vol. 3848, file 75236-1, A. E. Forget to J. A. J. McKenna, 16 April 1898 [CAP11755].
382 LAC, RG10, Vol. 3848, file 75236-1, A. E. Forget to Secretary, Department of Indian Affairs, 25 April 1898 [CAP11757].
be notified that “Commissioners would meet them at specified points during the months of June, July and August of [1899] to treat with them for the relinquishment of the territory occupied by them”. A gratuity of seven dollars per capita plus annuities of five dollars were proposed, although Sifton recommended that “the Commissioners should be given discretion both as to the annuities to be paid to and the reservations of land to be set apart for the Indians, with the understanding that no greater obligations will, on the whole, be assumed in either respect than were incurred in securing the session [sic] of the territory covered by the treaties which were made with the Indians of the other portions of the North West”. Although an estimate had not been presented for dealing with the “Halfbreeds”, the Minister indicated that

It is of the utmost importance that their acquiescence in the relinquishment of the aboriginal title should be secured; and he the Minister considers that to that end the Commissioners should be empowered to treat with them. It is to be noted, however, that it is practically impossible in instructing the Commissioners to draw a hard and fast line between the Halfbreeds and the Indians, as some of them are so closely allied in manners and customs to the latter that they will desire to be treated as Indians. As to these, the Minister is disposed to believe that it would be more conducive to their own welfare, and more in the public interest, to take them into treaty, than to give them scrip: and, hence, he is of opinion that it should be left to the judgment of the Commissioners to determine what Halfbreeds, if any, should be dealt with as Indians. As to the Halfbreeds who have to be treated with as such, the Minister would submit that the Commissioners should not accord more liberal terms than were accorded the Halfbreeds and Manitoba and the organized territories.

The Minister recommends that he be authorized to issue formal notice to the Indians and Halfbreeds of the territory aforesaid to the effect that in the months of June, July and August of the year 1899, Commissioners representing Her Majesty’s Government of Canada will meet them at various points convenient for their assembling, with a view to treating with them for the extinguishment of their title to the land...

383 LAC, RG2, Series A-1-a, no. 1703, 27 June 1898 [CAP11766],[5].
384 LAC, RG2, Series A-1-a, no. 1703, 27 June 1898 [CAP11766], 7 – 8.
385 LAC, RG2, Series A-1-a, no. 1703, 27 June 1898 [CAP11766], 9 – 11. On the issue of Métis Aboriginal title, see also Clifford Sifton in the House of Commons on 3 July 1899: “the Government of the Dominion, in taking possession of the territory, was bound to recognize [the Métis] petition and extinguish his title” (Canada House of Commons Debates, 3 July 1899, col. 6413); and Sir Wilfrid Laurier on the same day: “We determined at the outset, when we acquired the territory of the Hudson Bay Company, that we would treat the half-breeds as we would the Indians – that is, as first occupants of the soil. It has been the policy of the British Government from time immemorial not to take a possession of any lands without having in some way settled with the first occupants and giving them compensation” (Canada House of Commons Debates, 3 July 1899, col. 6418) [CR-009900]. On 11 August 1899, s. 90 (f) of the Dominion Lands Act was amended to provide for granting “lands in satisfaction of claims of half-breeds arising out of the extinguishment of the Indian title” (Canada Statutes, 62 – 63 Vic., cap. 16, An Act further to amend the Dominion Lands Act, s. 4) [CR-009904].
This Order in Council was approved on 27 June 1898. Almost as if on cue, a report was received at Winnipeg from Fort St. John on 28 June that “five hundred Indians...camped at Fort St. John...refuse to let police and miners go further north until a treaty has been signed with them”.  McKenna wrote to Forget on 6 July assuring him that “the Minister is quite convinced it will be necessary to take immediate steps to ensure the Indians that the Government has no intention of ignoring their rights and has already arranged for the making of a treaty with them”. Forget distributed notices in July 1898 to missionaries, Hudson’s Bay Company representatives and the Mounted Police proclaiming that “a Commission rep[resenting] Her Majesty’s Government of the Dominion of Ca[nada will] hold Sessions at the places and on the dates [hereunder] stated, for the purpose of treating with the In[dians and] Half-breeds of the Provisional District of Athaba[sca and] such territory immediately adjacent thereto [as is] deemed advisable to include".

The planning for Treaty Eight was complicated by the fact that some of the territory that Canada wished to include in the Treaty was within the Province of British Columbia, which had developed a framework for dealing with Aboriginal peoples that did not involve the recognition of Aboriginal title, the negotiation of Treaties, or the issuance of scrip. On 6 December 1898, Canada issued another Order in Council based on a memorandum submitted by Sifton, noting that “it is in the interest of the Province of British Columbia, as well as in that of the Dominion, that the country to be treated for should be thrown open to development and the lives and property of those who may enter therein safe-guarded by the making of provision which will remove all hostile feeling from the minds of the Indians and lead them to peacefully acquiesce in the changing conditions”. From the Crown’s perspective, as it had been since Confederation, one of the most important aspects of the Treaty and scrip process was the pacification of the Aboriginal population in areas of increasing contact, use, and occupancy by non-Aboriginal

388 LAC, RG10, Vol. 3848, file 75236-1, A. E. Forget to Secretary, Department of Indian Affairs, 1 June 1898, with attached “Public Notice”, Clifford Sifton, June 1898 [CAP11761]; PAA, Acc. 70.367 (Anglican Church records), A.30/A281/95, A. E. Forget to Bishop of Athabasca, July 1898 [CAP11780].
peoples. The Order in Council concluded by recommending that British Columbia be notified of “the intention to negotiate the proposed treaty” and “be asked to formally acquiesce in” “the setting apart of land for reserves” if such were necessary.

Canada’s strategy to pacify the Aboriginal population in the future Treaty Eight area was somewhat different than in the agricultural regions of earlier numbered Treaties. In several locations in the future Treaty Eight, Aboriginal people resisted the idea of Treaty, fearing that they would be confined on Reserves and deprived of the freedom to “roam about the country hunting.” Missionaries and Mounted Policemen were instructed to tell their contacts that the Crown would give them Reserves, which they can call their own... yet the Indians will be allowed to hunt and fish all over the country as they do now, subject to such laws as may be made for the protection of game and fish in the breeding season; and also so long as the Indians do not molest or interfere with settlers, miners or travellers. These restrictions and laws however are not peculiar to Treaty Indians; White men, Halfbreeds and Indians who do not take Treaty, will not be allowed by the Great Mother to disturb or hurt any of her children whatever their colour...

Canada developed an alternative to communal Indian Reserves to offer small groups or families, consisting of a maximum of 160 acres per capita “in severalty”, not to be alienated without the

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389 See also the speeches of Clifford Sifton in the House of Commons on 14 July 1899, explaining that “the main reason for [appointing the Half-Breed Commission] is to pacify and keep pacified the North-west Territories, to settle a claim which must be settled before the people of Canada can make a treaty with the Indians of that district – and the Indians of that district must have a treaty made with them, otherwise we shall be in danger of having an Indian trouble on our hands, the very slightest of which would cost us two or three times the amount of the scrip we issue. It only requires two or three hundred disaffected Indians...to cause a disastrous war” (Canada House of Commons Debates, 14 July 1899, col. 7513 [CAP12057]).

390 LAC, RG2, Series A-1-a, no. 2749, 6 December 1898 [CAP11801]. No record has been located to date of a written response by British Columbia to this Order in Council.


392 LAC, RG10, Vol. 3848, file 75236-1, David Laird, untitled document (circular), 3 February 1899 [CAP11899 is this right?]. See also LAC, MG27, II-D-15 (Clifford Sifton papers), Vol. 64, reel C-488, David Laird to Superintendent General of Indian Affairs, 4 February 1899 [CAP11900]; LAC, RG10, Vol. 3848, file 75236-1, Clifford Sifton to Charles Weaver, 26 January 1899 [CAP11826]; Fred White to Deputy Superintendent General of Indian Affairs, 6 February 1899, with attached “extract from Report of the Corporal of the N. W. M. Police, Stationed at Fort Smith, Slave River, dated October 31\(^{1}\), 1898” [CAP11904]; Clifford Sifton to David Laird, 10 February 1899 [CAP11907]; LAC, RG18, Vol. 1435, file 76-99, pt. 1, C. Griesbach to Commissioner NWMP, 10 February 1899 [CAP11911].
permission of the Governor General in Council. This Treaty option, which was thought to be better suited to northern Aboriginal cultural practices, offered some of the features of “Halfbreed” scrip (a fixed land allotment that did not have to be taken at the same location as the rest of the group) while providing the other benefits of Treaty. Instead of limiting Aboriginal movement, Canada hoped to secure peace in the Treaty area by assuring Aboriginal people that they would not be interfered with and offering benefits as a “clear gain”.

In April and May 1899, Indian Affairs and Mounted Police officials were busy with Treaty preparations. The logistics of supplies, interpreters, Treaty medals, commissions, personnel of the Treaty and scrip Commissions, mandates, and payment arrangements for Commission members were being worked out almost to the moment the Commissioners departed for Edmonton. At the end of March, David Laird, one of the Treaty Commissioners, had suggested that legislation be passed extending the terms of the Halfbreed Commission to issuing scrip to applicants “now resident in the country” who had not previously received scrip, instead of limiting eligibility to those resident in the Territories on 15 July 1870. In early April 1899, the Mounted Police sent a package of “census” returns for “Indians and Half Breeds at the points to be visited by the Treaty Commission”, totalling 2,006 “Indians” and 1,426 “Half-breeds”.

Amid reports of continued opposition by Aboriginal peoples to Treaty and scrip, McKenna advised Sifton on 17 April that “I fear that the Commissioner who will be charged with affecting a settlement with the halfbreeds will find it very difficult to do so under the scope given him by the Act, and that the consequent dissatisfaction among the halfbreeds may lead to their using their influence with the Indians in such a way as to make it difficult to negotiate a treaty”. He

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395 LAC, MG27, II-D-15, Vol. 64, reel C-488, David Laird to Clifford Sifton, 30 March 1899 [CAP11924].
397 LAC, RG18, Series B-1, Vol. 1435, file 76-99, pt. 1, Chas. Phillips to O/C Fort Saskatchewan, 13 April 1899 [CAP12009]; PAA, Acc. 70.387 (Anglican Church records), A32/A281/149, George Holmes to Bishop [Young], 4 April 1899 [CAP11927].
quoted the Deed of Surrender of Rupert’s Land providing that “any claims of Indians to compensation for land required for purposes of settlement shall be disposed of by the Canadian Government”, section 31 of the *Manitoba Act* appropriating a tract of land “towards the extinguishment of the Indian title to the lands in the Province” and the *Dominion Lands Act* authorizing grants of land to “halfbreeds” “in satisfaction of any claims existing in connection with the extinguishment of the Indian title preferred by halfbreeds resident in the Territories”. He concluded,

It is, therefore, clear that whatever rights the halfbreeds have, they have in virtue of their Indian blood. Indian and halfbreed rights differ in degree, but they are obviously coexistent. Halfbreed rights exist until the Indian title is extinguished, and they should properly be extinguished at the same time. The principle underlying the Government’s policy respecting Indians, as embodied in various treaties, may be thus stated: -- When changing conditions incident to advancing settlement interfere with their mode of life and ordinary means of livelihood it is politic and equitable – apart altogether from any title which they may have in the land – to offer them some degree of compensation. The same principle is, and should be, the basis of its halfbreed policy. When the Indian rights in a certain territory are extinguished the halfbreed rights should be extinguished; and if the Government fails as it failed in the past to pursue such a policy then the halfbreed right should be held to exist up to the date at which it is extinguished...

The practical difficulty confronting the Department at present is this: -- If we restrict ourselves to the provisions of the Dominion Lands Act in dealing with the halfbreeds of Athabasca we are likely to render it impossible to make either a satisfactory settlement with them or with the Indians. If we extend the provision of the Act, it will be necessary to so extend it as to make the amendment apply to all the Halfbreeds of the North West Territories, and this will involve the issue of a large amount of scrip...398

In a separate memorandum dated the same day, McKenna noted that the Order in Council of 27 June 1898 gave the Treaty Commissioners “discretionary power as to including in the treaty those characterized as Halfbreeds, should they prefer being dealt with as Indians rather than as Metis”.399

On 29 April, Sifton submitted a report to Cabinet proposing that

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398 LAC, RG15, Series B-1A, Vol. 329, file 518158, J. A. J. McKenna to Clifford Sifton, 17 April 1899 [CR-004815]. Compare LAC, RG10, Vol. 2832, file 170073-1, J. A. Macrae to Superintendent General of Indian Affairs, 18 February 1899 [CAP11912], 7, in which Macrae wrote that “I...hazard the opinion that the value of the halfbreeds’ title is proportioned to the value of the Indian title, as the extent of their Indian blood and length of occupancy of the Indian tracts is proportioned to full Indian blood and pre-historic occupancy”.

concurrently with the treaty negotiations, the claims of the Halfbreeds residing within the territory to be surrendered should be investigated and dealt with. Provision is made by sub-section (f) of Section 90 of the Dominion Lands Act for the granting of lands in satisfaction of any claims existing in connection with the extinguishment of the Indian title preferred by Halfbreeds resident in the North West Territories, outside of the limits of Manitoba, previous to the 15th July, 1870...

The undersigned is convinced that to appoint Commissioners to deal with the Halfbreeds of the aforesaid territory within the scope of this provision would tend rather to disturb than to satisfy the Halfbreeds, and would certainly cause them to so use their great influence with the Indians as to make it extremely difficult, if not impossible, to negotiate a Treaty...

...the Halfbreeds of the District of Athabasca and adjoining country were not affected by the transfer [of Rupert’s Land, 1870]. Whatever rights they have, they have in virtue of their Indian blood; and the first interference with such rights will be when a surrender is effected of the territorial claims of the Indians. It is obvious that while differing in degree, Indian and Halfbreed rights in an unceded territory must be co-existent, and should properly be extinguished at the same time.

The undersigned would, therefore, respectfully recommend...

(1) That every Halfbreed occupier of land in the said territory be confirmed in possession to the extent of one hundred and sixty acres.

(2) That scrip – redeemable in land – to the extent of Two hundred and forty dollars, or...two hundred and forty acres of land...be granted to each Halfbreed found to be permanently residing in the said territory at the time of the Indian Treaty and not to have previously received scrip in extinguishment of his claim...

...the Halfbreeds of the North West Territories...have since continued to urge that their children who were born between the 15th July, 1870, and the [1885]...Commission...were entitled to the same treatment as those born prior to the 15th July, 1870...

...this claim of the Halfbreeds is well founded and should be admitted. As already set forth in this report he is of opinion that Indian and Halfbreed rights are co-existent and should properly be extinguished concurrently. When Halfbreed rights are not so extinguished, they must be held to exist after the extinguishment of the Indian title and up to such time as action is duly taken for their extinguishment...

He would, therefore, respectfully recommend that the Commissioners...be given the same power in respect to the investigation of claims of Halfbreeds of the portions of the North West Territories already ceded as they are given in respect of the Halfbreeds of the District of Athabasca and adjoining territory; and that they be authorized to issue to such of them born between the 15th July, 1870, and the end of the year 1885...certificates of scrip...400

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400 LAC, RG2, Series A-1-b, Vol. 3329, no. 918, Clifford Sifton to Governor General in Council, 29 April 1899 [CAP12025].
In this report, Sifton emphasized to his Cabinet colleagues that Canada had an obligation and the jurisdiction to deal with the “Halfbreed” rights as well as “Indian” rights in the North West, inside and outside Rupert’s Land. As in 1870 and 1885 – 1889, the administrative method of dealing with “Halfbreeds” and “Indians” was to be different, but Canada did not question its authority to act under its own legislation, for the broader purposes of peaceful national development, to implement these administrative options in the Aboriginal population.

On the same day, Sifton recommended to Cabinet that the missionary Father Lacombe be added to the Treaty and Halfbreed Commissions, as

The undersigned has reason to believe that the Commissioners appointed to negotiate a treaty with the Indians of the Athabasca District and adjoining country, and to deal with the claims of the Halfbreeds, will meet with great difficulty in their missions, for the reason that the Halfbreeds are dissatisfied with the measure of recognition which by law is accorded to their claims, and because the Indians are suspicious of Governmental interference and are hostile to the incoming of white men whose advent they fear will destroy their hunting grounds. Moreover, the Commissioner will be handicapped at the very beginning of their negotiations by the fact that the Department cannot furnish them with any reliable information as to the manners, customs and characteristics of the Indians of the North country.

...it would be very desirable if the Commissioners could have the assistance and counsel of the Very Reverend Father Lacombe. He has been so long in the country as a missionary, knows the Indians and Halfbreeds intimately, and possesses their confidence in so marked a degree, that he would be able to render most valuable and effective assistance to the Commissioners in their difficult mission...401

The report recommending the appointment of Father Lacombe was approved on 3 May, and the report proposing the extension of the Halfbreed Commission’s mandate was approved on 6 May.402 Commissions were issued to the Halfbreed Commissioners (James Walker and J. A. Côté) and the Treaty Commissioners (David Laird, J. A. J. McKenna, and J. H. Ross) immediately after the passage of these Orders in Council, and instructions were sent to the Treaty

401 LAC, RG2, Series A-1-b, Vol. 3329, no. 892, Clifford Sifton to Governor General in Council, 29 April 1899 [CAP12023].

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Commissioners by Sifton on 12 May 1899. In the Treaty instructions, Sifton referred to the gratuity, annuities, and the option of granting land in severalty to “the Indians”, and noted that otherwise “the terms of the treaty are left to your discretion with this stipulation that obligations to be assumed under it shall not be in excess of those assumed in the treaties covering the North West Territories”. As David Laird, the chair of the Treaty Commission and in charge of directing both Commissions, had negotiated Treaty Seven and had been the Indian Commissioner for the North West Territories for many years, he was very familiar with the other numbered Treaties and general Government Treaty policy.

By 25 May, the Indian and Halfbreed Commissioners had arrived in Edmonton and were preparing to start for Lesser Slave Lake, their first stop. After an arduous journey, they arrived to a large crowd of Aboriginal people at Lesser Slave Lake on 19 June, already eleven days behind a schedule that they had been advised was impossible without any unexpected delays.

After a speech by the Chief Kinosayoo, the Treaty Commissioners spoke. David Laird told the gathering the “the Queen wants all the whites, half-breeds and Indians to be at peace with one another”, and outlined the features of the proposed Treaty, explaining that “the Queen’s Government wishes to give the Indians here the same terms as it has given all the Indians all over the country, from the prairies to Lake Superior”. He further explained that

Commissioners Walker and Coté are here for the half-breeds, who later on, if treaty is made with you, will take down the names of half-breeds and their children, and find out if they are entitled to scrip. The reason the Government does this is because the half-breeds have Indian blood in their veins, and have claims on that account. The Government does not make treaty with them, as they live as white men do, so it gives them scrip to settle their claims at once and forever. Half-breeds living like Indians have the chance to take the treaty instead, if they wish to do so. They have their choice, but only after the treaty is

406 Mair, Through the Mackenzie Basin [CAP12082], 56 – 57.
signed. If there is no treaty made, scrip cannot be given. After the treaty is signed, the Commissioners will take up half-breed claims.  

After a day of discussion and questions, the Treaty was signed on 21 June and annuities and gratuities were paid. The text of the Treaty was very similar to the earlier numbered Treaties, especially Treaty Six.

The Treaty Commission then split up to try to make up time, with Laird heading for Peace River Crossing, Vermilion and Fond du Lac, and Ross and McKenna striking out for Fort St. John, Dunvegan and Fort Chipewyan. The Half-breed Commissioners still had much work to do when the Treaty Commissioners left on the 24th, but decided “to follow the Indian Treaty Commission as quickly as possible”, as “it was feared that there might be trouble in making Indian Treaties at Fort Chipewyan and other places in the north if it were known that the Half-breeds there were not to be dealt with this year”. The itineraries of the Treaty and Half-Breed Commissions did not fully overlap; the Half-Breed Commissioners visited some points where Métis were gathered that the Treaty Commissioners passed by, and they did not go to all Treaty stops. Although the Half-Breed Commissioners carried with them large “elephant folios” of records of scrip issued in Manitoba and the North West Territories, they had no documentation available to indicate who had taken Treaty. Charles Mair, one of the secretaries to the Half-Breed Commission, recalled in his memoirs one instance at Fort Vermilion when King Beaulieu, a member of one of the largest Métis families in the Athabasca-Great Slave Lake region, “had joined the Indian Treaty...but repented, almost flinging his payment in our face, and demanding scrip instead”. An examination of the Treaty Eight paylists in 1899 reveals that many of those who took Treaty were members of regional Métis families. At the end of the Treaty and Half-Breed

408 Treaty Eight, as reprinted in Mair, Through the Mackenzie Basin [CAP13776], 153 – 169.
409 The Commissioners did not get to Fort St. John in 1899. J. A. Macrae, as joint Treaty and Halfbreed Commissioner, took an Adhesion to Treaty Eight at Fort St. John in 1900, and another Adhesion was taken at Fort Nelson in 1910. Scrip applications were not processed at either location.
411 Mair, Through the Mackenzie Basin [CAP12082], 69.
412 Mair, Through the Mackenzie Basin [CAP12082], 96.
413 See for example the paylists for the “Chipewyan Band” at Smith’s Landing, 14 July 1899 (LAC, RG10, Vol. 9432 [CAP12052]), which can be compared to a “List of Half-Breeds at Fort Smith and Smith Landing” compiled by the local Roman Catholic priest and submitted by the North West Mounted Police in April 1899 for the Commission’s
Commissions’ tours, a total of 2,217 people had received Treaty payments, and 1,244 scrip certificates had been issued. 414

In the preparations for Treaty Eight, Canada decided to facilitate the negotiations and avoid the complications that had arisen from adjustments in assignments to Treaty and scrip in earlier numbered Treaties by offering Treaty and scrip at the same time. This was done for practical reasons: it was thought that satisfying “Halfbreed” claims would cause the Métis to refrain from using their influence to defeat a Treaty, and Canada’s information was that in many parts of Treaty Eight, “it is practically impossible... to draw a hard and fast line between the Halfbreeds and the Indians”, as had also been the case in earlier numbered Treaties. Canada also drew on the obligations to Aboriginal people outlined in the Deed of Surrender of Rupert’s Land and the objective of “the extinguishment of the Indian title preferred by halfbreeds” outlined in the *Manitoba Act* and the *Dominion Lands Act* to develop the analysis that “Whatever rights [the halfbreeds] have, they have in virtue of their Indian blood; and the first interference with such rights will be when a surrender is effected of the territorial claims of the Indians. It is obvious that while differing in degree, Indian and Halfbreed rights in an unceded territory must be co-existent, and should properly be extinguished at the same time”. Acting on the conviction that the central government had both the jurisdiction and the obligation to do so, Canada devised administrative options designed to appeal to different segments of the broader Aboriginal population in order to do this, including Treaty, scrip and a new Treaty variant that allowed individual families and small groups to take land on their own. Canada used a qualification process for “Halfbreeds” similar to that used in earlier scrip distributions, but asserted little control over which Aboriginal people took Treaty and the designation “Indian”.

