CHAPTER VI: SCRIP DISTRIBUTION UNDER THE DOMINION LANDS ACT: POLICY AND PRACTICE.

I. Introduction:

In Chapter IV we reviewed the petitions from the half-breeds in the Northwest Territories outside of Manitoba. These requested the recognition of the Metis land claims, hunting, fishing and trapping rights, plus other rights similar to those granted in Manitoba. Also reviewed was the fact that the issue of "half-breed" lands came up in conjunction with the signing of Treaties during the 1870s. The response of the Commissioners was that the "half-breed" requests would be referred to Ottawa and that the Queen would deal with them justly and generously. However, in spite of support for a settlement with the Metis of the Northwest by churches, some government officials and members of the Northwest Territories Council, no action was taken by the federal government to deal with these petitions. Macdonald, in particular, did not put any of his views on record during this period. However, based on the position he outlined to the House of Commons in 1884, it can be assumed that his own view was that Metis had no aboriginal rights

In 1870 Macdonald had stated that the civilized Metis of the Northwest should not claim the privileges of Indians. As well, both Archibald and Macdonald took the position that it would be a mistake to recognize the "Indian title of the Metis".[1] Macdonald himself had put his views on record in Parliamentary debates in 1884 to this effect.[2] In fact, there had been a consistent line of thought since 1846 among certain government officials, including those of the Hudson's Bay Company, that Metis were white because they were descendents of whiteman and, therefore, had no aboriginal rights.[3] It has also been noted that these positions were contradicted by early Indian Acts which did not exclude Metis , and by Macdonald himself, who decided to include a land reserve provision in the Manitoba Act,

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which land would be a grant towards an extinguishment of the Indian title of the "half-breeds". It is also clear, however, that this was done as a matter of expediency to placate the Metis and not out of any conviction that they had rights as descendents of aboriginal people.[4]

As a matter of political expediency, Macdonald promised to settle the "Northwest Half-breed claims" during the 1878 election campaign. He made provisions in an amendment to the Dominion Lands Act to provide Scrip to settle these claims in 1879. The Act was further amended and clarified in 1883,[5] even though Macdonald was still insisting in 1884 that the Metis had no special land claims. The provisions of the Act were not implemented until 1885, when the government was forced to take action as a result of events leading to the Northwest Rebellion.[6]

II Constitutionality of Provisions of the Dominion Lands Act, 1879 and 1883

The federal government proceeded unilaterally to enact the provisions of the Dominion Lands Act 1879, to extinguish the "half-breed" land claims. Also, the government proceeded unilaterally in drafting and passing Orders-in-Council to implement the provisions of the Act. Although there had been many petitions over the years from the Metis, the government had ignored them. During the signing of Treaties with the Indians in the 1870s, the Metis were consistently told that the Commissioners could not deal with them. When new Treaties were signed after 1886, the Commissioners dealt with the Metis at the same time that they made Treaty with the Indians. However, there were no negotiations with

the Metis only a distribution of Scrip in accordance with Orders-in-Council, and administrative regulations set down by the government. Therefore, the basic question which must be examined is whether these actions met the minimum requirement of Order-in-Council No. 9 incorporated pursuant to the terms of Section 146 of the B.N.A. Act 1867. This requirement was that the Canadian government would deal with the Indians in accordance with the equitable principles which had governed the British Crown.[7]

What were these equitable principles? They could only have been the principles spelled out in the Royal Proclamation of 1763. These principles were based on the practice of British North American colonies and the Crown who recognized the Indians as sovereign nations and purchased land from them as required. The Royal Proclamation confirmed these practices and this was the basis on which Britian had conducted its relationship with the Indians after 1763.[8] In addition, there were certain precedents which the British had established in negotiating Treaties with aboriginal peoples in other colonies and other continents. These had to do with the terms of Treaties which followed similar patterns regardless of whether they were concluded with aborigines in New Zealand, Africa or Canada.[9] As applied to Canada, the Royal Proclamation set out the following minimum conditions for a valid land purchase from the Indian peoples:

(1) lands could only be acquired by the central government in the name of the Crown;

(2) consent of the Indians was required before lands could be purchased;

(3) negotiations were to take place at a public meeting with the Indians who had an interest in the lands;

(4) the conclusion of an agreement (Treaty) suitable to both parties and the identification of the compensation to be received by the Indian peoples.[10]

It is clear from a study of the process used to conclude Treaties that the Government of Canada followed these principles rather strictly in its dealings with the Indians.[11] In addition, the Government included these provisions in Section 8 of the 1868 Act to create the Department of the Secretary of State. The Act included additional provisions for land acquisition which were based on established practice. This Act stated as follows:

> "No release or surrender of lands reserved for the use of the Indians or any tribe, band or body of Indians, or of any individual Indian, shall be valid or binding, except on the following conditions:
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> 1. Such release or surrender shall be assented to by the chief, or if there is more than one chief, by a majority of the chiefs of the tribe, band or body of Indians assembled at a meeting or council of the tribe, band or body summoned for that purpose...held in the presence of the Secretary of State or an officer duly authorized to attend such council by the Governor in Council or Secretary of State... .
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> 2. The fact that such surrender or release has been assented to...shall be certified on oath before some judge of a Superior county or district court, by the officer authorized...to attend such meeting, and by some one of the chiefs present...and shall be submitted to the Governor-in-Council for acceptance or refusal."[12]

These provisions were carried forward in later Indian Acts and covered both the ceding of Indian territories and surrenders from Indian reserves.

When the issue of Metis rights in the Red River was being considered, the federal government proceeded with legislation only after an agreement had been concluded with the Red River delegates. The provisions of the Royal Proclamation and section 146 of the B.N.A. Act were applied. The negotiations were held with the delegates of the people of the Red River, appointed by them for this purpose. The agreements were set out in the Manitoba Act, which Act was assented to by the Parliament of Canada and later by the Parliament of Great Britain. The only potential weakness in the process was that the negotiations themselves did not take place at a public meeting. However, the terms of this agreement were publicly debated both in Canada and the Red River.

It may be that the government, and Macdonald in particular, only went through this process because it was expedient to achieve their goals. However, the law is to apply equally to all citizens and is also binding on the government. Therefore, the Macdonald governments subsequent unlawful actions in implementing the Manitoba Act cannot be excused on the basis that he did not intend to implement the Act as approved by the parliaments of Canada and Great Britain. Further, the illegal steps taken by the government, clearly invalidate the implementation process itself.

In the case of the Metis outside Manitoba, was the rule of the law followed? Did the government act in a way consistent with constitutional requirements? Although the

Metis sent numerous petitions to the Canadian government, certain essential features were lacking in the actions taken by the government. These included the following:

a) the Metis did not consent to give up their claim to title in the land, nor were their other rights as aboriginal people ever discussed or considered;

b) there were no public meetings to negotiate an agreement or settlement. Indeed, there were never any formal consultations with any Metis leaders before the government took unilateral legislative action;

c) there was no document signed by the government or the Metis indicating that the government was acquiring their interest in the land for the government;

d) there was no compensation for the rights they supposedly surrendered;

e) the Metis signed no documents indicating they understood that by taking Scrip they surrendered their aboriginal rights.