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While the Commissioners were out in the field, the Indian Department attempted to close the door on re-admissions to Treaty. Reginald Rimmer, the Law Clerk of the Department, in a memorandum dated 13 June 1899, expressed the opinion that

[halfbreeds] have taken the scrip in extinguishment of their Indian title (Vide the opinion of Deputy Minister of Justice on file 113,403)...

In withdrawing from Treaty under Section 13 (either original or amended) I consider that the individual ceased to be an Indian as defined by Section 2 clause h, and that in taking half breed land in extinguishment of his Indian title he ceased to have any claim to share in the land of any Indian reserve...

I consider that the half breeds having become practically whitemen have no more right than any other non-Indian persons to be admitted into membership of the band and to share in the lands, annuities and interest moneys of the band. The only Statutory provision in relation to admission into a band at all bearing on the case is Section 140 added by 58 – 59 Vic., Cap. 35, but this does not extend to non-Indians and in any case it requires the consent of the band...

Although half breeds have in the past been treated as readmitted to Treaty, in some cases being allowed to retain lands granted as scrip, upon repayment of the face value of the scrip and in other cases being given some privileges of Indians under the Treaty and denied others, I consider that such action is unauthorized by law and is likely to lead to difficulties in the future in relation to the rights of their descendants...415

Rimmer recommended that the issue be referred to the Department of Justice. The Deputy Minister of Justice, E. L. Newcombe, reviewed the issue of “whether [the Department of Indian Affairs] has a ‘right under law to re-admit half breeds discharged from Treaty, and to pay them annuities’”, specifically in cases where the persons discharged from Treaty “received land or scrip in settlement of their half breed claims”. He replied,

So far as Manitoba is concerned the Indian Act expressly provides that no halfbreed in that Province who has shared in the distribution of halfbreed lands shall be accounted an Indian...This provision is sufficient to make it unlawful for the Department in the absence of specially enabling legislation to readmit such halfbreeds...

As to the N. W. Territories, it does not seem clear that such halfbreeds may not still, under special circumstances (to be determined by the Superintendent General, or his agent) and for certain purposes, be accounted Indians...but I agree with the view expressed by the Law

Clerk that by receipt of land or scrip their interest in the Indian title has been extinguished and that it would not be lawful to pay them annuities as Indians where such annuities are the consideration...for the extinguishment of that title...416

Rimmer, on reviewing Newcombe’s opinion, noted the difficulties involved in treating Manitoba and North West “halfbreeds” differently regarding re-admissions to Treaty “because constant questions would arise as to the law applicable to different individuals...such questions could not conveniently be handled by the Agents”. He concluded that “as Section 13 as amended appears to leave a discretion with the Superintendent General within the limits expressed, I do not advise as a general principle that it should be exercised in favour of accounting a halfbreed an Indian, after he has received scrip”.417 Rimmer and Newcombe viewed Aboriginal people (“halfbreed” and “Indian”) as possessing an “Indian title” that Canada could act to “extinguish” by either Treaty or scrip, but favoured a one-time election, as was unfolding in the field in Treaty Eight. However, Newcombe noted that outside Manitoba, “halfbreeds” who had received scrip could still be “accounted [Indians]” at Departmental discretion, as long as they were not paid again for their “title”.

Immediately after Rimmer expressed this view, the Department advised the Saddle Lake Indian Agent (Treaty Six) that “it is not considered [proper?] to re-admit to Treaty any half-breeds in the North West Territories who have shared in the distribution of Half-breed lands or Scrip, and therefore no such persons should be restored to the annuity pay-list”.418 A letter was also sent to the Indian Agent at Portage la Prairie (Treaties Two and Five) informing him that “it is unlawful to re-admit to Treaty, Half-Breeds in Province of Manitoba, who have shared in the distribution of Half-Breed lands or Scrip. Such persons cannot therefore be restored to the Annuity Pay list”.419 This was a reversal of opinion from the basis on which the Department had re-admitted people to Treaty in the early 1890s, when the Deputy Minister of Justice had advised the Department of Indian Affairs that “there exists no legal objection to the half-breeds...who it is proposed to readmit into Treaty No. 5, receiving credit on the amount to be refunded by them in

416 Copy of document from LAC, RG10, Vol. 3996, file 206070-1, in Department of Indian Affairs and Northern Development file E 4030-3/2382 PR Vol. 3, Claims-NCC, HQ, E. L. Newcombe to [Department of Indian Affairs], 24 June 1899 [CR-010387]; also in LAC, RG10, Vol. 3998, file 206070-26 (original, but water-damaged) [CAP13785].
418 LAC, RG10, Vol. 3775, file 37267-2, J. D. McLean to W. Sibbald, 29 June 1899 [NEW NUMBER].
419 LAC, RG10, Vol. 3998, file 206070-26, J. D. McLean to H. Martineau, 29 June 1899 [CAP13789].
respect of the scrip received by them as half-breeds for the sum which would have been paid to them had they retained their status as Indians entitled to annuity under the Treaty”. Persons who had already been re-admitted to Treaty by 1899 continued to be reinstated to paylists as they repaid the face value of the scrip they had received. In October of 1899, David Laird, in his regular position as Indian Commissioner for Manitoba and the North West Territories, attempted to close the door between Treaty and scrip from the other side, advising the Indian Agent for the Sarcee Agency (Treaty Seven) that

on the subject of Halfbreeds [illegible] to withdraw from Treaty, I have to call your attention to the law as amended by Sec. 1, Cap. 22, 51 Vic. The object of the amendment was to provide that only with the consent in writing of the Indian Commissioner should one who had been admitted to treaty be allowed to withdraw therefrom. It seems that there is an impression...that Indians of mixed blood are practically free to elect to remain in treaty or take scrip; that the most the Department’s Agents and Officers can do is to use their influence to discourage them from leaving treaty, and that the Commissioners who will issue scrip to children born between 1870 and 1885 in the organized territories, will have power to issue scrip to Indians who may withdraw from treaty.

I have therefore, to inform you that this impression is altogether erroneous, that the scrip Commissioners will only deal with Halfbreeds born between 1870 and 1885 whose claims were not admitted in 1885; and that it is not the intention of the Government to give those who are in treaty the option of taking scrip.

In order to dissuade as much as possible Halfbreeds from applying to the Indian Commissioner for leave to withdraw from treaty you may inform possible applicants that I will not give my consent to such withdrawal except for some very special reason which must be fully explained when the application is made.

However, McKenna identified a category of “Halfbreeds” whom he believed should be taken into Treaty whenever possible, in a policy proposal approved by Sifton in early January 1900:

There are cases in which Indians have adopted Halfbreed children who are living with them on the Reserve and have not been admitted to membership in the band...claims in these cases were made for scrip. I reserved them because I am convinced that the best policy is to admit all such persons to treaty. If they are put off the Reserves they will simply become vagrants, and as they are at present we have no control over them, for they have not the legal status of Indians. I would apply the same policy to Halfbreed Women who have married Indian men. In brief I think that claimants who are living among Indians should be given the status of Indians. In laying down this rule, I think at the same time we

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420 LAC, RG10, Vol. 3775, file 37267-1, Deputy Minister of Justice to L. Vankoughnet, 8 July 1890 [CAP11640].
421 See for example LAC, RG10, Vol. 3999, file 206070-28, Deputy Superintendent General of Indian Affairs to D. Laird, 8 April 1903 [CAP13926].
422 LAC, RG10, Vol. 1627, David Laird to Indian Agent, Sarcee Agency, 7 October 1899 [CR-004783].
should lay down the rule that Indian women who have married Halfbreeds should have their annuity counted [commuted?] and their connection with the Band cut off... 423

In making these recommendations, McKenna echoed earlier Departmental concerns about allowing unsuitable candidates, otherwise eligible for “Halfbreed” scrip, to escape Departmental “control” and become “vagrants”. The Superintendent General, Sifton, evidently considered that this could be an example of the “special circumstances” or “certain purposes” in which the Department could exercise its discretion to take “Halfbreeds” into Treaty as “Indians”.

On 2 March 1900, an Order in Council was issued appointing J. A. Macrae as an annuity-paying officer, Treaty and Halfbreed Commissioner for Treaty Eight, with a mandate to obtain adhesions to the 1899 Treaty and issue scrip certificates on terms similar to the 1899 Halfbreed Commissioners. 424 The passage of one year since the first Treaty, however, required some refinement in the issuance of scrip:

It should be noted also that the date on which the treaty was made at each of the different places in the District is the date at which Half-breeds resident at such places at that time are entitled to share in the grant. It would be well, therefore, especially in the case of infant children, to establish clearly where the claimant was residing at the time of treaty, as children born at Lesser Slave Lake in the month of July last would not be entitled to scrip as the treaty at that point was made in June, whereas such children if born or living at Chipewyan in July last would be entitled to share in the grant as the treaty at the latter place was not made until some time in August.

The claims of deceased Half-breeds who died either prior to the treaty, or subsequent and who had not previously received scrip, are not to be considered in any case, as no provision has been made for their recognition... 425

On the same day, Half-breed Commissioners were appointed to take applications and issue certificates in the North West outside Treaty Eight. The Order in Council appointing the Commissioners extended eligibility for scrip to the children of those who had received Manitoba scrip in the 1870s, for although “the Department has acted upon the principle that the issue of scrip to Manitoba Half Breeds extinguished their Indian title, and that no title could afterwards pass to their children”, “the children of Manitoba Half Breeds who were born between the 15th

423 LAC, RG10, Vol. 3996, file 206070-1, “Extract from a Report, dated 3rd January, 1900, of Mr. J. A. J. McKenna, respecting certain Halfbreed matters, approved by the Minister” [CR-003406].
424 LAC, RG2, Vol. 825, no. 460, 2 March 1900 [CR-001209].
425 LAC, RG15, Series D-II-1, Vol. 782, file 555680, pt. 1, T. G. Rothwell to J. A. Macrae, 7 April 1900 [CR-002643].
July 1870, and the end of the year 1885, do not appreciate the difference between their position and that of children of North West Half Breeds proper born within the same period, and that if they be not given scrip they will consider that they have been unfairly dealt with...the issue of scrip is a measure of public policy for the purpose of satisfying a class of the community who have certain aboriginal rights which it is in the general interest that that class should recognize as having been properly and fully extinguished, it is the part of wisdom to go beyond the letter of the obligation of the State towards them in order to ensure the entire satisfaction of all the Half Breeds”. The Order in Council also explained why claims for deceased persons were recognized outside Treaty Eight, but not within it:

The Minister observes that in treating for the extinguishment of aboriginal rights in that territory [Treaty Eight], the policy was adopted and acted upon that when the extension of trade or settlement interfered with aboriginal rights they should be extinguished by compensation being given concurrently to the Indians and those of mixed blood. The recognition of claims on behalf of deceased Half Breeds in the organized territories resulted from the fact that such a system was not followed in the territory comprised in these districts when treaties were made with the Indians. It was first held that the issue of scrip in 1870 entirely disposed of the claims of Half Breeds. It was afterwards admitted that those born outside of Manitoba previous to the issue of scrip in 1870 were entitled to scrip; but as the admission was not made until 1885, it had to be further admitted that those who had died during the period of inaction were entitled to benefit through their heirs...

After Macrae had completed his tour of Treaty Eight during the summer of 1900, his decisions on scrip applications were reviewed by McKenna. In a report dated 16 March 1901, McKenna disallowed 51 claims on the grounds that

These claimants were discharged from treaty by Mr. Macrae and his action being approved by the Indian Commissioner this was construed to be a discharge under the Indian Act. Mr. Macrae in such case recommended the issue of scrip and supported his recommendation by a verbal statement to me. I have come to the conclusion, however, that it is not advisable to disturb the conditions existing in that country by discharging a group of persons from treaty and giving them scrip. I am quite aware it is difficult and often impossible in that country to draw a clear line of demarcation between an Indian and a Halfbreed. But if we make an admixture of white blood a ground of discharging and giving scrip, it will be hard to close this issue of scrip for the great majority of those in treaty have white blood. The Commissioners in making the treaty had for this reason to give the people the right to elect. The Indian Treaty Commissioners went in advance of the

426 LAC, RG2, Vol. 795, no. 438, 2 March 1900 [CR-001207].
427 Compare Charles Mair’s comment that the applicants he met in 1899 were “unquestionably half-breeds”, although he also noted that they had lived highly mobile lives, used Cree concepts of time, and considered their Cree names their “home names” (Through the Mackenzie Basin [CAP12082], 69 – 70).
Halfbreed Commissioners in 1899 and nobody was in any way influenced to enter treaty, for although it was realized that while it would be a less direct charge on the country to have the population classed as Halfbreeds rather than as Indians, we were convinced that the best interests of the people themselves and of the district would be served by their being mostly classed as Indians and treated as such. After these people entered treaty and the Halfbreed Commissioners came to hear Halfbreed claims, almost every one of them would have been prepared to have gone out of treaty for the ready money which scrip buyers were offering for their scrip. I am afraid that if this bunch are let out of treaty and given scrip, it would give an impetus to scrip speculators who might endeavor to lead others of the Indians who are as much Halfbreeds as these people to agitate for discharges and scrip.

But apart from this, I think the correct position to take is this. – When the Treaty was made the aboriginal inhabitants were given the option of having their territorial right extinguished by the taking of a perpetual annuity as Indians, or by taking scrip as Halfbreeds. After electing, they should be bound by election, and if anyone of them who elected to be an Indian should wish to leave treaty and he should be considered fit to leave treaty by the Indian Commissioner, it is only fair to regard his claim as having been extinguished, and if he loses, he loses as a result of his election.

The principle the Department has acted on in the past would seem to be that because the persons were of mixed blood they had a right to scrip irrespective of the fact they had taken treaty. I take it that everyone irrespective of the proportion of Indian Blood who takes treaty becomes an Indian in the eye of the law, and therefore should be treated as an Indian by the Indian Department, and the Department of the Interior. When he is discharged from treaty he becomes an ordinary citizen of the country having no claims as an aboriginee...428

In taking this approach, McKenna was undoubtedly guided by instructions he had received from Sifton in February of 1901 that “the Minister desires it understood that those who have entered Treaty are not free to leave at any time and take scrip”.429 McKenna had also questioned how decisions had been made in the past to allow people to leave Treaty, remarking in a memorandum to J. D. McLean that “I have never been able to ascertain from personal observation of the discharged what were the requirements insisted upon”.430 He supported the Departmental view taken in Treaty Eight, and the opinion of Rimmer and Newcombe, that extinguishment of “Indian title” should be a once-for-all decision, at least partly to avoid “[disturbing] the conditions of the country” and to allow Canada to “close this issue of scrip”. However, in the case of the children of Manitoba “halfbreeds”, the Department exercised its

429 LAC, RG10, Vol. 3996, file 206070-1, J. A. J. McKenna to J. Smart, 8 February 1901 [CR-003409].
discretion to “go beyond the letter of the obligation of the State towards them in order to ensure the entire satisfaction of all the Half Breeds”, although by Rimmer and Newcombe’s analysis their “Indian title” had been “extinguished”.

In April of 1901, David Laird wrote to Headquarters asking for instructions regarding applications to withdraw from Treaty. He cited the example of one applicant family in the Fairford Band (Treaty Two), whom he described as “well to do, careful, steady people...advanced Halfbreeds in whom the White race strongly predominates”, but although “if they can make an independent living it may be well to be rid of them as Indians”, “it would be forming a very undesirable precedent” for many others. As well, Laird wrote, “this man has been receiving treaty money for nearly thirty years, and as his youngest child is about 18, he has also received treaty money for his children for about 20 years. Their Indian title has consequently been pretty well extinguished without their also receiving scrip”. The response of Headquarters was succinct: “after some consideration the Department has decided not to give those Half-breeds who are in Treaty the option of withdrawing therefrom and taking scrip”. The response of Headquarters was succinct: “after some consideration the Department has decided not to give those Half-breeds who are in Treaty the option of withdrawing therefrom and taking scrip”.431 The response of Headquarters was succinct: “after some consideration the Department has decided not to give those Half-breeds who are in Treaty the option of withdrawing therefrom and taking scrip”.432

Although a total of 6,926 claims for scrip were considered by the commissioners for Treaty Eight and the rest of the North West in 1900 (of which 5,560 were allowed), the work of the Commissions was still unfinished.433 McKenna was appointed sole Commissioner to, Sifton hoped, complete the scrip process outside Treaty Eight.434 However, although McKenna heard 1,748 claims in 1901 (of which 1,295 were allowed), a smallpox epidemic forced an “indefinite adjournment” at the beginning of 1902, with a resumption of hearings about six months later.435

In 1901 and 1902 together, McKenna received 2,122 applications, of which 1,326 were

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431 LAC, RG10, Vol. 3996, 206070-1, David Laird to Secretary, Department of Indian Affairs, 16 April 1901 [CR-007202].
432 LAC, RG10, Vol. 3996, file 206070-1, J. D. McLean to David Laird, 23 April 1901 [CR-007203].
434 LAC, RG2, Vol. 818, no. 575, 16 March 1901 [CR-001163].
allowed. However, outstanding claims continued to emerge, and Commissioners were appointed to deal with these in several subsequent years.

McKenna, while receiving scrip applications in 1900 and 1901, redirected some applicants to the Department of Indian Affairs to be re-admitted to Treaty, apparently under his interpretation of the policy direction approved by Sifton in early 1900 that provided for some “claimants who are living among Indians” to be taken into Treaty instead of receiving scrip. In April of 1901, he recommended that Pierre Piché (a grand-nephew of the late Chief Bobtail), married to a member of the Bands at Hobbema, and Ann Four-Eyes (née Whitford), also married to a Hobbema Band member, be added to the Treaty Six paylists. Piché, reported McKenna, stated that “he lived with his grandmother on the Bear’s Hill Reserve, that he was refused Treaty, that he was married, that his wife received treaty money, and that his mother got scrip, that his father died before scrip was issued”. McKenna also observed that “the claimant in appearance struck me as being a typical Indian”, concluding that “I have disallowed the claim on the ground that he should be classed as an Indian and be admitted to the Band of which his wife is a member”. Piché and Ann Whitford (Four-Eyes) were placed on the Band’s annuity paylist.

On 1 May 1901, he wrote to Sifton for further instructions, noting that you decided that Halfbreeds living on Reserves as Indians should be given treaty instead of scrip. I am not clear as to whether you intended that to cover the cases of Halfbreeds so living who had already received scrip...

It seems to me undesirable that there should be upon reserves any but treaty Indians. The Department has in the past taken back many halfbreeds who received scrip into treaty and has held their annuity until the amount of the scrip was recouped...It seems to me that...they should be given the option of taking treaty with the understanding that the treaty money of the family would be held until the amount of...scrip is recouped. If they...insist

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437 According to scrip and paylist records, Pierre, born 1879, was a son of Augustin Piché, son of Louis Piché or Shekak (Kiskekoot). Louis Piché was Bobtail’s half-brother. Pierre’s grandmother, Agathe Kiskekoot (“Kiskekoot’s widow”), was on the Bobtail and Samson paylists in 1885 and 1886. The search engine for scrip records held at the LAC does not show any scrip application made in her names.
438 LAC, RG10, Vol. 3997, file 206070-12, [J. D. McLean] to W. S. Grant, 16 April 1901 [CR-000617]; also [J. D. McLean] to J. A. J. McKenna, 16 April 1901 [CR-000618].
on the status of Halfbreeds, then the condition of...getting scrip should be their leaving the
reserve...  

This memorandum was marked “Approved by the Minister”. McLean, however, not having
McKenna’s direct access to the Minister, wrote to McKenna about a week later stating that he
was unaware of a decision by the Minister on re-admissions, and noted that
the opinion of the Law Clerk [was] that it was illegal to take such re-admissions. Since
Mr. Rimmer gave this opinion the Department has not been re-admitting persons to Treaty.
I thought it was the intention that where it was found desirable to take any one into Treaty
each case should be decided by the Minister specially.  

McKenna responded that the cases on which Rimmer had ruled could be distinguished from
those on which the Minister could decide.  

On 15 May, he obtained a refinement of the ruling
from Sifton that “applicants for scrip, who were living on Indian Reserves, as Indians, should be
paid annuity, instead of being given scrip”, to the effect that such applicants were to be given
“the option of taking annuity from [the present] date or taking scrip + getting off the reserve”.  

On 18 May 1901, he conveyed Sifton’s ruling to the Department of Indian Affairs.  

On 31 May 1901, McKenna issued a report on his review of 856 claims reserved by the other
Halfbreed Commissioners, which incorporated a statement of his principles in deciding claims
outside Treaty Eight:

The usual grounds upon which Halfbreed claims are disallowed are: - Death before the
transfer of the country from the Hudson’s Bay Company; Birth outside of the Territories;
Death while in receipt of Indian annuity; and non-residence in the Territories on the 15th
July, 1870.

In addition to these grounds, I have disallowed on the following: --
1. As the claims of the Halfbreeds of the Territories were recognized as existing up to
1885 when action was taken for their extinguishment, I have taken it that residence in the
country up to that date was necessary to admission of a claim, for the reason that those who
had left and taken up residence in other parts could properly be considered as having

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441 LAC, RG10, Vol. 3997, file 206070-12, J. D. McLean to J. A. J. McKenna, 8 May 1901 [CR-000948].
442 LAC, RG10, Vol. 3997, 206070-12, J. D. McLean to J. A. J. McKenna, 8 May 1901 (marginalia on document) [CR-
000948].
443 LAC, RG10, Vol. 3996, file 206070-1, J. A. J. McKenna to the Minister, 15 May 1901, with marginalia on
thereby surrendered or allowed to lapse any territorial rights which they might have possessed in the country.

2. It has been the custom to recognize Halfbreed rights coming from the Mother as well as the Father, and consequently claims have been allowed of children who were the offspring of Mothers of part Indian blood married to husbands of exclusively white blood. I have taken the position that the benefits of the custom should not be extended to foreigners, and that the children by a foreigner of a Halfbreed woman who received scrip and thereby had her aboriginal right extinguished, should be regarded as taking the status of their Father and, therefore, not possessed of any aboriginal rights which the Government of Canada is called upon to extinguish.

3. After the issue of the Commission for the settlement of Halfbreed claims in 1885, a great number of Indians who claimed to be of mixed blood where allowed to leave treaty and take scrip; a number of them have since been taken back into treaty. Certain of those who have gone back into treaty have claimed scrip on account of children who were born and died while they had the status of Halfbreeds. I take it that by coming back into treaty the Halfbreed not only changed his own status, but surrendered any claim he might have even as heir of a Halfbreed to compensation on account of the territorial rights of such Halfbreed.

The discharges from treaty in 1885 and subsequent years have given rise to another question. It had been the practice to grant those Halfbreeds scrip for children who died before the making of the Indian Treaty, into which the said Halfbreeds had entered and only to disallow claims on account of those who actually died in receipt of annuity. I have taken the position that all those who entered into treaty with the Government, extinguished for the consideration they were granted under the Treaty, all territorial right which existed in them at that time and that consequently no claims could lie for children who died before the date of entry into the Treaty.

4. It is provided in the Indian Act that an Indian woman marrying a non-Indian, is entitled to commutation of her annuity. It has been the practice to pay, in addition to her annuity, scrip as a Halfbreed, if she were proved to be of mixed blood. I have taken it that commutation of annuity is a final and complete settlement.

5. It has been the custom to recognize proof of part white blood and a discharge from Indian treaty, as constituting a right to scrip. I have taken it that everyone, irrespective of the proportion of Indian blood which he may have, who enters treaty becomes an Indian in the eye of the law and should, therefore, be treated as an Indian both by the Department of the Interior and the Department of Indian Affairs; and that when he is discharged from treaty he becomes an ordinary citizen of the country, having no claims as an aboriginee, all such claims having been extinguished by his accepting the benefits of an Indian Treaty up to the date at which he voluntarily surrendered them.

6. Inasmuch as those persons of mixed blood in Canada who participate in the benefits of Band life on Indian Reserves are excluded from receiving scrip, I have taken the position
that Halfbreeds who have left Canada and taken up residence on Indian Reservations in the United States and participate in the benefits of Indian life thereon, should, as well as all Halfbreed children admitted to United States Indian Schools, be likewise excluded.

McKenna’s report was endorsed by an Order in Council issued on 6 June 1901.

After McKenna recommended the re-admission of several families to Treaty Two Bands in July 1901 (approved by Headquarters), the local Indian Agent, S. Swinford, objected, referring to the Department of Justice opinion solicited by the Department of Indian Affairs in June of 1899 that it was “unlawful to re-admit to Treaty, Halfbreeds in Province of Manitoba who have shared in the distribution of Halfbreed Lands or Scrip”. McLean then wrote to McKenna in mid-November 1901 noting that “the Department over-looked the fact that the question as to the legality or otherwise of the re-admission of Half-breeds to Treaty had been dealt with at length by the Law Clerk of the Department, and also by the Deputy Minister of Justice”, and asking for his views on the issue.

McKenna indignantly replied on 2 December that there was no warrant at all for stating that the readmission of halfbreeds to treaty is illegal...the opinion of the Deputy Minister of Justice is to the effect that the Indian title in the Halfbreeds having been extinguished by the issue of scrip to them, it would not be lawful to pay them annuities as Indians, where such annuities are a consideration or part of a consideration for the extinguishment of that title...the Minister laid down a policy as to admissions which I am following, and the Department before that had re-admitted some four hundred halfbreeds to treaty. When it came to realize the folly of the policy inaugurated and carried out in 1885, 1886 et seq., under which a great number of people

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445 LAC, RG2, Vol. 823, no. 1182, 6 June 1901, J. A. J. McKenna to Clifford Sifton, 31 May 1901 [CR-001166]. The policy in paragraph 6 was reversed in 1904 and scrip issued to a number of applicants who had been disqualified under it. See LAC, RG2, Vol. 878, no. 1613, 13 August 1904 [CR-001169].

446 LAC, RG2, Vol. 823, no. 1182, 6 June 1901 [CR-001165].

447 LAC, RG10, Vol. 3998, file 206070-26, J. A. J. McKenna to J. D. McLean, 5 [?] July 1901 (re: William James Sinclair) [CAP13827]; J. A. J. McKenna to J. D. McLean, 5 [?] July 1901 (re: Basil Letendre) [CAP13828]; J. A. J. McKenna to J. D. McLean, 5 [?] July 1901 (re: Alexandre Letendre) [CAP13829]; J. D. McLean to S. Swinford, 16 July 1901 (re: David Hamilton Letendre) [CAP13898]; J. D. McLean to J. A. J. McKenna, 16 July 1901 (re: Alexander Letendre, Basil Letendre and William James Sinclair) [CAP13899]; [J. D. McLean] to S. Swinford, 7 September 1901 [CAP13899 NEW NUMBER]. The reasons given for re-admittance were the “appearance” of the applicants, and that Alexandre and Basil Letendre had married Band members, were living on the Reserve, “and had, in fact, become Indians again” (S. Stewart to S. Swinford, 1 October 1901 [CAP13903]).

448 LAC, RG10, Vol. 3998, file 206070-26, S. Swinford to Secretary, Indian Department, 24 September 1901 [CAP13901].

449 LAC, RG10, Vol. 3998, file 206070-26, J. D. McLean to J. A. J. McKenna, 18 November 1901 [CAP13904].
who could in no way be distinguished from full blooded Indians and were as much in need of the protection which the law affords to Indians as any pure blooded Indians are were discharged from treaty and given scrip, and the Department sought to repair the injury done by restoring certain of them to their former status; but it was careful, as I have been careful, in each case to stipulate that there should be no payment of annuity until a full refund was made of that which had been paid them in extinguishment of their Indian title.

It is conceded by men of the best experience in Indian affairs in this country that it is most undesirable that there should be living upon Indian Reserves, a class of people who have not the status of Indians, and are not amenable to the laws relating to Indians...450

Reginald Rimmer, the Law Clerk of the Department, was then asked to revisit the issue of admission of “Half Breeds” to Treaty. In a memorandum of 9 December, he stated his view that

The opinion of the Deputy Minister of Justice given 24th June, 1899, is clearly that Section 1 of Cap. 22, 51 Vic., makes it unlawful for the Department to re-admit to Treaty a halfbreed of Manitoba who has shared in the distribution of half breed lands. As one of the incidents of Treaty, annuities cannot be paid. There are other incidents of Treaty such as the right to reserves and provisions, and there are incidents attached to the legal position of an Indian which cannot attach to a half breed...

I know of no machinery whereby such [Manitoba] half breed can be given the position of an Indian, which involved (inter alia) rights to share in annuities, to reside upon a reserve and to share in the proceeds of sale of a reserve and disabilities with regard to intoxicants imposed by the Indian Act...451

Rimmer continued by reviewing the provisions of the Manitoba Act; 1874 legislation regarding appropriation of Dominion Lands to “half breeds” in Manitoba; the 1876 Indian Act barring “halfbreeds” in Manitoba who had shared in the distribution of “half breed” lands from being “accounted an Indian”, and more broadly providing that “no halfbreed head of family...shall, unless under very special circumstances...be accounted an Indian, or...be admitted into any Indian Treaty”; and 1879 and 1899 amendments to the Dominion Lands Act providing for “the extinguishment of Indian title preferred by the half breed residents” by granting land. He concluded that

it seems...to have been the intention of Parliament that in the Province of Manitoba Indians (male persons of Indian blood reputed to belong to a particular band their wives and children) should be dealt with exclusively under Treaty and should be shut out from all

450 LAC, RG10, Vol. 3998, file 206070-26, J. A. J. McKenna to J. D. McLean, 2 December 1901 [CAP13905].
rights of half-breeds; who were given land and left free to homestead or pre-empt; and that on the other hand half breeds should have none of the rights and disabilities of Indians.

There are differences as to half breeds in Manitoba and in the Northwest Territories, but the practical deduction from the opinion of the Deputy Minister of Justice seems to be that whether in Province or Territories a half bred whose Indian title has been extinguished otherwise than under Treaty cannot be converted into an Indian as defined in the Indian Act so as to give him all the advantages of a Treaty.

There may be urgent reasons of policy demanding that some half breeds who are practically leading the Indian life should be accounted Indians. If there has been a change in the policy of the Department it does not alter the law; but the stronger the reasons for the Governments policy, the stronger are the grounds for asking Parliament to amend the law to conform to the policy. 452

Rimmer added a postscript, observing that “the Bill, as drafted for last Session to consolidate the Indian Act contained an alteration of Sec. 13 which would give the Supt General powers under very special circumstances to be determined by him, to allow the acception of Halfbreeds in Manitoba into members of Bands there”. 453

Departmental Secretary McLean and Departmental Accountant Scott then reviewed the matter again, concluding that McKenna’s decisions, the Minister’s directions, and Rimmer’s opinions were not necessarily inconsistent. 454 McLean then submitted Rimmer’s December opinion, McKenna’s December letter, and memoranda by himself and Scott to James Smart, the Deputy Minister of the Interior and the Deputy Superintendent General of Indian Affairs, who had been bypassed by McKenna in his correspondence regarding readmissions and scrip. Smart wrote across Scott’s memorandum, “I do not think that a Half Breed, withdrawing from Treaty + [receiving?] Scrip can be readmitted”. Although McLean remonstrated, “Mr. McKenna’s views are directly opposite what you assume them to be”, Smart replied that “McKenna is in my view

454 LAC, RG10, Vol. 3998, file 206070-26, J. D. McLean to Accountant, 13 December 1901 [CAP13913]; D. C. Scott to the Secretary, 17 December 1901 [CAP13916].
wrong. His ideas mean retrogress [?] and could hardly on any ground be [illegible word].

Smart then drafted his own reply to McKenna:

I gather from your letter [of 2 December] that the principle upon which you desire this Department to act is that any half breed in Manitoba may be admitted to treaty. Such action would be directly opposed to the opinions expressed by the Deputy Minister of Justice and the Law Clerk, which are not so restricted as your letter would imply, and to the express provisions of Section 13 of the Indian Act (as amended) which declares that “no half breed in Manitoba who has shared in the distribution of half breed lands shall be accounted an Indian.” Although I have no reference to directions given by the Minister to you, as Half Breed Commissioner, I may say that so far as the records of the Indian Department show there has been no ruling of the Minister upon this question which deviates from what the Department is advised to be the legal position of half breeds in Manitoba or which calls for any general or indiscriminate admission of half breeds in the Northwest Territories.

In directing that persons of part Indian blood who had entered treaty were not to be entitled at any time to leave and take up scrip, and in afterwards, in May last, directing that applicants for scrip who were living on Indian reserves were to be given the option of taking annuity or taking scrip and getting off the reserves, it would appear to have been the Minister’s intention not to disregard the law but rather to act in accordance with the intention of Parliament, as shown by legislation since Manitoba entered the union, that persons of Indian blood having once elected how they should be treated should not have an opportunity of altering their status. It is not to be supposed that his ruling that, those taking scrip were to leave the reserves was not to apply to those who had already taken scrip and their descendants. The cases before him were ones in which the applicant had not received scrip. In like manner the Minister in deciding in a few isolated cases in the Northwest Territories...that a person, who so far as was known had not received scrip should be allowed to enter treaty may be said to have acted within Section 13 (as amended) which, after the special provision with regard to half breeds in Manitoba who have received land, provides as to other half breeds that they shall not, unless under very special circumstances, to be determined by the Superintendent General or his Agent, be accounted Indians or admitted to treaty. The section in these cases does not conflict with the opinions of the Department of Justice and the Law Clerk.

Recently upon your recommendation, without consideration of the legal aspect of the matter and without any further ruling of the Minister, Agent Swinford was informed that the re-admission of certain half breeds in his Agency who had received scrip would be sanctioned. He drew attention to the attitude of the Department in the past, and the cases still stand undisposed of.

Although some years ago a number of half breeds were admitted to treaty, the Auditor General in 1890 objected to Manitoba and Northwest appropriations being diverted to them. Even if annuities were withheld so long as would be necessary for the annuities to

455 LAC, RG10, Vol. 3998, file 206070-26, D. C. Scott to the Secretary, 17 December 1901, with marginalia [CAP13916].
make up the amount of scrip, the same objections would hold good immediately payments commenced. Half breeds who had received scrip would still not be Indians in the eye of the law.

Under the circumstances I do not think proper to instruct Agent Swinford that half breeds who have received scrip shall be admitted.

My own opinion is that this would be a retrogressive step which could hardly upon any ground be justified. The question of amendment of the law is one for the Minister’s consideration.456

Smart’s personal view was that McKenna’s concerns about social control were outweighed overall by the “retrogressive step” of making “halfbreeds” whose “Indian title” had been “extinguished” wards of the state as “Indians”. Although in the 1880s and 1890s numerous “Halfbreeds” and “Indians” in Manitoba and the Northwest Territories had been allowed to move between Treaty and scrip for various policy reasons, he believed that the Department’s 1899 policy of once-for-all election had been the “intention of Parliament” since 1870: “that persons of Indian blood having once elected how they should be treated should not have an opportunity of altering their status” (at least in the case of admissions to Treaty).

In April of 1902, Indian Agent Swinford ventured an inquiry to Headquarters regarding “re-admission into Treaty of Half breeds who have shared in the distribution of Half-breed land or scrip”, noting that “now that a few have been readmitted in the Manitowapah Agency [Treaty Two], I expect to have a number of applications this summer, and I would like to know the Departments decision for future guidance”. McKenna wrote across this letter that “they will be dealt with in being transmitted to the Department”.457 McLean then instructed Swinford to “transmit them to Headquarters and they will be dealt with by the Department...accompany each case with a full report”.458 In 1903, the Department approved the reinstatement of the children of Bellevaire Breland, who had been discharged from Treaty Six in 1886 and then re-admitted with Chief Bobtail and his family in 1887, to Samson Band paylists, on the criterion that they lived on

456 LAC, RG10, Vol. 3998, fie 206070-26, J. A. Smart to J. A. J. McKenna, 21 December 1901 [CAP13917]. Although this copy of the letter is marked “Draft”, it is signed by Smart and noted to be copied to another file, which suggests that it was sent to McKenna.
457 LAC, RG10, Vol. 3998, file 206070-26, S. Swinford to Secretary, Department of Indian Affairs, 11 April 1902 [CAP13924].
an Indian Reserve. In 1904, eleven family heads, including a woman identified as a daughter of Bobtail and a man identified as a son of Bobtail, were approved by Headquarters for admission to the Samson and Ermineskin Band paylists. These people were described by the Indian Agent as “men and women that reside upon their Reserves and have done so for years, and yet do not have any rights or privileges pertaining thereto...[Chiefs Samson and Ermineskin] claim that these applicants for membership lost their standing in the band, simply by neglect or by absence”. Some of them had received Treaty payments elsewhere, and others claimed never to have been paid. The criterion used by the Department to admit, or re-admit these persons to Treaty was that they were “full-blooded Indians entitled to the rights and privileges of Treaty No. 6”.

The men and women admitted, or re-admitted, to the Samson and Ermineskin Bands in 1901 and 1904 had been removed or had never been placed on Treaty paylists for reasons that are now unclear. Pierre Piché simply noted that he had been “refused Treaty”. A relative, Paul Piché, had come to the Hobbema Reserves in 1885 for annuity payments, but later stated that he “was ordered off the reserve by Indian Agent Lucas as Lucas said he was a half breed and had no right on the reserve”. As discussed in Section V of this report on the development of numbered Treaty paylists and the standardization of annuity payment procedures, from the 1870s through to about 1885 many people are untraceable through the lists and “disappeared” from the records. In the scrip applications from 1900 and 1901, some of the personal histories behind these “appearances” and “disappearances” emerged, as many applicants indicated that they had moved through Treaty at some time in their lives. These people may never have completed formal withdrawal or commutation processes. Marguerite Houle, “halfbreed”, a niece of Chief O’Soup

459 LAC, RG10, Vol. 3997, file 206070-12, [J. D. McLean] to J. A. J. McKenna, 12 February 1903 [CA-000958]; Frank Pedley to W. S. Grant, 26 February 1903 [CA-000959]; Frank Pedley to J. A. J. McKenna, 24 April 1903 [CA-000963].
460 LAC, RG10, Vol. 3997, file 206070-12, W. S. Grant to Secretary, Department of Indian Affairs, 22 March 1904 [CAP13934]; W. S. Grant to Secretary, Department of Indian Affairs, 28 March 1904 [CAP13939]; W. S. Grant to Secretary, Department of Indian Affairs, 18 April 1904 [CAP13942]. The names of the son and daughter of Bobtail admitted at this time are not on any of the family’s withdrawal, scrip and re-admission documents.
462 LAC, RG10, Vol. 3863, file 83894, Johnson + Johnson to Indian Commissioner, Regina, 23 February 1891 [CAP13584]. Paul’s wife was on the 1885 Bobtail paylist, but was not paid subsequently, with no explanation. Piché was also identified by the Department of Indian Affairs as “a Rebel”, and may not have been paid Treaty for that reason.
of the Pasqua Band, and her children could not be traced in any Treaty Four paylists when the father of the children applied for scrip as an heir in 1901, and the only information available came from an interview with a former Indian Department interpreter who remembered that Marguerite alone was paid in 1877 and 1878. Marie Bruneau (née Batoche or Chastelain or Miyowasis) stated in her application as an heir to a deceased son that “I received Treaty once, at Red Deer [Blackfoot] Crossing with Bobtails band that was the first year he took Treaty [1877]. I never lived on the reserve”. Edouard Dumont, originally from Red River, stated in 1900 that his wife Marguerite Sutherland dit Kapetakus, a “halfbreed”, had been in Treaty before he married her, “but when I married her I took her out of Treaty”. As their first child had been born in 1876 in present-day Saskatchewan, she would not have gone through a commutation or withdrawal process, but simply moved out of the region. Christine Munroe (née Desjarlais), applying for scrip for deceased children in 1900 and 1901, had spent her life on the boundaries of “Indian” and “Half Breed”:

I live in the South Piegan Reserve, Montana. My first husband was Joseph Deschamps. He was the father of the children...He was in treaty in Canada. One year after his death I was married in Calgary to John Munroe. About five years ago he took treaty on the South Piegan Reserve. He is a Piegan Halfbreed. I do not get treaty...I was in treaty with my first husband but was discharged and got scrip in 1885 at Macleod after my marriage to Munroe...

[Daughter] Adelaide died at the Blood Reserve. She was raised by my father Francois Desjarlais. He was camped on the Blood Reserve while travelling. He was not in treaty with the Bloods. He got scrip. She died the year after the rebellion...

Christine said in her 1901 application that she had received annuity payments for only two years as part of the Stragglers at Big Lake near Edmonton (Treaty Six), in 1880 and 1881 or possibly 1881 and 1882 (the Department of Indian Affairs could not identify her with certainty on the Stragglers paylists). She then went to Montana with her husband (Deschamps). In her 1885

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463 LAC, RG15, Vol. 1333, application of Daniel Alary for his deceased daughter Marie Rose, claim 484, 1901 – 1903 [CAP13830].
464 LAC, RG15, Vol. 1338, application of Marie Anne Bruneau for her deceased son Paul, 1900 [CAP13893].
465 LAC, RG15, Vol. 1345, application of Edouard Dumont for his deceased children Olive, Lízà, Baptiste and Rosalie, claim 1170, 1900 – 1903 [CAP13795]. As Dumont and his family were said to be based in St. Boniface (Winnipeg) prior to his marriage, the Treaty is likely Treaty One or Treaty Two, although there were also many Mëtis in the Qu’appelle Valley at the time of Treaty Four.
466 LAC, RG15, Vol. 1360, application of Christine Munroe for deceased children Adelaide, Francois, Joseph and Melanie Deschamps, 1901 [CAP13810].
scrip application, she had said that she did not receive annuities as an Indian.\textsuperscript{467} Her name, in any of its possible permutations, does not appear on the Department of Indian Affairs register of withdrawals from Treaty, and no documentation has been located indicating that she was formally discharged or withdrew. It is likely that she, too, simply dropped off the paylists without explanation.