The whole process of Scrip allocation was a unilateral process, with no negotiations whatever. In fact, the government acted in a manner which ignored all of the constitutional procedures which governed Canada's dealings with the aboriginal peoples.

Since early Indian Acts did not exclude the Metis from the definition of "Indians", there is no reason to

conclude that the government should have dealt differently with the Metis. Metis people were only excluded from the wording of the Indian Act after Scrip was issued, and then only in areas where Treaties had been signed with the Indians. The fact that no legislation was passed to institutionalize a method by which the government would deal with the Metis meant that it was bound to act in accordance with the provisions of the Royal Proclamation and Section 146 of the B.N.A. Act 1867. The fact that the Metis wanted to be dealt with differently from the Indians could not excuse the government from not following the constitutional process established for the purchase of aboriginal lands. The Metis were organized into communities and they clearly had leaders. They had made known their requests in the form of lists of rights they wanted recognized, which were essentially not different from those provided for in Treaties. These included:

(1) land grants (individual plots rather than reserves);

(2) schools;

(3) help in getting established in agriculture;

(4) local self-government in their communities;

(5) hunting, fishing and trapping rights;

(6) language, education and religious rights;

(7) representation in legislatures.

The form in which they wanted these rights provided was different from that desired by the Indians; however, this did not in any way condone the federal government's arbitrary use of unilateral procedures for dealing with the Metis. It must, therefore, be concluded that the Scrip distribution, as it was implemented, was not a legally valid way of acquiring the land title of the Metis. No action has ever been taken on other rights which the Metis claimed.

III. The Government's Purpose and Reasons for Proceeding as They Did:

The government's purpose in recognizing the Metis rights and in allocating Scrip was primarily economic. As stated in Chapter IV, the government's purpose in acquiring Rupertsland and the Northwest as territories of Canada was to get access to the natural resources so that they could be developed as a means of profitably investing surplus capital.[13] The resources which the government wanted access to were:

- agricultural land
- timber
- fish and game
- mineral resources

Fish and game were not a major consideration since these had already been exploited and, to a large degree, depleted.

However, the other resources were important. The land would enable the development of a settlement policy. Farmers growing grain would provide a profitable export commodity and generate the need for all the infra-structure required to support the production, transportation and servicing of the industry. This would include transportation and storage facilities, plus a communications system. In order to have a successful settlement policy, a policy which combined free homesteads and low-cost pre-emption lands,to settlers was necessary. Land grants could also be made to capitalist entrepreneurs to encourage them to build railways and communications systems. In addition, land could be used to settle aboriginal claims. The whole approach required limited investment by the Government of Canada.

The timber provided the building materials required for the new developments which would take place in the West; the building of farmsteads, villages, towns and cities. It provided, as well, a useful source of fuel. In the longer term, forest resources had major export potential. The primary mineral in which the government was interested at the time was coal. Coal was required as a cheap supply of fuel to develop the railway transportation system. It also had potential as a fuel for factories, smelters, and domestic use. The government was aware of other resources in the Northwest, such as base metals, iron ore, gold, silver, etc. These had less immediate development potential but nevertheless did have long-term development potential. As concluded previously in this report, to achieve all of these goals the government needed:

- cheap land

- inexpensive transportation and communications systems;

- perfect title to the land;

- settlers who understood European methods of agriculture and industry, and who would be loyal to European forms of government;

- a condition of law, order and conformity in the settlement areas;

The Indians and"half-breeds"were not considered to be desirable settlers - they allegedly did not know how to effectively utilize European agricultural techniques, and could not be trusted to be loyal to the government. Therefore, the policy was to push aside, isolate, control, swamp and manage the Indians and"half-breeds".[14]

IV. Methods of Implementation:

Following the experience in Manitoba, the Government of Canada decided to avoid the use of land reserves in distributing land to the Metis Scrip issues became the preferred method of land distribution. The initial Order-in-Council providing for the 1885 Scrip issue provided only for money Scrip.[15] Money Scrip was easy to distribute and was popular with the land speculators. It ensured a quick method of passing Metis land entitlement to other persons, as Archibald had suggested in 1870.[16] When the Metis at the Qu'Appelle Lakes refused to accept money Scrip (personal property) and demanded land Scrip (real estate), the government quickly amended the P.C. Order to provide for a choice of money or land Scrip. (The difference in the Scrip and the legal impli-

cations will be discussed in the next section of this Chapter). As a result, the government rescinded P.C. Order 688/85, dated March 30, 1885, and passed a second Order, P.C. Order 821/85, dated April 18, 1885, to provide for a land certificate (land Scrip) as an alternate to money Scrip. The total number of Orders-in-Council passed dealing with Scrip and land grants numbered in the hundreds. They dealt with provisions to issue Scrip, the setting up of "half-breed commissions", individual cases, special classes of cases, special situations and regulations governing the process for issuing Scrip and its use. There are, however, a limited number of P.C. Orders dealing with major issues of Scrip. These included:

a) the March 30 and April 18, 1885, Orders covering all areas in which Treaty had been made (Treaty areas 1-6);

b) the May 6, 1898, Order covering Metis in the Treaty 8 area;

c) the March 2, 1900, Order covering children in the Treaty 1-6 areas born between July 15, 1870 and July 13, 1885;

d) the August 13, 1904, Order covering Metis who had moved to and were residing in the United States;

e) the July 20, 1906, Order covering Metis in the Treaty 10 area;

f) the June 27, 1921, Order covering Metis in the Treaty 11 area (this provided for a money payment rather than Scrip).

There were other Orders dealing with the Treaty 7 area and Adhesions, some of which included a substantial number of persons. All of the details, as well as background information, are to be found in a report prepared by N. O. Cote of the Department of the Interior, dated December 3, 1929.[17]

The method of distributing Scrip was through appointed Commissioners. They were appointed by Order-in-Council. Some of the rules governing their conduct were spelled out in these Orders. Other Orders were contained in letters of instruction. P.C. Order 309, dated March 1, 1886, appointing Rodger Goulet as a Commissioner, is typical of such Orders.[18] Originally, the Commissioners were appointed to deal with Metis only. However, starting with Treaty No. 8, the Commissioners dealt with Metis and Indians at the same time.[19] The procedures to be followed by the Commissioners included the following:

a) the time and place of Commission sittings were to be advertised in newspapers and on handbills in land offices, Indian Affairs offices, and other public places frequented by the Metis;

b) applications were received on a standard application form;

c) after review of the application the Commissioner would either reject the application, approve the application or reserve decision until further review;

d) an application would be rejected if the person's name appeared on the list of allottees in Manitoba or previous Northwest lists of allottees, if the person could not prove they were a Metis or if the person was registered as an Indian;

e) if the application was approved, the allottee was issued a Scrip certificate of the type requested;

f) this Scrip certificate, after being duly executed by the allottee or his/her agent, was sent to the Dominion Lands Office in Ottawa and exchanged for a Scrip note(only Scrip notes were negotiable for land);

g) if deferred, the application was referred to Ottawa for further investigation;

h) Ottawa might reject the application, approve the application, or have a special P.C. Order passed for persons who for one reason or another did not fit all of the criteria;

i) an allottee wishing to locate his/her Scrip was to go to the land office covering the area in which he/she wished to live and select a plot of open Dominion land of the specified size and ask that the Scrip be located on this land;

j) when the Scrip was registered against the land, the land patents would be issued;

k) the person would then apply for and be issued the certificate of title to the land.

In addition to the above, there were literally hundreds of individual rulings on cases in dispute or referred to Ottawa for a decision. These rulings usually became established government policy and often had no sound legal rationale. Rulings also changed from time to time, depending upon the policy of the government at various points in time and, in particular, upon the pressures exerted on politicians by Scrip speculators. (These will be explored in more detail later in this Chapter).

V. Scrip:

A. Origins and Purpose:

Scrip is defined as a certificate which gives the

person or corporation to whom it is granted the right to receive something. It is a temporary asset which, in the case of half-breed Scrip, could be exchanged only for land. The idea of using Scrip to make land grants was developed in the U.S.A. where it was allocated to settlers, aboriginal people, and others as a means of bestowing a land grant.[20] In Canada, Scrip was granted to a number of persons or groups other than to the "half-breeds". It was granted to volunteers in Wolseley's Army and Middleton's Army, South African volunteers, and to R.C.M.P. officers on their retirement from the Force. In addition, the government gave Scrip to land companies in exchange for their cash advances on colonization land schemes. Also, some colonization companies used Scrip to allocate lands to persons within the colonization tract.[21] In Canada, Scrip was granted with several key purposes in mind. These included:

i) a means of distributing land which would give individuals flexibility as to where they wished to select their land;

ii) to make certain that if persons did not plan to use their Scrip it would be easily negotiable and passed to speculators or settlers who would locate it on land;

iii) to ensure that land grants bestowed clear title on the grantee or the person using the Scrip.

B. Kinds of Scrip

The original practice was to issue a certificate, made out to "the bearer", on which a money value was specified. The certificate could only be exchanged for land of equivalent value. Since the government in the early 1870s had arbitrarily

set the value of open Dominion land at $1 per acre, a $160-Scrip note could be exchanged for 160 acres of land. Since the certificate was in effect a "bearer bond", it was easily negotiable for money, goods or services. Approximately two-thirds of all Scrip issued in the Northwest was money Scrip. This ranged from ninety per cent money Scrip during the 1885-87 issue to approximately fifty per cent money Scrip in the 1906 issue. Money Scrip was a personal asset covered by personal property laws. There were few restrictions other than those imposed by the government on its use.[22]

Land Scrip was a Scrip certificate which could be exchanged for the stated number of acres of land (160 acres for example) specified on the face of the certificate. The certificate was made out in the name of the person to whom the grant was allotted. Land Scrip was real property and was governed by real property laws. These provided a number of protections to the owner and required that the land title could only be transferred to some person other than the allottee after the allottee had acquired the patent in his/her name. Land Scrip was, therefore, not as negotiable because the speculators required the full co-operation of the allottee in having the Scrip allocated and patented before they could acquire the title. This often involved considerable risk to speculators and might involve substantial additional expenses for the process necessary to obtain the land title. As indicated above, one-third of all Scrip issued was land Scrip. This ranged from ten per cent of the 1885-87 allocation to fifty per cent or more of allocations during the early 1900s.[23] Money Scrip traditionally, therefore, brought a higher price when sold than did land Scrip. It was only when land was re-evaluated and cost considerably more than $1 per acre that land Scrip became popular with speculators and demanded a higher price.

C. Rules Governing Scrip Use

In the case of money Scrip, the Department of the Interior had originally adopted a policy that assignment of rights conveyed by the Scrip would not be recognized until the Scrip notes had been delivered into the hands of the allottee. The allottee had to make his/her own application and send the Scrip certificate to Ottawa. Once the Scrip note was delivered to the allottee, it was considered a personal asset, which he/she could dispose of as they wished.

The original policy included a refusal to accept Powers-of-attorney.[24] The speculators, however, soon challenged these policies which they argued to be in violation of existing civil law. In 1885, the Department allowed Commissioners to accept applications from agents with a properly executed Power-of-attorney, but assignments of Scrip entitlement were not accepted. However, in 1899, a P.C. Order was passed allowing the Commissioners to accept assignments, providing the Commissioners satisfied themselves that the assignments had been properly obtained.[25] In theory, Scrip notes were still to be delivered to the assignee. In the case of money Scrip, applications originally had to be made by the allottee in person. This practice too was changed when challenged by speculators, and agents were allowed to apply on behalf of an allottee. However, assignments of land Scrip were not recognized (except in several cases where exceptions were made). The Scrip note had to be delivered into the hands of the allotee, who had to locate it on land of his/her choice. Only once the patent was issued could the allottee assign his/her title to the land to someone else.[26] Speculators, of course, found ways of getting around these provisions (which will be discussed later in this

Chapter). Other important rulings on Scrip included the following:

i) money Scrip could be claimed by heirs of a deceased allottee and remained a personal right;

ii) land Scrip also could be claimed by heirs of a deceased allottee and remained a property right;

iii) military Scrip, on the other hand, which was all money Scrip, was ruled as being a property right (no rationale was given for this ruling);

iv) Scrip could be used to acquire homestead lands, pre-emption lands, coal leases, pasture leases, and timber leases;

v) if more than one person acquired a Power-of-attorney to the same Scrip certificate, the one to first send in their Scrip certificate with a Power-of-attorney would receive the Scrip note;[27]

vi) "half-breeds" could withdraw from Treaty to receive Scrip but the value of any annuity money received would be deducted from the Scrip.[28] This policy was changed in 1884 so as not to deduct annuities received;[29]

vii) Scrip could only be applied to lands in Manitoba and the Northwest Territories;

viii) the Department was not to be responsible to investigate charges of Scrip being acquired fraudulently. Individuals with complaints were to seek legal remedies through the courts;[30]

ix) large Scrip buyers could establish Scrip accounts with the Department of the Interior and bank Scrip in their accounts. When they decided on the use of the Scrip, the Department would assign the Scrip against land or other transactions on request;[31]

x) Scrip could only be located on open and surveyed Dominion land.[32]