The withdrawal register evidently presents a very incomplete view of those who were in Treaty and either left it or were removed from the paylists. According to the register, 446 applications were made (almost all leading to discharge) between May 1885 and 1 July 1886, when a temporary halt was called. Between July 1886 and January 1887, 201 applications were made (most leading to discharge). Between January 1887 and February 1888, when another temporary halt was called, 27 applications were registered. Between the time when discharges resumed in 1890 and the next stoppage of discharges in October 1899, 152 applications were registered. After October 1899, only 39 discharges were registered until 1926.\textsuperscript{468}

Departmental policies underwent a shift in focus and application from the late 1880s and early 1890s to the late 1890s and early 1900s. Underlying Canada’s policy approaches was the reality of a mixed, varied and interrelated Aboriginal population where in many locations it was “impossible to draw the line” between “halfbreeds” and “Indians”. Canada, however, persisted in attempting to manage this population by imposing distinct legal categories that in many cases had little to do with identity, social and cultural factors. In 1885 and 1886, Canada attempted unsuccessfully to sort the mixed Treaty population group into economic and legal categories of “Indians” and “half breeds”, allowing some people a choice they had not had at Treaty time but reasserting control over the categories when it became apparent that other policy objectives were being undermined. In the late 1880s and early 1890s, the Department had dealt with this outcome by transferring some people in economic difficulty from the “half breed” category to the “Indian” category, where they could receive more structured assistance and be more closely controlled. In the words of the acting Deputy Superintendent General in 1891, “the Dept. …was actuated by humane motives, as these people... cannot be left to starve... their delinquencies...
can therefore have very little bearing on the case as whether these people are Indians or Half Breeds in the legal meaning of these terms, the Govt will be compelled to assist them when they are destitute and starving. …and the fact is…that the Half-breeds can be managed more satisfactorily in their tribal state as Indians than as individuals”. At the same time, “half breeds” who could not support themselves without assistance were retained as “Indians”.

By the late 1890s, Canada was focussing its analysis and sorting of the Aboriginal population around the means used to “extinguish” Aboriginal title. Whereas in the early 1890s, it was acceptable to Canada to switch the means of extinguishment between Treaty payments and scrip as long as the two did not overlap (and in 1890 entitlement to scrip was in fact a prerequisite for discharge from Treaty), by the late 1890s the emphasis was on a one-time choice. The Department of Indian Affairs’ legal opinion in 1899 was that “half-breeds” who took scrip became “practically whitemen” and could not legally be admitted to Treaty, especially those who took scrip in Manitoba, who were specifically barred by existing legislation. Similarly, Treaty people were considered “Indians” legally, regardless of blood quantum or cultural identification, and if they had accepted Treaty annuities they could not be eligible for Métis scrip. Both in the Robinson Treaty areas and in the numbered Treaty areas, for both “Indians” and “Halfbreeds”, Departmental officials examined factors such as continuous residency in a surrendered tract prior to the extinguishment of Aboriginal title to determine entitlement to Treaty or scrip.

However, Canada also reserved to itself the right to consider “very special circumstances” and practical discretion in developing and implementing sorting policies for the Aboriginal population. To pacify a potential group of dissatisfied claimants, the children of “half-breeds” who had been granted scrip in Manitoba were deemed to be eligible for North West scrip if they were born in the Territories between 1870 and 1885. Aboriginal individuals and families living with “Indians” on Reserves in “tribal relation” with them were admitted to Treaty and Band membership and given the status of “Indians”. In the Robinson Treaty areas, even those who the Department decided were not entitled to Treaty by reason of non-indigeneity in the surrendered tract, or who did not legally qualify as “Indians”, were retained on paylists as an “act of grace” if they had been on a list in 1895. Although Law Clerk Reginald Rimmer advised in 1901 that re-admitting recipients of Manitoba scrip was illegal, and was generally opposed to using the
Minister’s discretion to re-admit people who had taken scrip into Treaty, he noted that if there were “urgent reasons of policy” to do so, “the stronger are the grounds for asking Parliament to amend the law to conform to the policy”, and in fact a Bill was drafted to remove impediments to re-admission of Manitoba “half breeds”. Rimmer did not question Canada’s authority to change its policies and legislation to take “half breeds”, even those whose “Indian title” had been “extinguished”, into Treaty and the Indian Act under a broad federal power.

IV (12). Treaties Nine, Ten, and Eleven, and “Half-Breed” scrip Commissions, 1905 – 1930

In 1905, the provinces of Alberta and Saskatchewan were created from the North West Territories. The new provinces were given all the powers of the older provinces under the British North America Act, with the exception of control of public lands, which was retained by the federal government. However, the new provincial governments did acquire provincial powers of regulating natural resource harvesting activities, such as hunting and fishing. A by-product of the creation of the new provinces was the resignation of Clifford Sifton from the Laurier Cabinet, after a dispute about religious schooling. Frank Oliver, the energetic and opinionated editor of the Edmonton Bulletin, assumed Sifton’s position as Minister of the Interior and Superintendent General of Indian Affairs.

1905 also saw the negotiation of the next numbered Treaty, Treaty Nine. This Treaty included the territory in the Province of Ontario north of the height of land that formed the northern boundary of the Robinson Treaties, east of the boundary of Treaty Three, and south of the Albany River. As a result of the continuing litigation over Treaty Three and the Robinson Treaties (confirming that Ontario’s consent was required to set apart Indian Reserve lands and that Ontario was responsible for the dollar value of Treaty annuity payments), Ontario was involved in the development and negotiations of Treaty Nine. In 1894, Canada and Ontario confirmed by statute an 1891/1894 agreement that provided “that any future treaties with the Indians in respect of territory in Ontario...shall be deemed to require the concurrence of the province of Ontario”. 469 In 1902, McKenna had suggested addressing “half-breed” claims before

469 Ontario Statutes, An Act for the settlement of questions between the Governments of Canada and Ontario respecting Indian Lands, 54 Vic., cap. 3, 4 May 1891 [CAP13588]; Canada Statutes, An Act for the settlement of
negotiating the “Indian” Treaty, and structuring the Treaty as an adhesion to the Robinson Treaties:

...in extinguishing the aboriginal title in the territory covered by Treaty Three there has been an apparent inconsistency. The territory is partly in Ontario and partly in Keewatin and a portion extends into Manitoba. The Halfbreed Claims Commissions...and the Department of the Interior recognized the Halfbreeds of the ceded portion of Keewatin as North West Halfbreeds...Halfbreeds living on the Keewatin side of the English River are recognized as having territorial rights and get scrip...which they may locate in Manitoba or any part of the North West Territories, while the Halfbreed on the Ontario side who naturally comes and makes claim has to be told that he has no territorial rights. We must take care to avoid the perpetuation of this.

Therefore I would at once say that the suggested extinguishment of Indian title should stand until the settlement of Halfbreed claims is completed, so that we may start with a clean slate in that respect. Then to avoid as far as possible the appearance of inconsistency, I would suggest that the extinguishment be confined to Ontario and Quebec and be made in the form of an adhesion to the Robinson Huron Treaty, with any alterations which difference in conditions may make desirable. If the treaty extended to Keewatin influences would at once be put in operation to lead many of the people classed as native to set up claims to white blood, to declare that their habitat was in Keewatin and to demand scrip instead of treaty. On the other hand if we keep out of Keewatin, all of the people who are really living the life of aborigines will come into Treaty...

The District of Keewatin at this time was located north of the Albany and English Rivers, and included parts of present-day Ontario, Manitoba and Nunavut. This territory was not included in Treaty Nine in 1905 – 1906.

In August of 1903, Deputy Superintendent General of Indian Affairs Frank Pedley, in a memorandum to Sifton, rejected McKenna’s suggestion of an adhesion to the Robinson Treaties, pointing out that “the treaties that have been made by the Department since the early seventies have followed practically the same form, indicative of a well-defined and clear-cut policy...it would be wiser to continue this policy with necessary restrictions rather than fall back upon the form and terms that governed the treaties made in early days”. With respect to “half-breeds”, he proposed that “if any claims be made by half-breeds as distinguished from Indians, the

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*certain questions between the Governments of Canada and Ontario respecting Indian Lands, 54 – 55 Vic., cap. 5, 10 July 1891 [CAPCAP13591]; LAC, RG10, Vol. 3832, file 95721, Canada-Ontario “Agreement re: Indian Lands”, 16 April 1894 [CAP13658].

Province to grant 160 acres to each of such persons in fee simple...[allowing the] land [to be]
located in advance of surveys and being taken possession of at once, as without such conditions,
owing to the remoteness of these persons from surveyed lands, the grant would be of little use to
them". 472

Given the difficulties Canada had encountered in dealing with Ontario over Robinson Treaty
paylists and Treaty Three Indian Reserves, however, it is probably not surprising that no
reference was made to “halfbreed” claims in 1904 and 1905, when arrangements were being
made with Ontario to negotiate the Treaty. The Treaty Commissioners (one of whom was
appointed by Ontario) apparently received no instructions regarding such claims.473 The terms
of Treaty Nine were similar to those of previous numbered Treaties, promising a gratuity of eight
dollars per person, an annuity of four dollars, Indian Reserves to a maximum proportion of one
square mile for each family of five, and schools, but no agricultural implements or livestock,
fishing twine or ammunition.474

Long-established Métis populations were present in the Treaty Nine territory at time of Treaty
Nine, especially at Fort Albany and Moose Factory. People from James Bay Métis families such
as Loutit, Linklater, Faries and MacDougall were admitted to Treaty in 1905 at locations
including Fort Albany, Attawapiskat and Abitibi, but were “refused treaty” at Moose Factory.
Five Moose Factory “half breeds” immediately petitioned the Government of Ontario:

We, the undersigned, half breeds of Moose Factory, beg to petition the Government of Ont.
for some consideration as we are told by His Majesty’s Treaty Commissioners that no
provision is at present made for us. We understand that script has been granted to the half
breeds of the North West Territory.

473 John S. Long, “Treaty no. 9 and fur trade company families: Northeastern Ontario’s halfbreeds, Indians,
petitioners and métis”, in The New Peoples: Being and Becoming Métis in North America, Jacqueline Peterson and
Jennifer S. H. Brown, eds. (Winnipeg: University of Manitoba Press, 1985) [CAP14428], 146. See also “Agreement
between the Dominion of Canada and the Province of Ontario”, 3 July 1905 [NO IMAGE], in which Ontario agreed
to repay Canada for Treaty Nine annuities and set apart Indian Reserves to a maximum of one square mile for each
family of five (copy included in “The James Bay Treaty – Treaty No. 9 (Made in 1905 and 1906) and Adhesions
October 2010).
(accessed October 2010) [NO IMAGE].
We have been born & brought up in the country, and are thus by our birth and training unfit to obtain a livelihood in the civilized world. Should the fur traders at any time not require our services we should be obliged to support ourselves by hunting.\textsuperscript{475}

This petition was forwarded to the Department of Indian Affairs with a note from Ontario’s Attorney General that “the petitioners probably mean the Government of the Dominion”.\textsuperscript{476} The Department returned it to Ontario with an explanation that

The Petition was properly addressed to the Government of Ontario and was advisedly forwarded by this Department to the Provincial Treasurer...The Halfbreed title is of the same nature as the Indian title and the cession of one is being taken by the Province of Ontario and the Dominion, the representative of the other class desire to have their claims considered at the same time. The Treaty 9 Commission to whom the Petition was presented had not the power to deal with Halfbreed claims against the Province of Ontario, and the Petition was, therefore, referred for action to the Provincial Treasurer ...\textsuperscript{477}

Pedley later followed up with Provincial Treasurer A. J. Matheson with additional information:

I find that the only halfbreeds in Treaty No. 9 are those interested in the petition...They were refused treaty by the Commissioners on the grounds that they were not living the Indian mode of life. The only thing that might be done for these people is to admit them into the Indian treaty if you thought advisable to do so; but of course, as they are residents of the Province and would come under the same category as the rest of your Indian adherents of Treaty No. 9 and would be paid by your Government, it is a matter which you will have to decide.\textsuperscript{478}

Ontario Provincial Treasurer A. J. Matheson responded in April of 1906 to the Department of Indian Affairs that his Government had decided “to allow these half-breeds...160 acres of land reserving minerals”, as long as the land was selected “in the District in which they at present reside” and did not “interfere” with Hudson’s Bay Company posts, Indian Reserves, or land required for railway purposes or town sites.\textsuperscript{479} For reasons which are not now clear, this land was never selected. Some Moose Factory Métis were later added to Treaty Nine paylists.\textsuperscript{480}

\textsuperscript{475} LAC, RG10, Vol. 3093, file 289300, Andrew Morrison and others to the Government of Ontario [CAP13944].
\textsuperscript{477} Department of Indian Affairs and Northern Development (DIAND) file E4030-3/2382 PR Vol. 7, NCC HQ, J. D. McLean to C. A. Matheson, 23 September 1905 [CR-005066].
\textsuperscript{478} DIAND file E4030-3/2382 PR Vol. 7, NCC HQ, Frank Pedley to A. J. Matheson, 21 November 1905 [CR-005068].
\textsuperscript{479} DIAND file E4030-3/2382 PR Vol. 7, NCC HQ, A. J. Matheson to Frank Pedley, 2 April 1906 [CR-005069].
\textsuperscript{480} Long, “Treaty no. 9” (1985) [CAP14428], 149 – 153.
As in Treaty Eight, the Commissioners could not visit all the gathering points within the Treaty area in one season. Adhesions to Treaty Nine were taken in 1906 by the same Canada-Ontario Commission. In 1907, Ontario confirmed twelve Indian Reserve selections made by signatories in 1905 and 1906.  

In 1906, the Indian Act was amended and incorporated into the Revised Statutes of Canada as Chapter 81. The definitional clauses regarding “Indians” were as follows:

1. (d) ‘band’ means any tribe, band or body of Indians who own or are interested in a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or who share alike in the distribution of any annuities or interest moneys for which the Government of Canada is responsible...
2. (e) ‘irregular band’ means any tribe, band or body of persons of Indian blood who own no interest in any reserve or lands of which the legal title is vested in the Crown, who possess no common fund managed by the Government of Canada, and who have not had any treaty relations with the Crown;
3. (f) ‘Indian’ means
   (i) any male person of Indian blood reputed to belong to a particular band,
   (ii) any child of such person,
   (iii) any woman who is or was lawfully married to such person;
4. (g) ‘non-treaty Indian’ means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada...

Clauses regarding Band membership included the following:

12. Any illegitimate child may, unless he has, with the consent of the band whereof the father or mother of such child is a member, shared in the distribution moneys of such band for a period exceeding two years, be, at any time, excluded from the membership thereof by the Superintendent General...
13. Any Indian who has for five years continuously resided in a foreign country without the consent, in writing, of the Superintendent General or his agent, shall cease to be a member of the band of which he was formerly a member; and he shall not again become a member of that band, or of any other band, unless the consent of such band, with the approval of the Superintendent General or his agent, is first obtained...

482 In 1905, the Department had partially reversed its previous policies against including “illegitimate” children on paylists by deciding that such children “should be placed on the paylist, and paid annuity, but without arrears” if both parents were Treaty recipients. Cases in which one parent was not in Treaty were to be submitted to the Department for further consideration (LAC, RG10, Vol. 3996, file 206070-1, J. D. McLean to all Indian Agents, Manitoba and the North West Territories, 20 June 1905 [CR-009932]).
14. Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; Provided that such income may be commuted to her at any time at ten years’ purchase, with the consent of the band...

16. No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian.

2. No half-breed head of a family, except the widow of an Indian or a half-breed who has already been admitted into a treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian or entitled to be admitted into any Indian treaty.

3. Any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Indian commissioner, or in his absence the assistant Indian commissioner, be allowed to withdraw therefrom on signifying his desire so to do in writing, signed by him in the presence of two witnesses...

4. Such withdrawal shall include the minor unmarried children of such half-breed...

18. The Superintendent General may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band...

In the same year, the Department of Indian Affairs completed arrangements for the next numbered Treaty. The impetus for Treaty Ten came largely from the Métis population, especially at Ile à la Crosse, who wanted to be treated equally with their friends and relatives nearby in the territory of Treaty Eight. The area to be covered by the Treaty (east of Treaty Eight and north of Treaties Six and Five) was included in the new provinces of Alberta and Saskatchewan, and Canada considered it desirable to deal with the Aboriginal title issues while the public lands were still under Canada’s control. The Order in Council authorizing the negotiation of the Treaty and the issuance of scrip noted that “the Indians and Half-breeds of that territory are similarly situated to those whose country lies immediately to the south and west, whose claims have already been extinguished by, in the case of those who are Indians, a payment of a gratuity and annuity and the setting aside of lands as reserves, and in the case of those who are Half-breeds, by the issue of scrip; and they have from time to time pressed their claims for

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483 This clause was amended in 1914 to include the wife of a male “half-breed”.
484 See for example J. A. J. McKenna, “Memorandum for the Minister”, 18 March 1903 [CR-001307]; also Miller, Compact, Contract, Covenant [CAP11537], 214 – 215.
settlement on similar lines; [and] that it is in the public interest that the whole of the territory included within the boundaries of the Provinces of Saskatchewan and Alberta should be relieved of the claims of the aborigines”. The Order in Council mandated that “a Treaty be made with the Indians”, including Reserves and land in severalty similar to what was offered in Treaty Eight, per capita payments and annuities, schools, and agricultural assistance; and “that the Half-breeds...be granted scrip...according to the rules followed in the issue of scrip to the Half-breeds in the territory covered by Treaty 8”. McKenna was appointed Commissioner for both Treaty and “Half-breed” scrip.485

McKenna’s first Treaty Ten meeting was at Ile à la Crosse in late August. This encounter was unscheduled, but finding “all the Chipewyans from English River and some ten families from Clear Lake” there, McKenna set out the terms of the Treaty to them and obtained the key first signatories. At Portage la Loche, the first scheduled stop, he found “all half-breeds”, who “were dealt with as such”. Despite a punishing travel schedule, the weather closed in on the Commissioner’s party and he had to turn back before completing all the planned meetings.486 At the end of the tour, he had paid 394 people Treaty money and had heard 541 claims for Métis scrip, of which he allowed 498.487 He met one family who claimed to have taken Treaty in error, “and asked that the annuity money be taken back and scrip issued”. McKenna did not “think that under the law I could discharge the family from treaty; but I am of the opinion that they should, under the circumstances, be discharged and given scrip”.488 In general, he observed in his final report on the Treaty negotiations that

The Indians dealt with are in character, habit, manner of dress and mode of living similar to the Chipewyans and Crees of the Athabaska country. It is difficult to draw a line of demarcation between those who classed themselves as Indians and those who elected to be treated with as half-breeds. Both dress alike and follow the same mode of life. It struck

me that the one group was, on the whole, as well able to provide for self-support as the other.\textsuperscript{489}

The work of the Treaty Ten Commissions was completed by Commissioner Thomas Borthwick, an Indian Agent in Treaty Six, in the summer of 1907. The Department of Indian Affairs’ instructions to him included the direction that “you should not allow any Indians who entered Treaty last year to leave Treaty and take half-breed scrip, and you should give all those persons who may have claims to half-breed scrip but who elect to be paid as Indians to understand that they make the choice once for all and that in future the Department will not be inclined to reconsider their cases”.\textsuperscript{490} He paid 329 people in two new Treaty Bands,\textsuperscript{491} and took evidence on 202 “claims of Half-breeds for land or scrip, arising out of the extinguishment of the Indian title”, which were brought back to the Department for decisions.\textsuperscript{492}

In 1908, 1909 and 1910, adhesions were taken to Treaty Five, covering all remaining unsurrendered territory in northern Manitoba.\textsuperscript{493} The Treaty Commissioner for these adhesions also acted as a Half-breed scrip Commissioner.\textsuperscript{494} In 1910, an adhesion to Treaty Eight was signed with Aboriginal people at Fort Nelson in British Columbia, but the Treaty Commissioner did not have a mandate to accept scrip applications.\textsuperscript{495} By 1912 the Department of the Interior had ceased to issue Métis scrip, and the Superintendent General of Indian Affairs told the House of Commons in 1914 that “it is not the intention to issue any further scrip”.\textsuperscript{496}

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\textsuperscript{489} J. A. J. McKenna to Frank Oliver, 18 January 1907, reprinted in “Treaty No. 10 and Reports of Commissioners”, online at \url{http://www.aicn-inac.gc.ca/al/hts/tgu/pubs/t10/trty10-eng.asp} (accessed October 2010) [CAP13945].

\textsuperscript{490} LAC, RG10, Vol. 4006, file 241209-1, J. D. McLean to Thomas Borthwick, 29 April 1907 [CR-003513].

\textsuperscript{491} Thomas Borthwick to Frank Pedley, 14 October 1907, reprinted in “Treaty No. 10 and Reports of Commissioners”, online at \url{http://www.aicn-inac.gc.ca/al/hts/tgu/pubs/t10/trty10-eng.asp} (accessed October 2010) [CAP13953].

\textsuperscript{492} LAC, RG15, Series D-II-1, Vol. 991, file 1247280, Thomas Borthwick to Frank Oliver, 13 October 1907 [CR-002647].

\textsuperscript{493} See Adhesions to Treaty Five reprinted in “Treaty 5 between Her Majesty the Queen and the Saulteaux and Swampy Cree Tribes of Indians at Beren’s River and Norway House with Adhesions”, online at \url{http://www.aicn-inac.gc.ca/al/hts/tgu/pubs/t5/trty5-eng.asp} (accessed October 2010) [CAP12315]. For more information on Treaty Five adhesions and scrip, see Frank Tough, \textit{As Their Natural Resources Fail: Native Peoples and the Economic History of Northern Manitoba, 1870 – 1930} (Vancouver: UBC Press, 1996) [CAP14482], 120 – 125.

\textsuperscript{494} See for example LAC, RG2, Vol. 950, no. 1114, 12 May 1908 [CR-001186].

\textsuperscript{495} See LAC, RG10, Vol. 8595, file 1/1-11-5-1, Secretary, Department of Indian Affairs, to H. A. Conroy, 14 April 1910 [CAP13957].

\textsuperscript{496} Canada House of Commons \textit{Debates}, 11 May 1914, W. J. Roche, 3533 [CR-009961].

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Discharges from Treaty (apart from enfranchisement and commutation) and admissions to Treaty were limited during the period from 1901 to the late 1920s, but they did occur. Admissions, including admissions of “half breeds”, were made in cases of children living with Treaty relatives on Indian Reserves, “upon grounds of humanity and expediency, rather than rules or regulations laid down by law – written or unwritten”. Some of the Moose Factory Métis who had been refused Treaty in 1905 were also later admitted. Discharges were considered case by case on the “merits”:

If the discharge were desired merely with the hope that scrip might be obtained some time in the future, the Department would not consider the application at all favorably; but if the Treaty Indian has so far separated himself from the life of the Reserve as to be virtually a whiteman, and if he is able to maintain his status and that of his family as ordinary citizens of the country, the case would be placed in a different category, and probably favorably considered...