D. Policy Changes or Exceptions:

Some of the changes in Scrip policy are noted above. Namely the policy on Powers-of-attorney and assignments were gradually changed. Specific policy changes included the following:

i) April 13, 1884 -- a P.C. Order was passed accepting assignments of the Scrip of "half-breed" children to the heads of families;[33a]

ii) November 26, 1885 -- the Department ruled that the issue was not who was entitled to Scrip but who could receive delivery of Scrip. A person holding a Power-of-attorney can receive delivery of Scrip;[33b]

iii) July 30, 1886 -- minor children were to be allowed to select their land and receive their patents before they became 18 years of age;[33c]

iv) titles acquired with Scrip were free titles; there was no settlement or cultivation requirement;[34a]

v) January 17, 1892 -- a special P.C. Order was passed to recognize the assignment of land Scrip made by deceased "half-breeds" or by deceased heirs;[34b]

vi) 1897 -- the government decided to accept land Scrip assignments for Scrip issued in 1885-87 which had not yet been redeemed by the allottees;[34c]

vii) October 27, 1899 -- Scrip could be delivered to an assignee if he had a properly executed assignment(money Scrip);[34d]

viii) December 1, 1903 -- Scrip assignments to all Scrip were to be accepted;[33e]

ix) May 29, 1919 -- land Scrip notes could now be located by the assignee without the appearance of the half-breed at the land office;[34f]

There is a proliferation of correspondence on the above policy changes in files dealing with Scrip rulings. They further support the above rulings and indicate how pressure was brought to bear on politicians by lawyers and speculators, which resulted in gradual policy shifts or changes in their favour. There were also several exceptions made to the general rules. In the case of one R. C. Macdonald, who was alleged to have fraudulently acquired large quantities of Scrip granted to half-breeds resident in the United States, a special investigation was held. The investigation cleared Macdonald of any criminal offense, even though a U.S. Court found that the allegations of the"half-breeds,"who had launched legal action of Scrip having been obtained by fraud, were proven. Following the report of the Commission, Macdonald was allowed to locate all of this Scrip on land of his choice without the presence of the allottees, even though all the Scrip was land Scrip. This was done on the authority of the Deputy Minister of the Interior.[35] Other similar exceptions were made at a later date

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E. (e) Law vs Practice:

The question of how the Indians and the Metis were to be dealt with had been of some concern to the Macdonald government for some time. As a result, the government commissioned Flood Davin to undertake a study of the question and make recommendations to the government. He visited the U.S.A. and studied their system, he consulted with the clergy in Western Canada and, as well, he consulted with other interested persons plus officials in the Department of the Interior.[36] He prepared a detailed report with recommendations which he submitted to the government on March 4, 1879. The main recommendations in his report which dealt with the "half-breed" question were the following (Flood Davin later settled in Regina and started the Regina Leader):

- the problems of the Metis could not be settled by an issue of Scrip;

- seed, tools, equipment and livestock should be provided to help Metis get established in farming;

- agricultural training should be provided;

- industrial training schools should be established.[37]

In 1878, David Laird, Minister of the Department of the Interior, urged the government to respond favourably to the Metis request for land and for help in becoming established on farms. In 1878, the Northwest Territories Council recommended that land reserves be set aside for the

Metis and that agricultural aid be given. Others who made similar recommendations to Macdonald during the same period included Colonel Dennis, Bishop Tache, Father Lacombe, and Judge Hugh Richardson.[38] Macdonald, however, rejected this advice and refused agricultural assistance.[39] His position was that the Metis should be dealt with the same as the whites.[40] Nevertheless, Macdonald himself sponsored the amendments to the Dominion Lands Act in 1879 and 1883 dealing with "half-breed" land rights. In spite of this action, in 1884, he still took the position that the Metis should be dealt with the same as whites and did not move to implement the provisions of the Act until forced to do so in 1885. As noted later by Sifton, the government's main concern in issuing Scrip was not the benefit of the Metis, but to placate them so the government could proceed with its development plans.

It would have been relatively simple for the government to set aside land reserves for groups of Metis in areas where they were settled. The government was helping colonization companies acquire blocks of land for colonization purposes at exactly the same time that they were refusing to deal with the "half-breed" land question.

Why did the government use easily negotiable Scrip issues to satisfy the "half-breed" land claims and not help them get established when many influential persons recommended against this approach? It is true that this, in theory, gave the Metis flexibility in selecting their land where they wished. However, since the Metis were inclined to settle together in one area or community, there was no pressure from them for a negotiable Scrip issue or for any form of

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Scrip as the method of providing land grants. This action of the government can only be explained on the basis of the government's policy of dispossessing the Metis.

The provisions of the legislation and the Orders-in-Council could be most easily subverted by an issue of money Scrip. The Metis were temporarily placated; they were dispossessed of their land rights and were forced into isolated rural areas. The land grants quickly and cheaply passed into the hands of speculators. The speculators, wishing to profit from their investments, helped promote the bringing of settlers into the Northwest. The government also eliminated any future challenges to the validity of the land titles which it had given out to individuals and corporations.

In practice, money Scrip notes were to have been delivered to the grantee. Nevertheless, records show that as many as ninety per cent of the Scrip notes were delivered into the hands of banks and other speculators.[41] For example, the government delivered to the banks fifty-two per cent of all Scrip notes. In the case of money Scrip, they had delivered to them sixty per cent of the notes.

It cannot be established from records that the banks had actually purchased all of these Scrip notes. In some cases, the Scrip may have been delivered to the banks at the request of the allottee or the assignee. However, since the Metis were not in the habit of dealing with banks, which were few in number, the amount of Scrip which would fall into this category would not be significant. In addition, we do have the Scrip accounts and correspondence with the Department of the Interior, into which banks deposited sub-

stantial amounts of Scrip to their credit.[42]

The banks also acquired land Scrip but the quantities were small compared to money Scrip - for two reasons. Firstly, the Scrip was classed as real estate and the banks were prohibited under the Bank Act from dealing in real estate. Secondly, the land Scrip was not readily negotiable and therefore had a more limited resale value.

There were many other speculators involved in purchasing Scrip. These included private financial institutions such as Osler, Hammond and Nanton, and Alloway and Champion; land companies such as the Haslam Land Company and the Saskatchewan Valley Land Company; merchants like the Dixon Brothers of Maple Cree; federal politicians including T.O. Davis of Prince Albert, A.J. Adamson of Rosthern; public servants such as Lowe (Deputy Minister of Agriculture), D.H. Macdonald (First Indian Agent in the Northwest), Isaac Cowey (Dominion Lands Agent), plus many legal firms and small town merchants.[43]

According to computer analysis of the data, approximately ninety per cent of all Scrip issued passed into the hands of Scrip buyers. Only ten per cent remained with the allottees.[44] The Manitoba Metis Federation found similarly that ninety per cent of the land grants in Manitoba, under the Manitoba Act, passed into the hands of speculators.[45]

Another method used to acquire Scrip from the Metis was that of using Powers-of-attorney. According to Ruttan, an official in the Indian Affairs office in Calgary, Scrip buyers presenting themselves as government agents would acquire Powers-of-attorney from unsuspecting Metis. Evidence indicates that for more than a year prior to the