People were also dropped from Treaty paylists without a formal discharge process, as in the case of several applicants for scrip who had been refused by McKenna on the grounds that they “should have been classified as Indians”, although they declined Treaty money. Some years later, these applicants were granted scrip on the recommendation of other government officials. Residency outside Canada for more than five years also passively removed some claimants from Treaty under the provisions of the Indian Act. Enfranchisement, or the removal of “Indian” legal distinctions from applicants, played a minor role in altering Band lists. In 1920, when the Indian Act was amended to allow for compulsory enfranchisement of “Indians” under the Act, a member of the committee holding hearings on the Bill told the House of Commons that the enfranchisement processes in the existing Act “seem to be slow and

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499 See for example LAC, RG2, Series A-1-b, Vol. 3473, no. 2354, 16 November 1909 [CR-002969]; LAC, RG2, Vol. 1009, no. 581, 20 March 1911 [CR-009956]. Also LAC, RG10, Vol. 3979, file 156710-31, Assistant Deputy and Secretary, Department of Indian Affairs, to Secretary, Department of the Interior, 17 February 1913 [CR-009959].
cumbersome”, and that only 313 “Indians” had become enfranchised since Confederation in 1867.501

Duncan Campbell Scott, the Deputy Superintendent General of Indian Affairs, summed up the provisions of the Indian Act relating to Band membership and Indian ancestry in 1920 as follows, in responding to an inquiry from the British Society of Comparative Legislation:

...with regard to the subject of laws relating to race mixture. This question is one that does not assume any great prominence among Canadian sociological problems. There is not, nor has there ever been any stigma attached to mixed blood in this country...

...children take the status of the male parent irrespective of the proportion of Indian blood that such parent may have. Membership of Indian bands does not therefore depend on any degree of blood...many who are Indians within the law are as a matter of fact practically white while others who are white people under the law may have a considerable proportion of Indian blood...502

In the summer of 1920, an oil strike at Norman Wells in the vicinity of Great Bear Lake accelerated Canada’s consideration of the issue of addressing Aboriginal title in the area north of Alberta and Saskatchewan.503 H. A. Conroy, who had been responsible for paying annuities in the Treaty Eight area since 1901, was strongly in favour of a Treaty with the “Indians along the Mackenzie”, whom he estimated as numbering 3,364 (2,500 of whom might accept Treaty).504 However, he was also concerned about addressing the claims of the resident “half-breeds”, which he described in a memorandum that was filed at Headquarters on 13 December 1920:

501 Canada House of Commons Debates, Mr. Boys, 23 June 1920, 4029 [CR-009970]. The clause authorizing a compulsory enfranchisement process, for those “Indians...in receipt of large sums of money...professional men, doctors and lawyers, [who] should not be treated as wards” (4030), was removed in 1922. The entire section of the Indian Act on the subject of enfranchisement was redrafted in 1927. In 1933, when an amendment to the enfranchisement clauses was discussed in the House of Commons, the Superintendent General of Indian Affairs stated that 854 people had been enfranchised between 31 December 1922 and 31 December 1932 (Canada House of Commons Debates, T. G. Murphy, 21 February 1933, 2305 [CR-009998]. The arguments by the Superintendent General for compulsory enfranchisement, that “clever and brainy men” who had prospered “should...accept their full responsibility as citizens”, were similar in 1933 to those made in 1920 (see Canada House of Commons Debates, T. G. Murphy, 21 February 1933, 2311 [CR-009998]).

502 LAC, RG10, Headquarters files, Vol. 7103, file 1/3-3-12, Duncan C. Scott to C. E. A. Bedwell, 7 July 1920 [CR-009972].


504 LAC, RG10, file 336877, H. A. Conroy to D. C. Scott, 13 October 1920, as reprinted in Fumoleau, As Long as This Land Shall Last, 203 – 206 [CAP13958].
In making Treaty with the Indians along the McKenzie river, it will be necessary to treat with the half-breeds. This problem is a little different from the one which confronted the Commissioners at the time Treaty 8 was made. At present I do not think that there are more than fifteen families who will have to be dealt with by scrip, and these are old and respected families in that country, who could not be expected to enter into Treaty...

...The other half-breeds in this country are mostly living the Indian mode of life, and I feel confident that I shall be able to take them into Treaty, as it is in their own interests to have this done. I do not think that there will be more than 75 families of half-breeds whom it will be necessary to take into Treaty. It is a curious thing that the half-breeds in this country are either whites or Indians and that there is no median course such as we find in other provinces. I shall, of course, use my best efforts to induce all people of Indian blood living the Indian mode of life to accept Treaty... 505

Conroy was appointed Half-breed Commissioner as well as Treaty Commissioner for Treaty Eleven, by an Order in Council issued on 12 April 1921:

...concurrently with the treaty to be made during the coming season with the Indians of the McKenzie River District and such territory adjacent thereto as is deemed advisable to include within the Treaty, with a view to the extinguishment of the aboriginal title to the lands in the said district and territory, it will be necessary, in accordance with the past practice in such cases, to deal with the claims arising out of the extinguishment of the Indian title of the Halfbreeds resident within the territory covered by the proposed treaty...It is estimated that there are about fifteen families of Halfbreeds resident in that territory who will have to be treated with. The other Halfbreeds in this country, consisting approximately of seventy-five families mostly living the Indian mode of life, it is anticipated will, in their own interests, be taken into treaty....

Halfbreeds, whose right arising out of the extinguishment of the Indian title has not been otherwise extinguished, found to be permanently residing within the territory covered by the proposed treaty on the date of the signing of the treaty at Fort Providence, shall be entitled to a grant of Two Hundred and Forty Dollars in satisfaction of their claims arising out of the extinguishment of the Indian title;

The right of a Halfbreed to share in the grant to the Halfbreeds resident within the territory covered by the proposed treaty shall be considered to have been extinguished if such Halfbreed has at any time joined a Band of Indians under treaty, although subsequently discharged therefrom, or if scrip has been issued to him or to his parents or guardian for him in settlement of his right... 506

As there was very little agricultural land of any value in the proposed Treaty area, the “Halfbreeds” were to receive 240 dollars in cash for each approved claim. This required an

505 LAC, RG10, Vol. 4042, file 336877, H. A. Conroy (untitled), date-stamped at Department of Indian Affairs [Headquarters] Records, 13 December 1920 [CAP13961].
506 LAC, RG2, Vol. 1273, no. 1172, 12 April 1921 [CR-001202].
amendment to the *Dominion Lands Act* which was not completed until 1923, delaying the payment of scrip money until the Treaty payments of 1924, although Conroy took evidence for the applications in 1921.⁵⁰⁷

Treaty Eleven was based on the numbered Treaty pattern, especially Treaty Eight, although it did not offer the severalty land reserve option. The Treaty Commissioner, Conroy, was given a formally hand-lettered copy of the Treaty before he left and warned not to make any “outside promises”.⁵⁰⁸ Notices were sent in March of 1921 that

>a Commissioner representing His Majesty’s Government of the Dominion of Canada will hold meetings on the places and on the dates indicated hereunder for the purpose of making a treaty between His Majesty and the various chiefs of the Indian bands inhabiting the Mackenzie River district and such other adjacent lands as is seemed advisable to include within the provisions of such treaty.

The Commissioner will deal with the Indians and half-breeds of such district and adjacent lands with a view to the extinguishment of the aboriginal title to the said territory and lands.

All such Indians and half-breeds, except those half-breeds who have already been dealt with are invited to be present...⁵⁰⁹

Meetings were held at Fort Providence, Fort Simpson, Fort Wrigley, Fort Norman, Fort Good Hope, Arctic Red River, Fort McPherson, and Fort Rae, but the meeting at Fort Liard had to be postponed until 1922. Witnesses to the Treaty meetings recalled that Conroy and the Roman Catholic Bishop Breynat, who travelled with Conroy, advised many Métis to take Treaty instead of scrip:

>Take treaty money. It will be better for you and you will benefit from it. If you do not take treaty money, you will be like the whiteman, you will not get anything out of it. You will live like the wind. But if you take treaty money like the Indians, the government will help you.⁵¹⁰


⁵⁰⁸ Fumoleau, *As Long as This Land Shall Last* [CAP14558], 206 – 209.

⁵⁰⁹ LAC, RG10, Vol. 4042, file 336877, Public Notice, 23 March 1921, as reprinted in Fumoleau, *As Long as This Land Shall Last*, 211 [CAP13964].

⁵¹⁰ Adele Lafferty, interview with Violet Camsell, Fort Rae, September 1971, quoted in Fumoleau, *As Long as This Land Shall Last* [CAP14558], 270.
In his report on applications for Mètis scrip, Conroy stated that...

...every case which I have recommended for favourable consideration is that of an applicant who has satisfied me that he is a bona fide MacKenzie River halfbreed entitled to the grant...and not living the Indian mode of life, as my recommendation is only made after sufficient evidence has been presented to establish the fact beyond any possible doubt. Besides this, I have known the applicants personally for many years.  

Conroy paid 1,934 people the Treaty Eleven gratuity in 1921 and took evidence on 176 claims for Halfbreed money scrip. Six hundred and fifty-five people were added to Treaty Eleven paylists in 1922, plus 150 with the new adhesion at Fort Liard.

The last adhesions to numbered Treaties were taken in Ontario north of the Albany River in 1929 and 1930. Ontario and Canada each appointed a Commissioner to treat with the “Ojibway, Cree and all other Indians inhabiting the...territory”. The Commissioners were not authorized to address Mètis claims and no scrip was issued under these Adhesions.

In the period between the conclusion of Treaty Eight in 1899 and Treaty Eleven in 1921, Canada continued to take an economic view of the legal categories of “Indian” and “Halfbreed” in dealing with the Aboriginal population as a whole. As the numbered Treaty system was expanded further north, Treaty Commissioners (also acting as “Halfbreed” Commissioners) sorted the Aboriginal peoples they met into these categories based on their undefined concept of

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513 LAC, RG2, Vol. 1349, no. 471, 26 March 1924 [CR-001023]. One hundred and thirty-eight of these claims were allowed by 1924 (LAC, RG10, Vol. 6879, file 191/28-3, pt. 10, P. Marchand to D. C. Scott, 28 May 1924 [CAP13977]). Some additional applications were made and approved in subsequent years (see LAC, RG15, Vol. 1372, scrip application file for John Richard Berens, P. Marchand to Mr. Coté, 28 March 1927, in which Marchand noted that 34 claims were payable in 1927 [CAP14068]).  
514 Fumoleau, *As Long as This Land Shall Last* [CAP14558], 302 – 304; Adhesion to Treaty No. 11, 17 July 1922, as reprinted in “Treaty No. 11 (June 27, 1921) and Adhesion (July 17, 1922) with Reports, etc.”, online at [http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/t11/trty11-eng.asp](http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/t11/trty11-eng.asp) (accessed October 2010) [CAP13966]; LAC, RG10, Vol. 4042, file 336877, J. Fletcher to Deputy Superintendent General, 4 September 1922 [CAP13978].  
“the Indian mode of life”.\footnote{Correspondence between the Department of Indian Affairs and the Department of Justice in 1937 confirmed that Indian Affairs had “no information by which to identify the expression ‘Indian mode of life’ (Department of Indian Affairs file 59-108; Department of Justice file 2779-37; T. R. L. McInnes to Deputy Minister of Justice, 27 May 1937 [CA-000345]; see also Eben A. W. R. McKenzie to Department of Justice, 10 May 1937 [CA-000341]; W. Stuart Edwards to Director of Indian Affairs, 14 May 1937 [CA-000342]; T. R. L. McInnes to Deputy Minister of Justice, 21 May 1937 [CA-000343]; P. M. Anderson to Director of Indian Affairs, 25 May 1937 [CA-000344]; F. P. Varcoe to Director of Indian Affairs, 29 May 1937 [CA-000346]).}

This occurred despite the Commissioners’ observation that in some locations “it is difficult to draw a line of demarcation between those who classed themselves as Indians and those who elected to be treated with as half-breeds. Both dress alike and follow the same mode of life... one group was, on the whole, as well able to provide for self-support as the other”. This, together with policies that transmitted Indian legal status only through the male line, produced a situation in which the Deputy Minister of the Department of Indian Affairs could state in 1920 that “membership of Indian bands does not therefore depend on any degree of blood...many who are Indians within the law are as a matter of fact practically white while others who are white people under the law may have a considerable proportion of Indian blood”. The last four of the numbered Treaties and the adhesions to earlier Treaties provided Canada with the opportunity to assign the Aboriginal population of the northern boreal forest to “Indian” and “Halfbreed” legal categories by addressing their shared “Indian” title at the same time, in different ways. This strategy can be contrasted with the conditions under which the first seven numbered Treaties, and the Robinson Treaties, had been completed, in which Aboriginal people were initially taken into Treaty to address their title and then later attempts were made to sort the population.

Generally, once an assignment was made after 1899, the Department of Indian Affairs was opposed to moves between categories, although the compartments were not watertight. Some applicants for scrip who had been turned away because, in the Commissioner’s view, they “should have been classified as Indians”, were later granted scrip, and some applicants for Treaty who had been refused because they were not living “the Indian mode of life” were later taken into Treaty. An unsuccessful attempt was made in the early 1920s to shed “Indians...in receipt of large sums of money...professional men, doctors and lawyers, [who] should not be treated as wards” from Indian lists, via compulsory enfranchisement, and a Treaty Indian who had “so far separated himself from the life of the Reserve as to be virtually a whiteman... if he is able to
maintain his status and that of his family as ordinary citizens of the country” had a chance to be favourably considered for discharge. Conversely, some individuals (particularly dependent children) living on Indian Reserves with Treaty Indian people were admitted to Treaty “upon grounds of humanity and expediency, rather than rules or regulations laid down by law – written or unwritten”.

IV (13).  Admissions to Treaty in Treaties Eight and Eleven, 1923 - 1939

Shortly after the completion of Treaty Eleven, Canada set apart Wood Buffalo National Park in Alberta and the North West Territories, and three hunting preserves in the North West Territories. The regulations for Wood Buffalo Park allowed Treaty Indian people, but not “Half-breeds”, to hunt for food and trap fur-bearing animals inside Park boundaries. The three hunting preserves were set aside for “native born Indians, Half-breeds or Eskimo” people to hunt and trap. Local missionaries and officials expressed the view that restricting Métis harvesting inside the Park would create hardship, and the Director of the North West Territories and Yukon Branch of the Department of the Interior, O. S. Finnie, proposed to the Department of Indian Affairs in November 1923 that “the Half-Breeds be accorded the privilege of taking treaty if they so desired...this...will place all the aborigines of that district on the same basis”. The Department of Indian Affairs replied, however, that it is the view of the Department that it is not desirable to re-open the half-breed question in the North West Territories. Special consideration might be given to cases, if such exist, of half-breeds who have neither received scrip nor been admitted to treaty...

Roman Catholic Bishop Breynat of the diocese including Treaty Eleven and the northern part of Treaty Eight had written separately to Scott urging a review of some of the decisions that had been made in assigning Aboriginal people to categories in Treaty Eight:


518 LAC, RG10, Vol. 4049, file 361714, O. S. Finnie to T. R. L. Mclnnes, 2 August 1923, with attached “Public Notices” for “Native Hunting and Trapping Ground” and Wood Buffalo National Park [CAP13983]; also Canada Order in Council no. 1862, 22 September 1923 [CAP13987], in which the preserves were stated to be set apart “for the sole use of the bona fide aboriginal native of the North West Territories”.

519 LAC, RG10, Vol. 4049, file 361714, O. S. Finnie to Duncan Campbell Scott, 3 November 1923 [CAP13991].

520 LAC, RG10, Vol. 4049, file 361714, J. D. McLean to O. S. Finnie, 8 November 1923 [CAP13992].
...those half breeds, living as Indians, should be protected by the Government.

I would suggest that the Department, at this present juncture, give those half breeds the advantage of taking treaty and thereby allow them to enjoy the privileges of Indians.

You are aware that Commissioner McCrea [Macrae] had refused to accept in the treaty the half breeds living the Indian way. His motives had their foundation in the rather bad reputation of some members of the Beaulieu family, and consequently, the Commissioner saw trouble ahead for the Government if such people were accepted as treaty members. Since, I have heard very often, expressions of regret for the non acceptance into treaty of this type of half breeds. They are identified with the country as well as the Indians, they intermarry with the latter, live their kind of life and should get the same protection.

I would consider it a good policy on the part of the Department to offer treaty to those half breeds...

Scott replied,

It seems rather difficult at this state to open up the question of taking half breeds into treaty. However, if you will let the Department know the names and locations of those whom you have in mind, I will see what can be done. Possibly, as an alternative, the North West Territories Branch would interpret the term “aboriginal” or “native” in its application to hunting privileges as covering half breeds as well as Indians.

Scott cautiously recommended to the Superintendent General a review of re-admissions policy in August 1924, following a request from the Rural Municipality of Abernethy in Saskatchewan:

The request...is that the halfbreed element should be “looked after in a similar way to the Indians”. If this is to be done, it is the obligation of the Province of Saskatchewan, as these halfbreeds are citizens of the Province. They have been compensated by the issue of scrip for their special claim on the territory, and I cannot think that they have any further claim on the Dominion Government. We have a good many of these halfbreeds on Indian reserves in the western provinces, particularly in Manitoba. Some of them are living the Indian mode of life, and it is a question of policy perhaps whether these so called halfbreeds should be taken into treaty. I must say that the issue of halfbreed scrip was hardly in the interests of these people, and we were compelled some years ago to take a great many of them back into treaty and withheld their annuity until the value of the scrip was paid up. I think we should carefully guard against a general reclassification of these people as Indians.

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Scott had at that time been with the Department of Indian Affairs for 44 years, and held the
corporate memory of the early days of the administration of the numbered Treaties, the mass
withdrawals in the mid-1880s, and the evolution of policies on the legal categories of “Indian”
and “Halfbreed”. He was outranked in length of service only by Departmental Secretary John D.
McLean, who had joined the Department of Indian Affairs in 1876.

Some “Indians and Halfbreeds” were apparently taken into Treaty Eight between the creation of
Wood Buffalo Park in late 1922 and the end of 1925, when the Department of the Interior asked
the Department of Indian Affairs for a list of their names. The Department replied by
enclosing a list of 49 “Indians who have been added to the pay-lists since the payments made in
1922”, from Bands at Fort Chipewyan, Fort Resolution, Fort Smith/Fort Fitzgerald, and Hay
River. The surnames included those of several historic local Métis families. McLean added that
“I might inform you that this Department makes no distinction whatever between Indians and
half-breeds who have been admitted into treaty. The latter in every respect assumes the rights
and privileges of Indians when accepted into treaty”.525

In March of 1926, McLean clarified the process for admission to Treaty for Gerald Card, the
Indian Agent responsible for the Bands in the vicinity of Wood Buffalo Park, reproving him for
“irregularly...accepting [a] half-breed into treaty”, although “the Department approves of his
admission”. McLean stated that “an Indian should not be admitted into treaty until his
application for admission has been submitted to the Department with your recommendation, and
until the Department has signified formal approval...you should furnish full particulars when
reporting”.526

The correspondence regarding these admissions may be restricted under Access to Information
and Privacy legislation. However, some of the motivations for admission to Treaty are

524 LAC, RG10, Vol. 4049, file 361714, O. S. Finnie to Secretary, Department of Indian Affairs, 11 December 1925
[CAP13993].
525 LAC, RG10, Vol. 4049, file 361714, J. D. McLean to O. S. Finnie, 19 December 1925 [CAP13994].
527 Several LAC files in RG10, Vol. 7972, file 62 (multiple parts) that cover northern numbered Treaty areas and the
time period 1907 – 1945 are coded as currently restricted under existing legislation, requiring formal review to
determine if they could be opened to present-day researchers.
apparent from other files. Felix Beaulieu, a nineteen-year-old member of the earliest
documented Métis family resident near Fort Smith, applied to the Department of the Interior’s
District Agent at Fort Smith for a permit to hunt and trap in Wood Buffalo Park in November of
1926, and was rebuffed on the grounds that he had not hunted there before the winter of 1925 –
1926. The Acting District Agent reported to his superiors in Ottawa that

He pointed out to me that his parents took scrip and that since a lad of 13 years he had
hunted in the Wood Buffalo Park, along with Treaty Indians Susie Marie, Pierre Biscaye,
and Chief Squirrel...He also pointed out that he went to Mr. Card and took Treaty in order
that he might hunt and trap in the Park. Mr. Card advising him at the time that the
privilege would be granted. He intimated that he would not have taken Treaty had he not
wished to trap in his old hunting grounds...528

In early 1927, the Department of Indian Affairs offered to consider taking into Treaty some
“wandering” “half-breed families” near Cold Lake, Alberta:

...we can only properly deal with Indians who have reserves set aside for them under treaty.
In the case of half-breeds, they received scrip and if they dissipated their scrip and require
to be looked after, they should look to the Province in which they live.

I may add, however, that in the case of half-breeds who have not received scrip and who
live on an Indian reserve, this Department would be disposed to assist them as far as the
law allows in becoming attached to the band on whose reserve they reside.529

In 1927, the Indian Act was revised and reorganized. In the new Act, the clauses defining
“Indians” and “Bands” read as follows:

2. (b) “band” means any tribe, band or body of Indians who own or are interested in
a reserve or in Indian lands in common, of which the legal title is vested in the Crown, or
who share alike in the distribution of any annuities or interest moneys for which the
Government of Canada is responsible...
(d) “Indian” means
(i) any male person of Indian blood reputed to belong to a particular band,
(ii) any child of such person,
(iii) any woman who is or was lawfully married to such person...
(g) “irregular band” means any tribe, band or body of persons of Indian blood who
own no interest in any reserve or lands of which the legal title is vested in the Crown, who

528 Parks Canada file, Fort Smith District Office, “Historical Documents on WBNP Creation”, G. Murphy to Director,
N. W. T. & Y. Branch, Department of the Interior, 6 November 1926 [CAP13999].
were not Band members were not legally allowed to reside on a Band’s Indian Reserves without the permission of
the Superintendent General, although as noted in correspondence previously cited in this report, such residence
was not uncommon.
possess no common fund managed by the Government of Canada, and who have not had any treaty relations with the Crown;

(h) “non-treaty Indian” means any person of Indian blood who is reputed to belong to an irregular band, or who follows the Indian mode of life, even if such person is only a temporary resident in Canada...