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1898 Athabasca Scrip issue, agents were approaching Metis offering to represent them and to present their Scrip applications for them to the Commissioners when they visited the area to take Scrip applications. They would make a cash payment of $25.00 with the offer of more money at some future date when the Scrip was issued.[46] Generally the Metis would not see the agent again. The practice was to use Powers-of-attorney to make the application, and once having received the Scrip certificate, to use that same Power-of-attorney to obtain the Scrip note. In the case of money Scrip, the speculator then had a negotiable document. In the case of land Scrip, blank quit-claim deeds were used to assign the land entitlement. These were completed when the Scrip had been allocated. This was done either with the collusion of land agents or fraudulently.[47]

Not only did the government keep Scrip accounts for speculators but it actively advertised Scrip for speculators; and where Scrip could be obtained, by posting these on bulletin boards in Dominion Land offices.[48] In addition, various speculators, including banks, ran regular advertisements in daily and weekly newspapers advertising Scrip for sale. Some banks also ran advertisements which indicated they would buy Scrip.[49]

Other evidence of bank activity is to be found in the financial records of the Dixon Brothers of Maple Creek. (These records are now in the Public Archives in Regina. They give us a glimpse of the extent of the "behind the scenes" buying and selling of Scrip). The Dixon Brothers were direct buyers of Scrip, and according to Scrip records acquired

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approximately 200 Scrip notes with a land equivalent of $40,000 or 40,000 acres. However, they did extensive buying and selling either through agents or from others who bought and sold Scrip. They had extensive contacts with all the big Scrip buyers such as R.C. Macdonald, D.H. Macdonald, McDougall and Secord, Alloway and Champion, Fewing, the Cowdry Brothers and others. The quantity of Scrip they sold was substantial and far beyond what the records show they acquired. The following are examples of Scrip orders placed with the Dixon Brothers by several banks during the period 1900 to 1904:

i) Union Bank of Canada:

July 1901	-	$ 5,000
October 1900	-	10,000
November 1900	-	15,000

ii) Imperial Bank:

1901	-	10,000

iii) Merchants Bank:

March 1901	-	10,000

Other large orders were received from R.C. Macdonald - $25,000; Atkinson - $70,000; R.C. Macdonald - $15,000. Not all of these amounts were taken or supplied but the very size of the transactions indicates the nature and degree of the Scrip speculation, which is not in any way revealed by records (which will be reviewed in detail in this Chapter).[50]

A lawyer named Fillmore, who practiced law in Winnnipeg for many years, in an article published in the Manitoba Bar Review in 1945, described how Scrip speculators

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operated. He was an Articling student in a well-known Winnipeg law firm. In 1906, he was sent by his supervisor, a lawyer named McDonald, to go to Ile-a-la-Crosse to buy Scrip to be issued in connection with the signing of Treaty 10. He and several other buyers from Winnipeg travelled by train with Commissioner McKenna's party. Charles Mair, of Red River fame, was Secretary to this Commission, as well as to previous Commissions.

At Prince Albert they were met by other speculators who all travelled in the company of the Commissioner to Ile-a-la-Crosse. When they reached their destination the speculators got together and set up an informal syndicate to buy the Scrip at an agreed price. They set up their tents approximately 100 yards from the Commissioner's tent. As Metis were issued Scrip, they were escorted to the next tent where their Scrip was purchased from them. Fillmore believes they bought most of the Scrip issued.[51] This is not surprising, since Scrip could only be located on open and surveyed Dominion lands, of which there were none anywhere close to Ile-a-la-Crosse.

Approximately sixty per cent of all Scrip issued at Ile-a-la-Crosse was land Scrip.[52] Fillmore related how local Indians and Metis were enlisted to help locate this Scrip fraudulently in the Winnipeg land office. There is no reason to believe that similar practices were not followed by Scrip speculators from Regina, Prince Albert, North Battleford, and other centres, who were present and had purchased Scrip The records also indicate that Powers-of-attorney and blank quit-claim deeds signed by the allottees were widely used in these transcations.[53] Complaints to the Department of the Interior over this practice by the allottees were rejected.

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The Department claimed that it had no responsibility in the matter and persons could take their complaints to court.[54] Legal action was launched against one of the primary abusers of Scrip - the law firm of McDougall and Secord. The law firm was committed for trial after the preliminary hearing found sufficient evidence of fraud to warrant a trial. The government immediately rushed to pass legislation in 1920 limiting the time period between the commission of the allotted Scrip fraud and the date a charge could be laid to three years.[55] As a result, legal action against McDougall and Secord was dropped, even though the legislation was not retroactive.

F. The Uses to which Scrip was put:

When half-breed Scrip was provided for in Orders-in-Council the Orders made it quite clear that a land benefit was being bestowed on the allottee. The Scrip notes themselves also clearly stated they could be exchanged only for open Dominion land. This was the end use of Scrip notes. The Metis and speculators found that Scrip could be used for other puproses than those intended, since its end value in land made it negotiable for other purposes. This was true to a lesser extent for land Scrip.

Because of the desperate and destitute situation of the Metis the Scrip was often sold for cash, bringing amounts equivalent to 25 cents on the dollar or acre in 1878, to as high as five dollars per acre for land Scrip in 1908. The majority of the Scrip, however, was sold for approximately one-third of its face value. Scrip was also exchanged for farm animals, implements, seed, food, and other supplies.

Land Scrip in particular was useful for this purpose, as it was bartered with local merchants and local farmers who were able to obtain the co-operation of the Metis in locating the Scrip on land. In a money-starved economy, Scrip became a form of currency. Merchants and small-town lawyers may have sold their Scrip to banks or land companies for a profit rather than using it themselves.

Scrip also was to have a number of other official and unofficial uses. As mentioned previously, land companies such as the Haslam Land Company and the Saskatchewan Valley Land Company bought Scrip. The government allowed these companies to use it to make down payments on colonization lands and other classes of Dominion lands. Other speculators such as Alloway and Champion also used Scrip to acquire land. The Canadian Pacific Railway used Scrip to acquire townsites where these happened to fall on sections not owned by the Railway.[56] It would also appear that banks may have used Scrip to create money. (This will be discussed in more detail later in this Chapter).

The government itself gave official approval to a number of alternate uses of Scrip. Some of these were approved by P.C. Orders and others were carried out as a question of government policy. We would suggest that some of these uses were not legal under the terms of the P.C. Orders, which provided for Scrip issues. The following were some of the specific ways in which the government allowed Scrip to be used:

i) October 16, 1899 -- Scrip was accepted in payment for hay and grazing permits only;

ii) May 1, 1900 -- Scrip could now be used to pay rent on ranch lands;

iii) May 1, 1900 -- Scrip could now be used to obtain surface, mineral and coal rights;

iv) April 28, 1902 -- Scrip could be accepted in payment for rent due or occurring due on lands in the Rocky Mountain Parks of Canada;[57]

v) 1901 -- farmers could use Scrip to buy homestead and pre-emption quarters they occupied.[58]

In at least one case involving a politician, a former Lieutenant-Governor and other friends, Scrip was applied to the purchase of timber leases.[59] It is obvious that Scrip rulings were made to facilitate the government's policy for the West. (This fact will be examined in more detail later in this Chapter).

G. Scrip speculation:

Land speculation is of course an old art, since the source of all wealth is the renewable and non-renewable resources which the land relinquishes to its owners or to those allowed to exploit those resources. The interest in the land of the west by British and Canadian capitalists as a place where they could invest their surplus money and reap large profits was, of course, an entertaining prospect. However, the prevailing government philosophy of the time was not to allow wealthy corporations or individuals to acquire large tracts of land or control over large quantities of land in the West.

The Canadian and British governments recognized that it was not in the interest of their development and settlement policies to allow such control over land to take place. The merchants had become the new class of power and wealth. Their wealth was based on the production and sale of consumer goods and goods required for capital investment, such as buildings, machinery, tools, etc. The more consumers, the more goods could be sold. In addition, the transportation system and communications system required a large number of settlers. Therefore, it was in the general interest of those who controlled power to have most of the land owned and controlled by the government. This would allow the government to develop a generous land settlement policy to attract large numbers of immigrants. The government also needed the land to finance railway construction.

The government could give generous land grants to encourage private investment in railways. It was an inexpensive way for the government to ensure the building of the transportation system. In addition, both the railways and their investors would promote immigration to ensure that their investments paid off.

As well, the government offered cheap colonization lands, in what were considered to be less desirable settlement areas, to corporations who would take on the responsibility of recruiting and settling immigrants. This land was to be sold to these immigrants at a profit. For the most part, these were areas not served by railways and which were considered to have a more marginal climate for agriculture. These policies had worked in the U.S. and, therefore, the Canadian government

decided to implement them in the Northwest. All of these schemes had limits on the prices which the immigrants and settlers could be charged for the land. Naturally, the government and the merchants needed large-scale agricultural settlements if these policies were to encourage profitable development.

Therefore, land which could be acquired with Scrip was a very attractive speculative device because land grants given by the use of Scrip carried a clear title. There were no conditions on the use or resale value of the land. Also, there were no improvement conditions for agricultural use, as was the case with the homestead and pre-emption lands.[60] The "half-breed"money Scrip, in particular, was in more demand than land Scrip, since money Scrip was considered personal property and easily negotiable. It could easily be redeemed for land. Also, since the Metis , with their economy and lifestyle destroyed, found themselves desperately in need of cash or goods, the Scrip could be acquired inexpensively and turned into land or other assets which quickly appreciated in value.

The policy regarding"half-breed"land also accomplished the goal of getting the Metis off the land and out the way of the settlers. The policy with other forms of Scrip such as Scrip for soldiers, volunteers, and the N.W.M.P. encouraged them to settle in the Northwest. This, of course, did not prevent those who didn't want to farm from disposing of Scrip to speculators or using it themselves for speculative purposes. However, it did discourage the large speculators from dealing in such Scrip, making it more difficult to turn that type of Scrip to a profit.

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Speculation in"half-breed Scrip"began in the Northwest shortly after the Manitoba Act was put in place, and continued as long as Scrip could be redeemed for land. Speculators began to buy land entitlement (quit-claim deeds) and Scrip from the Metis at prices which gave settlers only about one-quarter of the actual value of the land as established by the legislation at the time.[61] As indicated above, there were a number of uses for the Scrip, which enabled buyers to sell for a profit to farmers, banks, and to those wanting to use the Scrip for other purposes. For those buyers who had access to surplus capital of their own, they could afford to buy, locate the Scrip, and hold the land until the influx of settlers and the availability of land was such as to drive up prices. Because of the low price of Scrip, such transactions proved profitable even though investments were drawing no interest.

Small town merchants, for example, exchanged goods for Scrip at prices which guaranteed the merchant a substantial profit when he sold it. Some of these persons also converted the Scrip into land to be held for future sale. Others such as politicians, civil servants, and lawyers, supplemented their income in this way and, in some cases, turned the Scrip into large holdings or into valuable mineral or timber resources. For example: A. J. Adamson, MP for Rosthern, and a business partner of Sifton, patented approximately 240 quarters of land in Saskatchewan using Scrip; D. H. Macdonald, first Indian agent in the Northwest Territories, patented approximately 160 acres in Saskatchewan under his name using"half-breed"Scrip. This speculation assisted the government in the achievement of its settlement and development policies.[62]

H. Scrip and the Creation of Money

Although the Northwest had been added to Canada as a territory in 1870, and the federal government had high hopes for rapid settlement of the area, this settlement did not proceed as planned. The government, by 1878, through Treaties 1 to 6, believed it had acquired title to almost all the land in what was known as the fertile belt. Only land in some of the more northern areas of the prairies - now agricultural land, but not considered particularly suitable for agriculture at the time - had not been acquired from the Indian inhabitants. By 1885, all of the Indians in an area east of Battleford had been placed on reserves. In the western area, Indians were still resisting taking reserves. In spite of these preparations, the rapid influx of settlers did not take place. The building of the C.P. railway had encountered many problems and, unfinished, it had come to a standstill in 1884. Macdonald was unable to persuade Parliament to provide the builders with further funds.

Since there were no export markets and since getting goods and machinery into the area was extremely expensive, the area was still not attractive to European settlers, who were attracted by the better opportunities in the U.S.A. Government census figures indicated that in 1886, in all of the Northwest outside of Manitoba, there were not more than 10,000 non-aboriginal settlers. As a result, the area was not attractive for developers and investors. The needed services and infra-structure were slow in developing for reasons sited above. As well, the government was spending little money on public works in the area. According to old

settlers of the time, records of the Northwest Territories Council, and letters of William Henry Jackson, the area suffered from a perpetual depression. With investment limited, the fur trade and the buffalo hunt greatly depleted, and limited government expenditures, there was a serious shortage of money in the western economy. Farmers and businessmen had great difficulty acquiring loans ,as there was no cash market for their produce.[63]

The military action in 1885 did inject badly needed cash into the Northwest economy. This spurred the completion of the railway in 1886, which injected more money into the prairie economy. However, these events injected only a short-term cash flow into the economy. The solution to long-term injection of money depended on several factors. Firstly, rapid settlement which was still discouraged because of the lack of transportation connecting with the Canadian Pacific Railway. Secondly, the lack of private investment by farmers, small businesses, banks and other financial institutions and government investment. The major investments would have to come from the financial institutions. These were still small in number and reluctant to invest without good collateral, since the Northwest was still a high risk investment economy. Early settlers, nevertheless recollect that after 1886 they experienced no problems getting money from banks with little or no collateral demanded.[64]

In 1885, when "half-breed" Scrip began to be issued, money was still in short supply. In particular, the Metis themselves had access to very little cash because of the economic situation in which they found themselves. Therefore, Scrip notes became a form of currency and were accepted

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as such by merchants because of their end value. Records indicate that Scrip, in addition to being sold for cash, was also traded for groceries, clothes, farm animals, tools, equipment and other goods needed by the Metis. Money Scrip was mostly sold for cash and land Scrip was primarily exchanged for goods. This was due to the nature of the instrument which has been discussed in detail previously in this Chapter. Since speculators could use Scrip to acquire lands and for other economic purposes discussed above, it was as good as money to them. Merchants could also use it to acquire goods from wholesalers, and some wholesalers such as the Dixon Brothers of Swift Current and Maple Creek traded extensively in Scrip.