(j)  “reserve” means any tract or tracts of land set apart by treaty or otherwise for the use or benefit of or granted a particular band of Indians, of which the legal title is in the Crown, and which remains so set apart and has not been surrendered to the Crown, and includes all the trees, wood, timber soil, stone, minerals, metals and other valuables thereon or therein...

The clauses on the subject of Band membership read as follows:

12. Any illegitimate child may, unless he has, with the consent of the band whereof the father or mother of such child is a member, shared in the distribution moneys of such band for a period exceeding two years, be, at any time, excluded from the membership thereof by the Superintendent General...

13. Any Indian who has for five years continuously resided in a foreign country without the consent, in writing, of the Superintendent General or his agent, shall ceased to be a member of the band of which he was formerly a member and he shall not again become a member of that band, or of any other band, unless the consent of such band, with the approval of the Superintendent General or his agent, is first obtained...

14. Any Indian woman who marries any person other than an Indian, or a non-treaty Indian, shall cease to be an Indian in every respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but such income may be commuted to her at any time at ten years’ purchase, with the approval of the Superintendent General...

16. No half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian.

2. No half-breed head of family, except the widow of an Indian or a half-breed who has already been admitted into a treaty, shall, unless under very special circumstances, which shall be determined by the Superintendent General or his agent, be accounted an Indian or entitled to be admitted into any Indian treaty.

3. Any half-breed who has been admitted into a treaty shall, on obtaining the consent in writing of the Superintendent General, be allowed to withdraw therefrom on signifying his desire so to do in writing, signed by him in the presence of two witnesses, who shall attest his signature on oath before some person authorized by law to administer such oath.

4. Such withdrawal shall include the wife and minor children of such half-breed...

18. The Superintendent General may, from time to time, upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is
not a member of any band of Indians entitled to share in the property and annuities of the band.

In the spring of 1928, the Department of Indian Affairs commissioned its Inspector of Indian Agencies for Ontario and Québec, C. C. Parker, to “undertake a general inspection this summer of the Indians and the Indian administration in the Northwest Territories”. This inspection was not confined to Indian Department schools, administration and services, but was to include “a general survey of the whole economic situation as regards Indians”, Indian relations with the Police and “white” trappers and traders, the effect of game regulations, and other subjects. Parker’s report was submitted in late 1928 and was critical of many aspects of wildlife management, economic management and administration of the Territories. He drew particular attention to the legal distinctions that had been imposed on the Aboriginal population along the Mackenzie River drainage system:

...for the novelty of nomenclature I am inclined to give much credit to the Northwest Territories where we find people defined as aliens, non-residents, residents, whites, halfbreeds, halfbreeds living the lives of Indians, Indians, Eskimo, Eskimo halfbreeds and Eskimo halfbreeds living the lives of Eskimo. I may have missed some but the foregoing is a general list which fairly well covers the population...we should concern ourselves with the “halfbreed living the life of an Indian”. These poor outcasts, victims of one of the most iniquitous schemes ever fostered and maliciously operated are deserving of sympathetic consideration. I must confess lack of familiarity with the halfbreed scrip law and what is said in this report is influenced entirely by what was observed while in the Territories.

When one sees Indians, whole families of them, who speak little or no English or French, who live the lives of Indians, and are quite incapable of supporting themselves otherwise, discriminated against because at some time in the past at their own option or the urge of some interested party they accepted scrip and thus sold their miserable mess of potage, a sense of injustice rises up in indignation and the crying need of re-adjustment will not down.

There are people in the Territories today who should have the full privileges of the Treaty Indian; who never should have been anything else and who today are virtual outcasts eeking out a more miserable existence than the Treaty Indian.

It may be granted that there are halfbreeds who should be so classed and are not deserving nor in need of paternal protection. A great many of them of are creditable citizens and tradesmen. I speak of a class called “halfbreeds” who are more Indian than a great proportion of the so called Indians I have on the reserves within my own inspectorate. I

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530 LAC, RG10, Vol. 4094, file 600264, [Duncan Campbell Scott] to Mr. Parker, 24 April 1928 [CAP14069].
could wish I had a few on some of my reserves for prize exhibits of pure blooded descendants of Canada’s aboriginal inhabitants.

I would strongly urge the advisability of an independent “halfbreed commission” to re-open the whole question and by personal interview and inquiry make a re-adjustment of the status of these people. There are many cases where these people should be taken into Treaty and allowed to enjoy the same privileges which are now and will be allowed to Treaty Indians. An injustice has been done which the Government of Canada must and can rectify. If returned to the status of an Indian and placed on our Treaty pay lists, payment of annuities could be withheld until such time as the Government was re-imbursed for the amount they drew as halfbreeds. I trust that this is a matter which will receive sympathetic support and consider it one of the most important suggestions that is my privilege to make.

It is worthy of note that at the meetings of Indians I was able to hold before the influenza epidemic laid everyone low, the Indians invariably spoke on behalf of the halfbreed and asked that they be accorded the same hunting and other privileges enjoyed by themselves. There is a sense of justice even in the native mind...

Although the Department of the Interior disagreed with many statements in Parker’s report, at least one official supported Parker’s views on “halfbreeds”, giving his opinion that “there are many Half-breeds living the lives of Indians who should be taken into Treaty, also some Script Half-breeds who should receive the same consideration”. At the end of January 1929, Scott recommended to the Superintendent General of Indian Affairs, Charles Stewart, that the question of admission to Treaty of certain halfbreeds in the Territories should be dealt with. I might say that I propose to take this matter up first with our local Agents by correspondence.

...I would suggest that Inspector Parker be authorized to deal with individual cases and place such persons on Treaty lists as, in his opinion, are deserving of this consideration.

I do not think that there are a great many who will be admitted to Treaty and I would propose to ignore the amount they have already received by way of scrip. There would be considerable difficulty in adjusting matters if it were decided to collect from them for scrip before paying treaty and this work would involve considerable expense which would hardly be warranted.

I understand that there are also some few cases of Indians and halfbreeds who have never been admitted to Treaty and are not eligible for scrip. These are people from outside the


532 LAC, RG85, Series C-1-1, Vol. 792, file 6327, [unknown author, Department of the Interior] to Mr. Finnie, 3 January 1929 [CAP14092], 3.
Territories who have been living there for years, are intermarried with Treaty Indians and will remain in the Territories for all time. I think that these are equally deserving of consideration and should be dealt with at the same time.

With your approval I will take immediate steps to get the preliminary information from our Agents so that Inspector Parker’s work will be facilitated as much as possible should he visit the Territories in the near future.533

Stewart did approve this memorandum, and on 31 January letters were sent from Ottawa to the Indian Agents at Fort Simpson, Fort McMurray, and Fort Resolution, noting that

...Inspector Parker has drawn attention to the cases of certain halfbreeds who are to all intents and purposes Indians, and living the lives of Indians.

In some cases these people have taken scrip, possibly without a clear understanding of what it meant to their future and to their families. There appear, also, to be other cases where such people have been denied scrip and have not been accepted into Treaty.

It is my desire to see that deserving cases of this nature are fairly dealt with, and as a preliminary step, I have to request that you let me have a complete list of individuals and their families who, in your judgment, should be admitted to Treaty.

I must ask you to use discretion in submitting cases for consideration in order that action may be confined to deserving cases only...534

Gerald Card, the Agent at Fort McMurray, replied on 14 February, stating that “I feel grateful that the cases of half brreds, in the North West Territories, who have, as yet, received neither scrip nor Treaty, is to receive consideration”. He noted that Fort Smith was the only population centre in the Agency within the North West Territories, with “only a small permanent native population”, and therefore there were “not many cases for consideration”. He presented three cases, two of whom had parents who had received scrip, and who either “follow[ed] the Indian mode of life”, were married to Treaty women, or were disabled. “Others may turn up at Treaty”, he concluded.535

533 LAC, RG10, Vol. 4094, file 600264, Duncan C. Scott to Charles Stewart, 26 January 1929 [CAP14095].
535 LAC, RG10, Vol. 4094, file 600264, G. Card to Duncan C. Scott, 14 February 1929 [CAP14098].
Dr. C. Bourget at Fort Resolution, too, expressed his support of the Department’s initiative, writing on 18 February that “I am sure Inspector C. C. Parker has observed one of the greatest troubles in this north when he favored this correction”. He elaborated,

Specially during the last few years we had too many classes among these people, we had the treaty Indians, the Indians not born here, the half breeds from the territories, those who were born in the old territories and lived here and some from outside, and all the divisions were for people of the same stock and all living by hunting and trapping, some had protection and some were left to their own resources, and most of them...married to Indian girls who simply lost their protection for the children when married to half breeds... 536

Bourget submitted a list of fifty-one family heads from Resolution, Hay River, Providence and Fort Rae, although “of course we could not consult them all, because many are away at present trapping or hunting caribou”. He explained that

Many of them of course had received the script when first paid, but most of these recipients received only the value in trade which would amount only to a ridicule sum in those days. Some had the scrip delivered to either parents or adoptive parents...Some have been applying for the script but so far never obtained satisfaction...

Some names mentioned here may not look deserving cases, either because the man is partly working, but the jobs are kept only for short periods as a rule and the man reverts to his trapping life in most cases... 537

Parker was given a letter by the Department of Indian Affairs prior to revisiting the Great Slave Lake/Mackenzie River area in the summer of 1929, authorizing him to “place on the treaty pay-list natives who are now classed as half-breeds and who, in your opinion, should have been classed as Indians”, pursuant to Section 18 of the Indian Act. 538 After the Treaty payments, at least one additional applicant came forward at Fort Resolution to be admitted to Treaty. François Mandeville wrote to the Indian Agent, explaining that

the Bishop...told me that the half Breeds at Fort Resolution who were force to take scrip...now can take treaty if they want to.

536 LAC, RG10, Vol. 4094, file 600264, C. Bourget to Assistant Deputy and Secretary, Department of Indian Affairs, 18 February 1929 [CAP14099].
537 LAC, RG10, Vol. 4094, file 600264, C. Bourget to Assistant Deputy and Secretary, Department of Indian Affairs, 18 February 1929 [CAP14099].
538 LAC, RG10, Vol. 4094, file 600264, [Duncan Campbell Scott] to C. C. Parker, 4 June 1929 [CAP14104].
I am one of who were force to take scrip...we make our living the same way as Indians, therefore we would like to be treated like indians...\textsuperscript{539}

The details of these admissions to Treaty may be in archival files that are currently restricted under access to information and privacy legislation.\textsuperscript{540} In 1932, at Fort Resolution, Agent Bourget referred to “the group of Half Breeds taken on treaty 3 years ago...not in numbers sufficient to require a chief according to Indian Act”, \textsuperscript{541} which according to s. 96(4) of the 1927 \textit{Act} would have been thirty members.

At the end of 1934, the Province of Alberta established a commission of inquiry into “the health, education, relief and general welfare of the half-breed population” of Northern Alberta.\textsuperscript{542} The Department of Indian Affairs declined to become involved in this commission, citing the definition of “Indian” in the \textit{Indian Act} and stating that “half-breeds are not the responsibility of the Dominion Government and that the problem of relief for half-breed settlers is a matter for the consideration of the municipality or the Province concerned”.\textsuperscript{543} However, although the Dominion deflected responsibility for relief for “half-breed” settlers, its counsel had just weeks before submitted an argument to the commission on Alberta’s claims for compensation for its natural resources that “the Dominion could have taken the necessary steps under Section 91 (24) of the B. N. A. Act to compel equitable treatment to Indians and Half Breeds” if Alberta had refused to address their title claims (see section IV (13)).

Métis people continued to apply to be taken into Treaty in Alberta, Saskatchewan and the North West Territories after 1930.\textsuperscript{544} After the Treaty Eight/Eleven payment tour of the summer of 1936, the Inspector of Indian Agencies for Alberta, M. Christianson, reported that

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{539} LAC, RG10, Vol. 4094, file 600264, F. Mandeville to Dr. Bourget, 19 June 1929 [CAP14105]; attached to C. Bourget to Assistant Secretary and Deputy, Department of Indian Affairs, 9 September 1929 [CAP14107].
\item \textsuperscript{540} May be LAC, RG10, Vol. 7972, file 62-134, “Fort Smith-Fort McMurray Agency-Band Membership”, 1914 – 1932.
\item \textsuperscript{541} LAC, RG10, Vol. 6880, file 191/28-3 pt. 2D, C. Bourget to Secretary, Department of Indian Affairs, 19 August 1932 [CAP14119].
\item \textsuperscript{543} LAC, RG10, Vol. 6812, file 481-1-22, pt. 1, [H. W. McGill] to George Hoadley, 10 October, 1934 [CR-002501].
\item \textsuperscript{544} LAC, RG10, Vol. 6880, file 191/28-3 pt. 2D, C. Bourget to Secretary, Department of Indian Affairs, 19 August 1932 [CAP14119]; 3; LAC, RG10, Vol. 6921, file 779/25-3, pt. 3 (Treaties Eight and Eleven, NWT); Harry Lewis to Secretary, Department of Indian Affairs, 11 August 1936 [CAP14366] (Treaty Eight, Alberta). The official responsible for making Treaty Ten annuity payments in 1932 in the Isle a la Crosse Agency also noted that “at
\end{itemize}
\end{footnotesize}
I found the Half-breed question to be an issue in different places in the North West Territories. There are about 145 Half-breeds in the Fort Resolution Agency...Of this number, 12 families live at Providence, and they are in very poor circumstances...they are really much worse off than the Indians...

Wherever I went I found that most of the Half-breeds live the life of an Indian, and of course are intermarried with Indians, and a great many of them are no different in appearance from the Indians, the White blood being practically obscured. Then, of course, there are people of mixed blood there who are of a superior type, and they are living as Whites.

...I believe our Department should take into Treaty all Half-breeds or three-quarter-breeds who are living with Indians, and following their mode of life. I received some applications from these people, three of which I have submitted to the Department...I did not seem to be able to ascertain which Half-breeds had taken script...

The Department at Ottawa then sent out a letter to the Indian Agents at Forts Resolution, Simpson and Good Hope noting that Christianson had reported “that there are a number of halfbreeds living in the Northwest Territories who are anxious to be taken into treaty”. Emphasizing that “this is a matter which requires careful consideration”, the Department requested “the names of the heads of all halfbreed families in your Agency who have not received scrip and who desire to be taken into Treaty”, with the number in their family, location and name of the Band they wished to join. Bishop Breynat of the Mackenzie District also recommended in late 1936 that “all half breeds, living an Indian life, at least the children, should be included in the Treaty and have the same rights as the Indians”. In 1943, officials at the Indian Affairs Branch of the Department of Mines and Resources (successor to the Department

almost every paying point I was asked to consider applications for admission of breeds to Treaty 10. This I refused to do” (LAC, RG10, Vol. 6812, file 481-1-22, pt. 1, S. H. Simpson to Mr. Morrison [extract], 31 August 1932 [CR002499]). More information on some of these applications may be contained in restricted file LAC, RG10, Vol. 7972, file 62-132, “Treaty No. 10 – Band Membership”, 1907 – 1937. Donald Wetherell and Irene Kmet, in their book *Alberta’s North: A History, 1890 – 1950* (Edmonton: University of Alberta Press/Canadian Circumpolar Institute Press/Alberta Community Development, 2000) [CAP14528], stated that 28 people living “an Indian mode of life” whose direct ancestors had not taken scrip were admitted to the Wabasca Band in Alberta in Treaty Eight (306).

545 LAC, RG10, Vol. 4092, file 567205, M. Christianson to Dr. McGill, 18 August 1936 (extract) [CAP14369].
547 LAC, RG85, Series D-1-A, Vol. 267, file 1003-2-1, pt. 1, G. Breynat, “Memo re the physical and economic conditions of the North West Territory Indians”, copy attached to G. Breynat to J. L. Turner, 18 November 1936 [CAP14371].
of Indian Affairs) reviewed the “admission of a number of half-breeds and others to the band lists in the Northwest Territories since 1930, amount[ing] in all to 164 persons”. Although it would seem quite clear that many who were admitted were not Indians as defined by the Indian Act.

The Deputy Minister expressed the view that the admission of this class of persons to band membership was a backward step and should be avoided except where special circumstances existed. However, now that formal action was taken to admit them it is doubtful whether we could be justified in striking them off from the evidence on your files. About all that can be done now is to question their eligibility and as time permits examine each individual case. It will probably be found that a good many of them will have to be allowed to remain in membership...  

In 1935, the result of eighty-five years of Treaty-making, Indian Act administration, scrip policies, and admissions and discharges from Treaty was summarized by G. M. Matheson, the Registrar and keeper of documentary records for the Department of Indian Affairs:

On entering into treaty in the Western provinces, those who followed the Indian mode of life on reserves and received annuity and certain other treaty benefits, were known as “Indians” whether they were of pure Indian blood or mixed. Those who elected to take scrip in lieu of the treaty benefits and to live off the reserves were known as “Half-breeds”, although they may have been of pure Indian blood.

The distinction between the Indian and the Half-breed, from an official standpoint, is not a matter of blood but of the status they elected to assume at the time of the treaty...

As is evident from the events described in this report, the “distinction between the Indian and the Half-breed” was not only dependent on “the status they elected to assume at the time of the treaty”, but on the ongoing process of adjustment and reassignment of Aboriginal people to legal categories managed by Canada since the Treaties were signed. This ongoing adjustment, including withdrawals from Treaty, issues of scrip, late admittance and re-admittance to Treaty,

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548 LAC, RG10, Vol. 4092, file 567205, C. W. Jackson to R. A. Hoey, 12 August 1943 [CAP14388]. In 1939, the Private Secretary to the Minister responsible for Indian Affairs advised the Department of Justice that Indian Affairs was “averse to any proposal that would result in [half-breeds’] reversion to Indian status”, although “the department...is carrying on a coordinated effort in conjunction with the authorities of the Province, for the economic betterment of both Indians and half-breeds through the protection of their hunting and trapping interests under supervision” (LAC, RG10, Vol. 6812, file 481-1-22, pt. 1, W.J. F. Pratt to L. P. Picard, 20 June 1939 [CR-002527]).

549 LAC, RG10, file 10030 (G. M. Matheson, “Prairie Provinces and Maritime Provinces” (copy from DIAND Treaties and Historical Research Centre), G. M. Matheson, “Memorandum: Half-breeds.”, 12 March 1935 [CA-000340]. The reader will recognize that not all elections were made “at the time of the treaty”, but the result was the same. See also LAC, RG10, Vol. 6812, file 481-1-22, pt. 1, T. G. Davis to T. A. Crerar, 11 December 1935 [CR-002505].
enfranchisement, Indian Act changes, and paylist revision, was undertaken to meet a variety of objectives, the importance of which could change over time. These objectives had included the requirement to adhere to “the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines” in compensating for “Indian title”, the need to ensure a peaceful and orderly environment for settlers and infrastructure development, cost control, flexibility in allowing Aboriginal people to be compensated outside Indian Act legal restrictions, “humanity and expediency”, and assistance to “destitute persons”.

IV (14). Summary: Commissions on Natural Resource Transfer Agreements, 1930 – 1934, and Canadian policies on Treaty and scrip

On 15 July 1930, after the negotiation of agreements with Manitoba, Saskatchewan, and Alberta, control of natural resources and public lands was transferred from Canada to these provinces. These agreements contained clauses confirming existing Indian Reserves and setting out responsibilities for unfulfilled Treaty obligations.

At the end of December 1933, a Commission of inquiry on the Natural Resources of Saskatchewan was struck to consider the issues related to and the amount of compensation payable by the Dominion to the Province for lands and resources alienated by the Dominion between 1905 and 1930. The Commission was composed of A. K. Dysart, a judge of the Court of King’s Bench of Manitoba (the Chairman), H. V. Bigelow, a judge of the Court of King’s Bench of Saskatchewan, and G. C. McDonald, a chartered accountant from Québec. In setting up a discussion before the Commission of the Dominion’s issuance of “half-breed” scrip, J. M. Stewart, counsel for the Government of Canada, explained the origins of the obligation to address the claims of “half-breeds”, referring to the Dominion Lands Act:

...the provision is simply this: the Governor in Council may grant lands in satisfaction of claims of half-breeds arising out of the extinguishment of the Indian title. And throughout the history of Canada the term “Indian” has been held to include half-breeds...[p. 1167]

...from the commencement of Canada and by the agreement between the Hudson’s Bay Company and Canada, the rights of the aboriginal population were regarded as existing. It was considered that they had rights in this Western country. Canada proceeded to treat with the aboriginal population on principles of decency and justice. The policy was to procure the surrender of their nomadic rights or their floating rights, by the acceptance of definite reservations, and as regards half-breeds by the allocation of scrip giving them the right to a farm or to a part purchase price on a farm. By so doing the Dominion extinguished the floating charge on the Territories. If the Dominion had not retained the control and administration of these lands in 1905 the problem would have been one for the provinces to deal with. They would have to make their reservations. They would have to provide for half-breed scrip or compensate the half-breeds in some way...[p. 1171]551

P. H. Gordon, counsel for the Province of Saskatchewan, also opined that the Dominion became obliged to “look after all these halfbreeds” upon the “acquisition of Ruperts Land”,552 and referred to the “liability of the dominion to look after their wards, the Indians of the province. Now, that is all I have to say in reference to halfbreed scrip”.553

A similar Commission of inquiry was established to consider the claims of Alberta. J. M. Stewart continued as legal counsel for the Dominion at the hearings of the Alberta Commission. The legal brief prepared by the Dominion for the Commission contained a section on “North West Half Breeds Grants”, which traced the origins of documented Dominion obligations to Aboriginal peoples in the North West Territories from section 14 of the Deed of Surrender of Rupert’s Land (“any claims of Indians to compensation to land required for the purposes of settlement, shall be disposed of by the Canadian Government”), reflecting the commitment in the Joint Address of the Senate and House of Commons to the Queen in 1867 (“upon the transference of the territories...to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”). Stewart, in the brief, summarized the Dominion’s position on these documents:

The Dominion Government has, throughout, recognized the Half Breed as an Indian within the meaning of these obligations and has consequently treated him as entitled to some share or interest in the lands. As each treaty was made with the Indian Tribes, the Government appointed one or more Commissioners to enquire into the claims of Half Breeds resident in the territory at the time of the treaty. The measure of relief took the form either of cash scrip for $240.00 or land scrip for 240 acres of land...