The direct use of Scrip as cash, although important, did not solve the need for large investments in a largely undeveloped economy. In addition, in 1886, only a limited number of farmers could get their products to market easily. For the rest, grain had to be hauled long distances at considerable cost. As a result, it appears the banks played a major role in the creation of money, using Scrip.

Our records, at first glance, indicated that the banks might simply be offering a service to speculators and allottees by receiving and selling Scrip for them. However, as more information was examined and analyzed, it became obvious that the major portion of the money Scrip notes were delivered to banks. A final computer tabulation of Scrip from individual files and from the Scrip accounts maintained by the Department of the Interior indicates that approximately fifty-two percent of all Northwest"half-breed"Scrip was delivered

to chartered banks.[65] Since the regulations followed by the Department originally were that Scrip must be delivered to the allottee or his/her agent (persons having Powers-of-attorney), one must question whether the policy was followed strictly, in practice. Alternately, one must conclude that banks were acquiring Powers-of-attorney from Metis entitling them to act as their agents. If this is so, many of the Scrip buyers who followed around the Scrip commissioners must have been buying for the banks. By the late 1890s, when assignments of money Scrip were accepted, the quantity of Scrip purchased by the banks increased. The bulk of the Scrip was issued between 1898 and 1908. This period coincided with the boom in immigration. It would also have been the period when the demand for money from the banks was the greatest.

Other evidence of the involvement of the banks in Scrip speculation is found in an article by Peter Lowe, titled "All Western Dollars". The article outlines how private banks were involved in Scrip speculation and how they used Scrip. The title of the article implies that the West was developed with western dollars.[66] (The question is, how could this happen when the resource base on which the creation of wealth took place was still largely undeveloped?) Other evidence of bank speculation in Scrip can be found in old newspapers where banks regularly advertised both the purchase and sale of Scrip.[67] In actual fact, it is likely that banks acquired much more than the fifty two per cent of Scrip shown by the individual files, since the banks also bought Scrip notes from merchants, Metis and other buyers after the notes had been delivered.

Why did the banks buy Scrip in large quantities? This question was puzzling from the beginning, since the Bank Act at that time prohibited the banks from dealing in real estate.[68] A check of the Land Archives in Saskatchewan indicates that banks did not use Scrip to patent any land in their own corporate names. It is known that banks sold Scrip "over the counter" to farmers. The records also indicated that they sold Scrip, in quantity, to land companies. At least one such transaction is verified by the Scrip buyers' accounts.[69] Lowe's article indicates that other buyers were corporations such as the Haslam Land Company and the Canadian Pacific Railway.[70] In the case of the former, Lowe's allegations were verified by a check of the Land Archives which show that the Haslam Land Company applied large quantities of Scrip to land acquisitions in Saskatchewan.

Although these sales would have brought the banks some profit, they did not in themselves explain the banks' involvement in Scrip speculation in such a major way. Although we can only speculate on this, since we do not have access to bank records, it appears that banks used the Scrip to create money. Here we draw on information regarding the essential nature of the banking system. Banks have two sources of funds: their own assets and the deposits from customers. In regards to deposits and bank assets, the banks could put into circulation bank notes to the equivalent value of these deposits and assets, less the margin of cash which banks had to keep on hand to meet day-to-day requirements. This would mean Scrip enabled banks to increase the cash they put into circulation. This additional cash was acquired at considerably less than the value of the bank notes. In addition, banks could make loans against both deposits and assets. There was no control on the ratio of bank loans to bank assets prior to 1930.

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In a 1930 House of Commons debate on amendments to the Bank Act, it was pointed out by an M.P. that it was not uncommon prior to that time for banks to make loans to the value of up to ten times their assets.[71] It will be recalled that speculators bought Scrip for approximately one-third of its land value. Banks were no exception to this practice. In the possession of banks, Scrip notes became an asset in the amount specified on the face of the notes. The banks could use these notes as an asset for the purpose of creating loans. Therefore, they had in their possession an asset that they could use to create money by granting loans on easy terms. Let us examine the following propositions:

- an Imperial Bank in Moose Jaw acquires $1,000 worth of Scrip for $350;

- the Imperial Bank issues up to $10,000 in loans against this asset at six per cent;[72]

- if sixty per cent of the creditors pay their interest the first year, the banks realize $360 interest or enough to cover the original cost of the Scrip;

- if only sixty per cent of the loans are repaid, the banks end up with a cash asset of $6,000. The original value of the original Scrip notes increased very quickly;

- since it is common knowledge that most settlers repaid their loans, the actual return to the banks would have been much larger than indicated above;

- since the banks had some two million dollars worth of Scrip delivered to them, and probably acquired additional amounts through purchases of notes from other holders of Scrip, it can be seen that enormous quantities of money could be created in a short period of time.

Hence, Peter Lowe's suggestion that the West was developed with "All Western Dollars". Even if there were defaults on loans, the loans still found their way into the economy and generated economic activity. Even on defaults the banks stood to lose nothing and the assets of the shareholders were not endangered in any way.

The Scrip records indicate that Scrip was sometimes held by the banks for up to thirty years before it was sold to someone who would redeem it for land. By this time, its value had increased substantially and banks could sell the Scrip at a profit to farmers and other persons who could use it, thereby recovering their initial investment. It is known from advertisements in newspapers and in land offices that banks pursued an active policy of selling Scrip in this way, after having it in their possession for some years.[73] It is interesting to note that the Government of Canada was obviously aware of the banks' purchase of Scrip and openly collaborated with them by allowing them to keep Scrip accounts in Ottawa and by advertising their Scrip free of charge in their land offices.[74]

1.i The Scrip Speculators

What is of interest about the speculators is that they were generally active - buying peoples' land entitlement or Scrip entitlement well before the administrative and legal machinery was set up to distribute the land entitlement. This was true in Manitoba where speculators obtained assignements to river lots, reserve lands and Scrip in advance of their issue. In Manitoba, this happened in part because of the years of delay in confirming title and in distributing land and/or Scrip. The speculators, therefore, had considerable time between the passing of legislation and the announcement of policy, and the actual implementation of that policy, to pressure people into selling their entitlement. Laws were passed disallowing such assignments, and although the Dominion Lands Branch policy was not to recognize these assignments, many indeed were recognized. Even where they weren't recognized, this proved to be only a matter of formality. The allottee usually co-operated in the process of obtaining his title and then by quit-claim deed transferring the title to the speculators.[75]