The obligation to provide for the Indian (including the Half Breed) was considered as applying without distinction to the whole of Ruperts Land and the North West Territories. Consequently the scrip issued entitled the Half Breed to locate it in any Dominion Lands available for settlement. For the same reason the Commissions appointed to adjudicate on the rights of the Half Breeds visited the various settlements and reported and issued the scrip without keeping any data that would enable one to determine the number of Half Breeds resident in the various provinces...

Stewart then argued that scrip issued prior to the creation of the province of Alberta, and scrip issued after that date in areas that were included in prior treaties, constituted a “trust in favour of the Half Breed, which Alberta would have been bound to respect if it had received the Resources on September 1st 1905”, and “a ‘trust’ within the meaning of Section 109 of the B. N. A. Act”. He went on to state:

It is submitted that it is inconceivable, at least for the purposes of this Commission, that the Province would have declined to extinguish the Indian title (including Half Breed claims) “in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”. If it had so declined, it is submitted that the Dominion could have taken the necessary steps under Section 91 (24) of the B. N. A. Act to compel equitable treatment to Indians and Half Breeds.

Ontario felt itself under such an obligation in respect of lands in New Ontario, and provided for the Indians with provincial lands. This was done in cooperation with the Dominion Department of Indian Affairs. The Half Breed situation did not arise as Western Civilization had not previously penetrated the territory...

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554 This is of course true for Treaties Eight, Ten and Eleven, but not for Treaties One through Seven. In the cases of Treaties One and Two, a scrip process for “half-breeds” had been promised the year before Treaty, but took several years to implement, prompting some “half-breeds” to take the immediate benefits of Treaty instead of waiting for scrip. Scrip was also issued in denominations other than 240 acres, depending on the mandate of the Commission and the individual fact pattern of the application.

555 LAC, RG33, Series 51, Vol. 2, “Alberta Natural Resources Commission. Brief on Behalf of the Dominion”, November 1934 [CAP14195], 33 -33a. Scrip applications did collect data on residency, although prior to 1905 this data would not have included a provincial identifier except for applicants resident in Manitoba. The Half-Breed Commissioners did not attempt to link the residency of the applicant to the location of land eventually acquired when the scrip coupon was redeemed, which could be many years after the initial application.

556 LAC, RG33, Series 51, Vol. 2, “Alberta Natural Resources Commission. Brief on Behalf of the Dominion”, November 1934 (CAP14195), 33a – 33b. The argument concerning “Half Breed” scrip concludes with a note that Departmental staff were attempting to classify the scrip issued according to the date of issue, date and place of...
Stewart thus stated that “the Indian title” included “Half Breed claims”, and explicitly linked Canada’s actions in dealing with the Métis via scrip with the power the federal government had reserved to itself at Confederation for “Indians, and Lands reserved for the Indians”. As Stewart explained, this view of Canada’s obligations toward the Métis: to address their claims and rights as Aboriginal people as they had been obliged to address the claims and rights of “Indian” people: was not new. In developing a Dominion position on negotiations for the Natural Resource Transfer Agreements, as early as 1921, the Deputy Minister of Justice had advised that section 14 of the Deed of Surrender of Rupert’s Land had enabled “the Canadian Government in communication with the Imperial Government to extinguish the Indian title and if this be done by issuing land scrip to them as mentioned, the Province can have no legal claim whatever on account of such settlement with the Indians”.557

This undertaking in the Deed in turn had its roots in “the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines”, as expressed in the Treaty-making in British North America west of the territory of Québec as it was defined in the Royal Proclamation of 1763. When Canada, and its predecessor the Province of Canada, asserted jurisdiction over new territories in present-day Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, and the Northwest Territories, it encountered a varied Aboriginal population composed of distinct (though not necessarily homogenous) and interrelated peoples such as Ojibway, Cree, Saulteaux, Blackfoot, Chipewyan and Métis. In pursuance of its objectives for its new territories, in 1867, Canada reserved to itself both a broad jurisdiction over “Indians, and land reserved for the Indians”, and Crown lands west of Ontario. In keeping with British precedent set out in the Royal Proclamation of 1763, Canada then compensated Aboriginal peoples for what it called “Indian title” in these territories prior to large-scale location of the land, and the territory in respect of which it was issued. The covering letter for this brief noted that the section on “Half Breed Scrip” was to be “supplemented by oral argument”. Regarding the case of “New Ontario” (north of the Albany River, added to the Province in 1912), Stewart was correct in noting that fur trade, mission or resource exploitation locations in the territory were of relatively recent origin. The reader will recall that Ontario offered to provide land for the Moose Factory Métis as part of the implementation of Treaty Nine in 1906.

development and non-Aboriginal settlement, and continued to manage the Aboriginal population in support of its national goals as development proceeded. Canada’s actions included the creation and administration of different compensation and legal frameworks (Treaty and scrip) to address the variety of Aboriginal peoples and situations with which the central government had to work, and also included the shifting of Aboriginal people between frameworks if necessitated by broader policy objectives and changing conditions.
V. Development of Treaty paylists, 1850 – 1930

Terms of Reference question:

3. How did Treaty paylists evolve from a simple record of payment of annuities to a determining factor in the identification of individuals and families as “Indian” for a range of purposes such as Indian Reserve allocation, entitlement to assistance and benefits, recognition of harvesting rights, and legal status? What implications does this evolution have for the subsequent creation of the Indian Registry in 1951?

The Robinson Treaties of 1850 continued practices followed in earlier Treaties by allocating Indian Reserves and annuities as agreed upon with each Chief or principal man and his “tribe”, not on a per capita basis. Robinson provided estimates of the numbers of Indians and “halfbreeds” and included paylists with his report on the Treaty negotiations, to be used in estimating the amount to be given to each Chief. The population figure of 1,422 quoted by Robinson for the Huron Treaty included “probably two-hundred half-breeds”, according to his report. The equivalent figure in the Superior Treaty was 1,240, including 84 “half breeds”. The clause of the Treaties read as follows, as extracted from the Robinson-Huron Treaty:

the sum of two thousand pounds of good and lawful money of Upper Canada, to them in hand paid, and for the further perpetual annuity of six hundred pounds of like money, the same to be paid and delivered to the said Chiefs and their tribes at a convenient season of each year...

The Treaty also contained an escalator clause by which the amount payable could be increased to one pound Provincial currency, “or such further sum as Her Majesty may be graciously pleased to order”, for each individual, “should the territory hereby ceded by the parties...at any future period produce such an amount as will enable the Government of this Province, without incurring loss, to increase the annuity”.

Robinson recognized that new families would probably be added to the paylists in subsequent years:

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558 W. B. Robinson to R. Bruce, 24 September 1850; reprinted in Morris, Treaties, 19 [CAP10802].
When at Sault Ste. Marie last May, I took measures for ascertaining as nearly as possible the number of Indians inhabiting the north shore of the two lakes; and was fortunate enough to get a very correct census, particularly of Lake Superior...

The number paid, as appears on the pay list, does not show the whole strength of the different bands, as I was obliged at their own request to omit some members of the very large families. I have annexed to this Report the names of the chiefs, their localities, and number of souls in each band as recognized by me in apportioning the money, thinking it will be useful when paying the annuity hereafter.

This information may I believe be fully relied on for Lake Superior, but the census for Lake Huron is not so perfect, and I would suggest that Captain Ironside should be furnished with copies of that document and also of the pay-lists, in order that he may correct, in time, any errors that are found to exist...

I could not from the information I possessed tell exactly the number of families I should have to pay, and thought it prudent to reserve a small sum to make good any omissions, there may still be a few who will prefer claims, though I know of none at present...

Robinson left discretion as to the beneficiaries of the Treaty in the hands of the signatory Chiefs:

As the half-breeds at Sault Ste. Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion. I told them I came to treat with the chiefs who were present, that the money would be paid to them – and their receipt was sufficient for me – that when in their possession they might give as much or as little to that class of claimants as they pleased. To this no one, not even their advisers, could object and I heard no more on the subject.

From 1851 to 1875, the Hudson’s Bay Company paid Robinson Treaty annuities to the Lake Superior beneficiaries. The Company officials undertaking the payments were instructed to make the payments in cash, and collect a receipt from each head of a family for the amount paid. The total amount to be paid was £500, minus some deductions. The Company used the census lists that it had given Robinson as a guide to making the payments, and began drawing up its own lists from 1851 onwards, modifying them to track changes in the numbers in families. The annuity payment lists from the 1850s, preserved in Hudson’s Bay Company...

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560 W. B. Robinson to R. Bruce, 24 September 1850, reprinted in Morris, Treaties, 19 – 20 [CAP10802].
561 W. B. Robinson to R. Bruce, 24 September 1850, reprinted in Morris, Treaties, 20 [CAP10802].
562 HBCA, D.4/43, fols. 110b – 111, G. Simpson to J. Swanston, 30 June 1851 [NO IMAGE].
563 HBCA, B.129/d/7, “List of Indian Money in the Cos. hands[?] at Lake Superior”, 1852 – 1855 [CAP12784]; also “Statement of Indian Annuity Money [on?] hand at Michipicoton”, 1 July 1857 [CAP10832].
564 LAC, RG10, Vol. 514, R. Bruce to Governor General in Council, 21 April 1851, 194 [CAP12773]; R. Bruce to G. Simpson, 27 June 1851, 243 [CAP12781].
records, list “Half Breeds” and “Indians” separately. In 1876, the year after the Indian Affairs
Branch of the Canadian Government took over the payment of annuities, “Half Breeds” were
still listed separately on the Michipicoten Band paylist, but at Fort William and Nipigon they
were not. By the late 1880s, the “half breed” families on the Robinson-Superior Treaty
paylists were no longer identified as such.

On Lake Huron, a different method was chosen for the payment of annuities. From 1851 to
1855, Government Indian Superintendents made the payments at Manitowaning on Manitoulin
Island, at the same time as the customary Indian present distributions. Both the Treaty annuity
payments and the present distributions were made in goods. The Robinson-Huron annuities were
valued at a Toronto wholesale price of £600, and Robinson’s 1850 paylists were used to
determine the share of the total annuity payable to each Band from 1851 to 1855. No lists of
individual or family names were kept for these payments. The annuity payments were made
in cash in 1856, and lists of family heads were prepared at the 1856 payments. These lists, for
many Bands, showed large increases from the lists made in 1850. For example at Henvey
Inlet, 11 family heads representing 47 people were added to the paylist between 1850 and 1857,
and at Spanish River the number of people on the paylist increased from 137 in 1850 to 337 in

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565 HBCA, B.129/d/7 (Michipicoten account books), see for example “Payments to Michipicoten Indians 1852”, p. 2
(CAP10808); and “Statement of Indian Annuity Money on hand at Michipicoten”, 1 July 1857, p. 37 (CAP10832).
From 1855 onwards, Métis annuity recipients were not always consistently identified as “Half breeds”, although
the distinction was preserved in summaries such as the “Statement of Indian Annuity Money” of 1 July 1857.
Paylists and summaries of annuities paid continued to show “Half breeds” separately in the 1860s (see for example
Michipicoten Year 1864”, 6 October 1864 [CR-000321]).
566 Treaty annuity paylists for Michipicoten [CAP12852], Fort William [CAP12847] and Nipigon [CAP12855] Bands,
1876.
567 Treaty annuity paylists for Michipicoten [NO IMAGE], Fort William [NO IMAGE] and Nipigon [NO IMAGE] Bands,
1889.
568 See LAC, RG10, Vol. 514, R. Bruce to G. Ironside, 6 June 1851, 225 [CAP12775]; R. Bruce to G. Ironside, 9 June
1851, 229 – 230 [CAP12777].
569 Superintendent General Bruce asked Ironside in 1851 to ascertain if the Robinson-Huron Treaty Chiefs would
agree to share the annuity in the proportion suggested by Robinson’s 1850 lists for a fixed period, such as four
years, to simplify the payment process and the record-keeping. Although no definite response to this proposal has
been located, such an agreement would explain why no lists were made for the years 1851 – 1855. LAC, RG10,
Vol. 514, R. Bruce to G. Ironside, 9 June 1851, 229 [CAP12777].
570 See Morrison, “Robinson Treaties” [CAP11312], section 12.5.2.
1857. As the total to be paid out under Treaty was fixed, the effect of adding names to the paylists was to reduce the per capita amount paid.

Charles Skene, a Government Indian Agent in the Robinson-Huron Treaty area, recalled in 1878 that the Band chiefs exercised considerable authority over the paylists as late as 1873: “when I was appointed Agent [in 1873] a certain Sum was sent to be divided amongst the Band and then the Band had a right to say who were to share in it”. When Skene asked Headquarters in 1875 about the inclusion of some Métis at Henvey Inlet on the paylists, the Department advised him that any doubtful cases regarding who was an “Indian” under the applicable legislation should be referred to the Band Council concerned, “formally pronounced on by the Indians in C. and then decision [should] be submitted to the Supt. Gen. for his approval”. Individuals and families were placed on paylists “through the influence” of the Chiefs, “on account of connections more or less distant (or upon other scores)”. At Garden River and Batchewana, near Sault Ste. Marie, “half breeds” accepted by the Bands drew annuities, lived on the Reserves and harvested Reserve resources. Although some Métis from Sault Ste. Marie were paid with these Bands in 1850, many more were added to the paylists after 1859, following a surrender for sale of Reserve lands and difficulties in securing land title in Sault Ste. Marie. When Skene asked the Chief of the Henvey Inlet Band in 1878 about a family on the paylist that the Chief identified as “Frenchmen...always considered such by the Band”, the Chief replied that his late father had got their names on the paylists and that he was content to keep them there as “it was evident...that he wished to make the Band appear as numerous as possible”.

572 LAC, RG10, Vol. 2065, file 10235, Charles Skene to E. A. Meredith, 13 August 1878 [CAP12427]; see also LAC, RG10, Vol. 2143, file 29703, J. C. Phipps to Superintendent General of Indian Affairs, 4 December 1881 [CAP12982].
576 Morrison, “Robinson Treaties” [CAP11312], section 12.5.3.
Many of the family heads added to paylists of Bands such as Henvey Inlet and Spanish River were Métis who had married women related to people already on Band paylists, or who were the children of such marriages.\[578\] At the time of the Treaty (1850), Canada legislation regarding “Indians” defined its subjects as “Indians or any person inter-married with Indians”.\[579\] This definition was refined in legislation of 1857 to read “Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands”.\[580\] In July of 1857, just after this legislation was passed, the Superintendent General of Indian Affairs, Richard Pennefather, wrote to George Ironside, the superintendent responsible for the Robinson-Huron Treaty Bands, to request a list of Indians entitled under the Treaty to share in annuities and reside upon the Reserves, “such list to specify any addition made thereto since [the Treaty], distinguishing the halfbreeds and noting those who claim participation through the Mother”.\[581\] Many of the Band lists produced by Ironside in response to this request identified persons in this category.\[582\] There were no apparent immediate consequences for these families and individuals as a result of being labelled in this way, and indeed the Indian Department received legal advice in 1858 that “it is impossible to contend that the word ‘Indian’ in 13 & 14 Vic c 74 s 3 is restricted in meaning to Indians of pure blood”.\[583\] Other persons added to the Robinson Treaty paylists between 1850 and 1875 appear to have been relatives of Band members who were absent at the time of the Treaty, or representatives of families who claimed an interest in the territories covered by the Treaty but had not been included in the original annuity distributions.\[584\]

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578 See Jones, “Dancing with Underwear” [CAP11504], 6 – 7; Morrison, “Robinson Treaties” [CAP11312], section 12.5.3, paragraph 13.
579 Province of Canada Statutes, 13-14 Vic., cap. 74, 10 August 1850, “An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury” [CAP10765], para. V.
582 See for example the Spanish River paylist, RG10, Vol. 9497 [CAP10782].
584 Morrison, “Robinson Treaties” [CAP11312], section 12.5.2, paragraph 4.
In 1862, Canada negotiated with Chiefs of Indian people resident on Manitoulin Island for a surrender for sale of most of the Island, which had been established as a reserve for the Upper Canadian Indian population in 1836. In the terms of this surrender, Canada introduced the concept of allocating Indian Reserves on a *per capita* basis (100 acres to each head of a family and 50 acres to each single adult, to be selected where possible in adjacent parcels). The interest from the proceeds of land sales was also to be distributed on a *per capita* basis. Although the implementation of this Treaty was dependent on *per capita* distribution, there is no evidence that Canada conducted a systematic inquiry at the time of the Treaty into the basis of entitlement of claimants who came forward for land or interest distributions. In the mid-1890s, the Department of Indian Affairs undertook an investigation into the origins of many people on the Manitoulin Island and Robinson Treaty paylists, and found that 373 of 850 people receiving the 1895 Manitoulin interest distribution were also on Robinson Treaty paylists, although (in the opinion of the Department) “the Commissioners [of 1862] did not intend to include therein any Indian who had already entered into treaty with the Government”. After a search of records at both the Indian Agency on Manitoulin Island and at the Department of Indian Affairs headquarters at Ottawa, no “record...of the Indian population in 1862” on Manitoulin could be located.

One of the key issues at the meetings for the numbered Treaties was the development of complete lists of those entitled to be paid the gratuity and annuity. Unlike the Robinson Treaties, Treaties One and Two did not set a fixed sum to be divided up amongst claimants, but established individual entitlements to a fixed amount. Treaty Commissioner Wemyss Simpson recognized there were many potential claimants who had not attended the Treaty meetings, as well as claimants who might have had the choice between Métis scrip and Treaty:

...A large number of Indians, entitled to share in the treaty, were absent on the 3rd August [at the Stone Fort], and in the belief that I should, almost immediately, be able to obtain a more accurate knowledge than I possessed of the numbers of the several bands, I paid to each person present only three dollars – the gratuity – postponing for a short time the first annual payment...

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586 LAC, RG10, Vol. 2832, file 170073-1, Hayter Reed to B. W. Ross, 7 April 1896 [CAP13672], 3. See also Morrison, “Robinson Treaties” [CAP11312], section 3.9.1, paragraphs 4 and 5.
587 LAC, RG10, Vol. 2832, file 170073-1, Hayter Reed to B. W. Ross, 7 April 1896 [CAP13672], 5; B. W. Ross to Deputy Superintendent General of Indian Affairs, 18 April 1896 [CAP12859].
...At Portage la Prairie, although the number paid at the Stone Fort was largely increased, there still remained many who, from absence or other causes, were not paid, and by the request of the Chief the money was left for these with the officers in charge of the Hudson’s Bay Company Post...

...the payments for the Indians...[at Fort Alexander] were sent to the officer in charge of the Hudson’s Bay Company Post...but it may be as well to mention that the number so paid will fall far short of the total number belonging to that place. The latter remark will apply to the Pembina band...All these must receive their back payments during the course of next year.

During the payment of the several bands, it was found that in some, and most notably in the Indian settlement and Broken Head River Band [in Treaty One], a number of those residing among the Indians, and calling themselves Indians, are in reality half-breeds, and entitled to share in the land grant under the provisions of the Manitoba Act...A very few only decided upon taking their grants as half-breeds....[41]

...I have since written to the officers in charge of the Hudson’s Bay Company Posts within the tract [included in Treaty Two]...requesting them to procure for me a reliable census of the Indians...

...a large number of Indians, whose lands were ceded by the second treaty, were not present. The distance from the hunting grounds of some to Manitoba Post is very great...[42]...

In both Treaties, a clause was inserted promising that

Her Majesty’s Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the district above described, distributing them in families...[589]

This clause was also inserted in Treaties Three through Six.

At the Treaty Three (1873) negotiations, the Commissioners were aware that only a small percentage of the Indian population of the territory was present; the shorthand reporter who travelled with them estimated that of a total of approximately 14,000 “Indians”, 800 attended the meetings at the North West Angle.[590] During the Treaty negotiations, Commissioner Alexander

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588 W. Simpson to J. Howe, 3 November 1871, reprinted in Morris, *Treaties*, 39 – 42 [CAP10965].
590 Notes of shorthand reporter reprinted in the *Manitoban* newspaper, 18 October 1873, reprinted in Morris, *Treaties*, 53 – 55 [CAP11047]. The population estimate of 14,000 was high; Dawson estimated the number at between three and four thousand (see for example S. J. Dawson, “Report on the Line of Route between Lake
Morris promised, at the request of the Chiefs, that “any children of British Indians who come in within 2 years will be received”. The Reserves were to be selected by the Bands by the summer of 1874 “or as soon thereafter as may be found practicable”. The written Treaty did not make reference to a two-year period for adding absentees to the paylists.

Provencher, one of the Treaty Three Commissioners, and as Indian Commissioner for Manitoba and the North West Territories also dealing with the dissatisfied signatories to Treaties One and Two, recommended in his annual report for the year 1873 that the per capita entitlements be managed in a way that combined features of the numbered and Robinson Treaty systems. He expressed his opinion that the Government should pay annuities by bands, instead of to individuals. In making a Treaty with a tribe we may retain a total sum to be divided each year amongst the different members of the tribe, according to a census which might be made one year previously.

If the chiefs desire to introduce new families into their bands they have perfect liberty to do so, but at the same time they must understand that the amount payable to each person will be diminished...

This annual census should be taken by the Commissioner or his representative, and the chiefs of the tribes. By these means all disputes would be avoided, and we would not have to give merely approximate estimates, as is the case under the present system.

The principal of payment to bands instead of individuals should be applied to Reserves. If we give a fixed space to each head of a family, separately, as the population tends to increase considerably, so long as the chiefs are not themselves interested in preventing an undue intrusion, we shall never be able to determine the extent to be given for each Reserve.

Moreover, if we grant a considerable extent, a square mile for instance, to each family, as is mentioned in Treaty No. 3, as each family will be able to demand a lot of equal value, it will follow that these claims will comprise all the most valuable properties, and will render impossible whatever intentions the Government may have, in paying the Indians for the relinquishment of their rights...


591 LAC, MG29, C67, 3 October 1873, 31 – 32 [CAP11028].
592 Written Treaty reprinted in Morris, Treaties, 320 – 324 [CAP11024].
593 J. A. N. Provencher to Minister of the Interior, 31 December 1873, reprinted in “Book of Documents” [CAP12805], 243 - 244.
Provencher evidently did not understand that any date had been fixed for the addition of persons to the lists of Treaty beneficiaries, either for the payment of annuities or for the allocation of Indian Reserve land.\(^{594}\) He also assumed that, as in the Robinson Treaty areas, Chiefs would be given control over the paylists for their Bands. The proposals in his annual report were his attempt to balance control and predictability of Government expenditures with what he perceived to be the open-ended features of the \textit{per capita} clauses of the numbered treaties. In March of 1874, Treaty Three Commissioner Dawson wrote to Minister of the Interior Laird requesting early action on the selection and survey of Indian Reserves, and the “taking of an accurate census...necessary seeing that the payments are to be on the basis of a certain sum per head”.\(^{595}\) Shortly afterwards, Provencher received instructions from Laird to inform Indian Agents for the numbered treaties “to obtain in accordance with some prearranged plan, a census as accurate as possible of the bands to whom payments are made...as the census must form the basis of all future annual payments to the Indians.” Provencher replied:

as the Treaties stand now, I don’t see that they contain any provision binding the Indians to be restricted to any census that would be made in connection with the payment of their annuity...

...without formal instructions from the Department, I don’t feel sufficiently authorized to refuse the arrears of annuity to any Indian who would really belong to one of the bands coming under the existing Treaties, and would have been unavoidably absent at the preceding payments.

I may add that I have reason to believe that when the Treaties were made, one of the Commissioners gave to the Indians the assurance that those who happen to be absent could always claim any amount of arrears that might be due to them.\(^{596}\)

Headquarters, in its response, did not address Provencher’s statements regarding the census.\(^{597}\)

As in previous Treaties, Morris was aware that only a portion of the Aboriginal peoples covered by Treaty Four (1874) were in attendance at the Treaty meetings, and that there would be many

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\(^{594}\) This view was supported by statements of Crown negotiators at Treaty One. See Ray, Miller and Tough, \textit{Bounty and Benevolence} [CAP11396], 79.


\(^{597}\) Department of the Interior to J. A. N. Provencher, 20 May 1874, reprinted in “Book of Documents”, 257 [CAP12816].
additions to the first year’s paylists. A Saulteaux leading man at Fort Ellice asked Morris if the Treaty would “take in all my children”, to which Morris replied, “yes”.

In the summer of 1875, Canada changed the payment of annuities under the Robinson Treaties to a fixed *per capita* allocation of four dollars, abandoning the old pre-Confederation system of dividing up a fixed total sum among a variable number of beneficiaries. This brought the Robinson Treaties more into line administratively and in cash value with the new numbered Treaties, and fulfilled the term of the Robinson Treaties allowing for an increase in the annuity if the lands surrendered should generate sufficient revenue. Canada also took over payment of the annuities in the Robinson-Superior Treaty from the Hudson’s Bay Company in this year.

In October 1875, Canada addressed outstanding grievances of signatories to Treaties One and Two by increasing the *per capita* annuity to five dollars from three dollars, to match the benefits of the other numbered Treaties, and providing some additional goods as promised verbally at the Treaty One and Two negotiations. The paylists in Treaties One, Two and Three were still at an early stage of development. Indian Commissioner Provencher noted in his annual report for the year 1874 – 1875 that “the staff of this office has not allowed of the taking of a complete census of the Indians”.

Morris noted in his report on the Treaty Five negotiations in 1875 that “the Indians were uniformly informed that... next year those not present would receive payment with the others, if they presented themselves”. At the 1876 Treaty Six negotiations, Morris acknowledged that many Chiefs and their followers were absent, but promised the Chiefs in attendance that

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599 Notes of shorthand reporter, 21 September 1874, reprinted in Morris, *Treaties*, 125 [CAP12149].
600 See Morrison, “Robinson Treaties” [CAP11312], section 12.6.3; LAC, RG10, Vol. 1963, file 5045-1, E. B. Borron to D. Laird, 1 April 1875 [CAP12817].
absentees “would receive the present of money as they had done”. The “accurate census” provision did not appear in the written copy of Treaty Seven.

About one-third of the Treaty Three Indian Reserves surveyed in the nineteenth century were laid out between 1875 and 1878. The acreage of these Reserves corresponds most closely on a per capita basis not to the Treaty paylists, but to population estimates given by Dawson in memoranda of 31 December 1874 and 17 February 1875.

As described earlier in this report, the Band Councils in the Robinson Treaty areas had been given considerable control over their Treaty paylists until at least 1875. In a practical sense, Aboriginal people in the numbered Treaty areas also exercised substantial control over who was paid. Years after the numbered Treaties were signed, new applicants for the annuity continued to appear at the payments. Amos Wright, the Indian Agent responsible for the eastern part of Treaty Three, explained the ten per cent increase in annuity recipients in his Agency from 1875 to 1876 as follows:

In ascertaining the number and character of the persons entitled to annuity, I had the assistance of the four Chiefs of the bands under Treaty number three, that are in our Division, together with the members of their staff.

The circumstance of the Indians being located upon their own Reserves has tended to bring in those that formerly were engaged in their calling at distant points.

In reviewing the paylists for Treaties One, Two and Three in 1876, Robert Sinclair, an accountant in the Department of the Interior, noted the large increases in people paid, especially

604 A. Morris to [D. Laird], 4 December 1876, reprinted in Morris, Treaties; 187, 189 – 190, 191, 192 – 193 [CAP12392].
605 “Copy of Treaty and Supplementary Treaty No. 7 between Her Majesty the Queen and the Blackfeet and Other Indian Tribes, at the Blackfoot Crossing of Bow River and Fort Macleod” (Ottawa; Queen’s Printer, 1966), also online at DIAND website [http://www.ainc-inac.gc.ca/al/hts/tgu/pubs/tv/tryt7-eng.asp] (accessed June 2010) [NO IMAGE].
607 See also LAC, RG10, Vol. 2465, file 96244, J. P. Donnelly to Superintendent General of Indian Affairs, 28 May 1889 [CAP13550], in which he reported that “about thirty seven children of White men, married to Indian women and two supposed American Indians of the Fort William Band and five children of a White in the Red Rock Band...claim their right, by having been placed in the Band by their Chief”.
608 LAC, RG10, Vol. 3637, file 7057, Amos Wright to E. A. Meredith, 31 October 1876 [CAP12860].
in Treaties One and Two. “The Department is yet very far from having a correct census of even the Indians who come under the operation of the older Treaties”, he observed.609 Asked to account for the rapidly enlarging number of annuitants in Treaties One, Two and Three, Provencher replied,

...with the nomadic habits to which many of these Bands are still addicted, no track can be kept of each of them except by the means of a regular and detailed census, which could not be taken without some expense that was repeatedly refused to me...

As a result of the imperfect personal knowledge of the Indians on the part of the agents employed in making the payments, many names have been kept on the paylists even when the parties were dead, or had left the Band, or by being married or christened had changed their names, many corrections are made every year, but they are necessarily far from complete... 610

In Treaties Six and Seven, annuity payments took place in large gatherings around places such as Fort Walsh in the Cypress Hills in southern Saskatchewan, Blackfoot Crossing, and Edmonton. Although some Aboriginal people were well-known to the Indian Agents and Mounted Policemen responsible for making the payments, the sheer number of people waiting to be paid and the lack of any identification system prevented government officials from inquiring into the background of every person or family that presented themselves for payments. The Indian Branch’s Treaty paymaster at the Treaty Four payments in the summer of 1876, M. G. Dickieson, had attempted to do some sorting of the Aboriginal population before him, refusing to pay annuities to some Métis not already under Treaty. However, he found classifying Aboriginal people was not straightforward:

The question as to who is or who is not an Indian is a difficult one to decide, many whose forefathers were Whites, follow the customs and habits of the Indians and have always been recognized as such...the question then arises – where shall the line be drawn to decide who is or who is not an Indian? 611

David Laird, who had been at the Treaty Six payments at Fort Walsh in 1878, commented that “it is almost impossible for any person who has never had to deal directly with Indians to realize

how trying it is on the patience and judgement of the Indian agents to accomplish his work satisfactorily”. He thought that the 2,700 gathered at Fort Walsh was “too many to be assembled at one place for payment”.  

The paylists in all the numbered Treaties were simple documents in the 1870s. Although names may have been entered on a numbered list, family heads were not yet linked to a number that was carried over from year to year. There were no identification cards or tickets for claimants. The names on the paylists were phonetic approximations of Aboriginal names made by people who did not speak their languages, impromptu English translations of these names (“Earth Trotter” or “Strong Linen”, among the Cree of Treaty Six, for example), or European names, many of which were so common at the time they were almost generic (“Mary” or “Baptiste”). Spellings, transliterations and translations were not consistent from year to year, and multiple naming was common in some of the Treaty Aboriginal populations. Chief Bobtail, for example, was also known as Kiskayu or Alexandre/Alexis Piché, his brother Ermineskin was also known as Kosiksoweyano or variants, Baptiste or Jean-Baptiste Piché, or Peau-de-Belette, and Chief Passpaschase was known as Woodpecker or John Gladieu Quinn.

The paylists were not intended as a census of individuals, but as a record of to whom payments were made, and therefore only one person per group or “family” paid was named on the list. The composition of this group could include grandchildren, cousins, nephews and nieces, elders and other dependents as well as wives and children (Bobtail, for example, was paid for 25 people in 1879). Women could appear on a paylist alone or as lone parents, when in fact they may have been married to men outside Treaty, or to men who had more than one wife. The term “family head” applied to paylist names is therefore more of a term of art than an indication of household or family composition. Paying officers did not, in the early years of the numbered Treaties, make an attempt to trace changes in families with notes on births, deaths, marriages or changes in group affiliation. Names may therefore appear and disappear on paylists, when the individuals themselves of course did not appear or disappear at all. These features of early paylists make linking individuals from one list to another a very uncertain exercise, except for particularly prominent persons.

Paying officers also had difficulty applying the idea of a “band”, based on Departmental experience with organized groups in older settled areas, to the highly mobile and fluid Aboriginal populations of Northern Ontario and the Prairies. The principal anthropological ethnographer of the Plains Cree, David Mandelbaum, characterized pre-Treaty Cree social organization as “several loosely organized bands whose numbers and range varied a good deal over relatively short periods of time”. Plains Métis populations travelled almost the entire year in large rolling camps composed of varying extended family groupings, friends, Indian relatives or allies, and the occasional non-Aboriginal fellow-traveller. However, in the first few years of the Treaties, Indian Department officials tried to link the Aboriginal people they were paying with a Treaty Chief, whether or not they were with that Chief at payment time, and made unclassifiable groups of annuity recipients the exception to the standard by terming them “Stragglers”. In 1878, for example, over 550 people at separate payments at Sounding Lake, Tail Creek, Blackfoot Crossing and Carlton were paid and classified as “Bobtail’s Band”. The group at Tail Creek was part of a gathering of 424 Aboriginal people that the responsible Departmental official described as being divided into three subgroups, each under a “headman” or “leading man”. One of these leading men had been paid as a headman of the Bobtail Band in 1877, so this group was classified as “part of Bobtail’s band”. The other two groups, however, led by Chief Bobtail’s brother Ermineskin and an allied “headman”, Samson, were paid under the heading “Tail Creek Indians (no chief)”, although many of the people in those groups were Bobtail’s relatives and people in his Treaty group. Although identification and tracing of most

613 David Mandelbaum, *The Plains Cree: An Ethnographic, Historical and Comparative Study* (American Museum of Natural History, 1940; reprinted by Canadian Plains Research Centre, University of Regina, 1979) [CAP14416], 9. Documents such as letters from the priests who followed Cree and Métis groups prior to Treaty describe the assembling and dispersal of these groups for food harvesting and religious events; see for example PAA, Accession 71.220/7333, Constantine Scollen to [recipient unknown], 16 December 1872 [CAP12803]; Albert Lacombe to Superior-General, Oblates of Mary Immaculate, 12 May 1870, reprinted in *Missions de la Congrégation des Missionnaires Oblats de Marie Immaculée* (Paris: Typographie A. Hennuyer, 1870), t. 9 [CAP12793], 255.

614 See for example Glenbow Archives, M1154 (Mary Rose Smith papers), file 5, Kootenai Brown, “I Remember” [NO IMAGE], and “Recollections of Kootenai Brown” [CAP14676]; M1154, file 3, Marie Rose Smith, “The Adventures of the Wild West of 1870” [NO IMAGE]; SHSB, Série Taché, J. Lestanc to Archbishop Taché, 2 May 1871 [CAP12800], T-8745 – T-8746. Analysis of Métis scrip records across the Prairies also emphasizes these family and travel patterns.

individuals through these early lists is impossible, the earlier lists may give a more accurate picture of affiliations, travel patterns and social organization on the ground than the later more structured paylists.

Selecting Indian Reserves in the numbered Treaty areas required taking further action to get the “correct census” referred to in the Treaty documents. Canada’s policy was to avoid the creation of very large Indian Reserves which, in the view of the Department, would aggregate unmanageable numbers of Aboriginal people and remove large unbroken areas from non-Aboriginal settlement, so simply counting the “Indians” was not sufficient.616 “Bands” of a moderate size with a stable membership had to be created so that per capita Indian Reserve allotments could be calculated and surveyed, a process that continued in Treaty Six until the mid-1880s. These policy requirements, together with a drive to reduce duplicate payments, increase accountability and better control Aboriginal populations, led to revisions in Treaty annuity payment methods and procedures in the early 1880s.

The newly-appointed Indian Commissioner for the North West Territories, Edgar Dewdney, went on his first tour of his jurisdiction in the summer and fall of 1879, assisting in making the Treaty payments in Treaties Six and Seven. After seeing firsthand the conditions under which payments were made, and finding that there were undoubtedly some duplicate payments being made under multiple names, he proposed a pay ticket system under which no one could be paid without a markable ticket showing for how many he or she was entitled to receive money.617 In 1880, this pay ticket system was introduced according to Dewdney’s recommendations. In Treaty Six paying agents stopped trying to assign most of the “Stragglers” to Treaty chiefs, absentee payments to family representatives were greatly reduced, and Aboriginal people at a reduced number of locations were assigned to existing Bands. This resulted in a precipitous drop in the numbers paid in each Band (for example, a decline of 48% in the Bobtail Band, 37% in the

616 John Tobias, “Canada’s Subjugation of the Plains Cree, 1879 – 1885”, in J. R. Miller, ed., Sweet Promises: A Reader on Indian-White Relations in Canada (Toronto: University of Toronto Press, 1991) [CAP12657], 154 - 158; see also E. Dewdney to Superintendent General of Indian Affairs, 25 November 1884, in Annual Report of the Department of Indian Affairs for the year ended 31 December 1884, Canada Sessional Papers, 1885 [CAP13025], 157, in which Dewdney indicated that he had promised the Cree Indian Thunder Child that he would recommend Thunder Child for a chieftainship “provided he was able to collect the requisite number of families”.

Ermineskin Band, and 27% in the Samson Band). The Inspector of Indian Agencies for Treaty Six, T. P. Wadsworth, reported that these new procedures had resulted in a great falling off in the number of Indians paid in each band this year. I can in no way account for this.

The Indians may have, at former payments, presented themselves twice, but...I cannot think it obtained to any great extent; the numbers of families have, in many instances, been given incorrectly, also Indians wishing to be paid for absent members of their family, whom it was likely were being paid elsewhere; this year I have as far as possible stopped this practice...

1881 was a transition year in terms of payment policies and practices. For example, at the payments for Treaty Four at Fort Walsh, Inspector Wadsworth attempted, with varying degrees of success, to discourage “Northern Indians” with Reserve entitlements in Treaty Six from gathering at Fort Walsh, to teach annuity recipients to preserve their tickets, to take a census of Chief Lucky Man’s band, to resist the combined efforts of Chief Little Pine and several hundred assembled “halfbreeds” to have Métis taken into Treaty, and to sort “stragglers” into Bands. In Treaty Three, although Indian Agents had been given repeated instructions to the contrary, payments still took place at large gatherings described by Inspector McColl as “most demoralizing”, and Indian pay tickets had not been distributed to the Agents. Before the annuity payments of 1882, comprehensive instructions were issued to Indian Agents in numbered Treaty areas with the intent of further standardizing paylist records, tracking, counting and controlling the Treaty population, and tying stable groups to Reserve lands.

The instructions issued in 1882 included some measures introduced in previous years, and brought together many elements of legislation and policy. Standard forms were issued on which

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618 The Samson and Ermineskin Bands had been administratively created in 1879. Numbers paid are calculated from Treaty Six paylists.
to record payments, and each head of a family was to be assigned a number, which was to remain the same from year to year. Variations in family composition (births, deaths, adoptions, transfers, *et cetera*) were to be accounted for and described in written comments or remarks. This facilitated the tracking of payments to individuals and flagged movements between Bands or family heads. The instructions directed that “it is imperative that the Indians should be paid their Annuities on the Reserves, and that they money due them be paid direct to themselves or their representatives...by written order”. Those absent in 1882 were not to be entitled to arrears for that year, unless they could prove “just cause” for their absence. “Absentees of previous years” (who may have been paid elsewhere by another Agent) were only to be paid one year’s arrears of annuity at one time. This gave Headquarters staff an opportunity to check the paylists for double payments before much money was paid out, and encouraged recipients of annuities to appear every year at the same place to be counted and have their identities verified by officials. No arrears were to be paid to Indian people who presented themselves for the first time in 1882, unless their names appeared on the paylist at the time Treaty was signed with “the band”. The new instructions emphasized that “the habit of adopting children and of transferring Indians to other Bands is very objectionable, causing complications with the Pay Sheets making irregularities difficult to trace, and therefore should be discontinued” save for “exceptional cases”. Rules were also set out for the recording of payments for multiple wives and stopping payments to the children of women who had married “any other than a Treaty Indian”, further obscuring actual family composition by separating family members on paylists and removing children of non-Treaty fathers. 622 “Stragglers” were to be required to join a Band before they could be paid in 1882. 623

Taken together, these procedures and documentation practices tended to crystallize the Band lists as they appeared in the early 1880s. Although field administration in the 1880s was not consistent and was driven by practicalities on the ground, paylist analyses in Treaty Six and Treaty Three show much greater stability and continuity of families from year to year after 1882. Band lists, however, should not be construed as comprehensive or exclusive lists of related or

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associated individuals, or as censuses of Reserve residency. Many individuals and families appeared at their paylist Reserve only at payment time, living most of the year either off-Reserve or on other Reserves, and not all of their family or group members were included on paylists. Many people simply “disappeared” or are not traceable through paylist records (see Section IV (11)). Ric Hardisty, the Hudson’s Bay Company Chief Factor at Edmonton in 1885, commented on the arbitrary nature of the Indian Affairs Bands in Treaty Six:

The main tie however which binds the Cree band is residential juxtaposition of individuals at the time the band was formed. Most of its members might with equal propriety belong to any band other than that with which they were initially connected. They form a heterogenous assemblage.624

In Treaties Four through Seven, and in Treaty Three after 1878, paylists of the closest available date were used to determine a Band’s entitlement to Indian Reserve land. As policies were introduced to keep Indians on their Band’s Reserves, the paylists were also used as a guide to entitlements to residency and land allotments on specific Reserves, as well as other benefits such as rations, access to Department-owned tools and livestock, and schooling.625 By 1898, senior Departmental official J. A. Macrae was emphasizing the importance of careful scrutiny of the paylists, not simply because of the annuity, but because they had become a means for administrators to determine entitlements such as rights to reside on Reserves or share in Band funds.626 In areas covered by Treaty, the lists became a proxy for recognition of Indian legal status, on issues as disparate as voting rights, access to hunting and fishing, and liquor regulations. “Non-Treaty Indians” or Indians belonging to “irregular bands” were included in the Indian Act, but from a practical perspective their rights were often restricted or questioned.627

624 HBCA, B.60/b/3 (Edmonton Correspondence Book 1878 – 1886), Ric Hardisty to James Grahame, 1 June 1880, 26 – 28 [CAP12938].
625 See for example the instructions to a senior field official in 1881 to “establish a fixed Ration for those who are settled on their Reservations and also a meagre ration for those who don’t belong to the District and who won’t go home” (LAC, RG10, Vol. 3744, file 29605-1, “Extract from Letter of E. T. Galt to Inspector Wadsworth, dated 13th July 1881” [CAP12538]); the removal of access to Departmental tools and livestock when former Band members withdrew from Treaty, and the removal of children from the school at Sandy Bay after their parents withdrew from Treaty (described in Section IV (7 - 8)).
626 LAC, RG10, Vol. 2832, file 170073-2, J. A. Macrae to Secretary, Department of Indian Affairs, 30 January 1899 [CAP11829], 7 – 8.
627 See for example the restriction of hunting and residency privileges in Wood Buffolo Park to Treaty Indians on the paylists of local Bands described in Section IV (13), and Alberta’s challenge to the hunting rights of “non-Treaty Indians” under the Natural Resource Transfer Agreements in 1933 ( see Frank Tough, “Introduction to Documents: Indian Hunting Rights, Natural Resources Transfer Agreements and Legal Opinions from the Department of Justice”, Native Studies Review 10, no. 2 (1995), 121 – 167 [CAP14458]).
In 1951, when the official Indian Register was established, the Treaty paylists formed the basis for the Register, incorporating all the vagaries of record-keeping, implementation of understandings of the *Indian Act*, administrative decisions, and policy directions of generations past that had affected them for the previous 100 years.