In Manitoba, the longer the delay in distributing land grants, the more desperate became the position of the Metis This increased the pressure on them to sell their entitlement to the speculators. When they sold their entitlement, many Metis left the area and moved west where they could find new land. In other cases they moved without selling their entitlement. The research of the Manitoba Metis Federation indicates that the census confirms that many people had left the Red River area before receiving their land grants. In spite of this, most of these entitlements were registered in the name of former residents and then transferred to the

speculators. In Manitoba the speculators were persons already well-known in the Red River, such as Dr. John Schultz, who, for example, acquired 10,000 acres of river lots; Donald Smith, Charles Mair, James McKay, Bannatyne and others. As well, newcomers such as the law firm of Bradshaw, Richards and Affleck and entrepreneurs like Alloway and Champion acquired land. Also, the trust companies and banks were active in Scrip and land speculation.[76]

Government files show that speculators often made conflicting claims to land - more than one speculator having purchased an assignment. As a result the government adopted a policy of recognizing the first assignment submitted for registration to the Department of the Interior. Speculation in land became such a pervasive practice that it prompted historians to liken the Manhatten Island purchase as a "Sunday school picnic" compared to speculation in Northwestern Canada.

Speculators in the Northwest, outside of Manitoba, included the following categories of speculators:

1. Chartered Banks:

Name of Speculator	Number of Land Scrip Acquired	Number of Money Scrip	Totals
Imperial Bank of Canada	1,721	4,659	6,380
Merchants Bank	271	2,286	2,557
Bank of Hamilton	25	878	903
Bank of Montreal	46	359	401
Dominion Bank	-	365	365
Bank of Ottawa	-	180	180

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Name of Speculator	Number of Land Scrip Acquired	Number of Money Scrip	Totals
Federal Bank of Canada	-	183	183
Molson's Bank	36	76	112
Banks acquiring less than 100 notes (Nova Scotia, Union, Ontario, Commercial)	22	253	275
TOTALS	2,189	9,314	11,499[77]

Scrip notes were generally issued in 160-acre amounts, plus 80-acre amounts where the grant went to children. In the case of heirs, smaller amounts were issued depending upon the number of heirs. A spot check indicates that the average acreage per Scrip note was approximately 130 acres. The above statistics are based on tabulations of approximately eighty per cent of the files. The other twenty per cent were not available, having been lost or destroyed in other ways. If we assume that in the case of the twenty per cent of the files unaccounted for, the breakdown between the banks and other speculators is consistent with the above figures, we can project that in the case of the Imperial Bank, for example, that they acquired approximately 8,000 Scrip notes with a land value of 1.04 million acres. For all banks the number of Scrip notes would be approximately 15,600 and the land value would be somewhat in excess of two million acres.

2. Private Banks, Financial institutions and other major speculators:

	Land Scrip/	Money Scrip/	Totals
Osler, Hammond and Nanton (private bank)	8	1,366	1,374
Alloway and Champion (private bank)	15	814	829

	Land Scrip/	Money Scrip/	Totals
Conroy(civil servant)	408	45	453
R. C. Macdonald(speculator)	22	187	209
Dixon Brothers(merchants)	17	180	197
McDougall and Secord(lawyers)	75	103	178
D. H. McDonald(civil servant)	134	40	174
Adamson(M.P.)	94	53	147
*Delivered to Dominion land agents	1,946	172	2,118
Speculators acquiring less than 100	83	413	496
TOTALS	2,812	3,363	6,175[78]

*It is assumed that most Scrip delivered to land agents was passed on to the grantee by the agent. However, it is known that a few agents, such as Isaac Cowey, were involved in Scrip speculation after leaving their positions with the Dominion Lands Branch. There, however, is no direct evidence to verify that any individual land agent was involved in Scrip speculation while an employee of the Department.

Other speculators included Chaffey, Cowdry Brothers, Haslam Land Company, Tait, Hudson's Bay Company, Sgt. Watson Camkin, etc.

There were numerous other buyers who bought a small number of Scrip - less than 19 - accounting for approximately 3,000 Scrip notes. Approximately 2,800 Scrip notes were retained by the allottees. All of the above figures need to be increased by one-quarter to account for the lost files and records.

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The total number of Scrip notes issued was approximately 31,000. Of this number, they were delivered approximately as follows:

TO:

Allottees	11%	3,500
Dominion Land agents	8%	2,600
Small speculators	12%	3,700
Private institutions and large speculators	17%	5,600
Chartered banks	52%	15,600
TOTAL	100%	31,000

Many well-known businessmen such as Donald Smith, George Stephens, and Senators, were on the Boards of banks. Alloway and Champion were volunteers in Wolseley"s Army in 1870. Osler, Hammond and Nanton was a politically well-connected private financial institution with interests in a private bank, a mortgage company, a trust company, and with major real estate holdings in Western Canada. Adamson was a Member of Parliament from Humbolt, a business partner of Michall Sifton, and a brother-in-law of Turrif who was for a time Chief Commissioner of Dominion Lands under Sifton. Conroy and D. H. McDonald were officals in the Indian Affairs Administration. Sgt. Watson was a N.W.M.P. officer. Other speculators had equally interesting backgrounds and careers, such as Lowe, Federal Deputy Minister of Agriculture, and T.O. Davis, an M.P. from Prince Albert who later became a Senator.

Many speculators were in a good position to know about government intentions before policy decisions were actually made. Even Dewdney, in a letter to Macdonald dated April 18, 1885, believed white speculators were encouraging the Metis to agitate for a land settlement. This was so even though there was little advance notice of the Scrip issue. In later issues, speculators always knew about these issues in advance of government decisions being made. As a result, speculators like R. C. MacDonald, McDougall and Secord, and others were busy buying entitlement to land before the allottees even knew that they would be granted Scrip.[79]

J. 1) Withdrawals from Treaties:

An examination of Scrip policy indicates that the government became increasingly more generous in its granting of Scrip and the rules surrounding the issue and use of Scrip. The government moved progressively from Macdonald's position in 1884 that the Metis had no aboriginal rights, to 1900 when they granted Scrip to all those Metis who were born prior to July 15, 1885, and to the policy of granting Scrip to all born before the date of the Treaties in areas ceded after 1885.

The question of who was a Metis or who was an Indian did not receive any major debate, nor were there any rulings on the question. Indians, of course, were defined in the Indian Act. Any Metis who lived with or followed a lifestyle like the Indians could join a band and enter Treaty. In the 1884 House of Commons Debates, Macdonald indicated that "half-breeds"who wished to be treated like Indians could join an Indian band and enter Treaty.[80]

In the issuing of Scrip, this rule of thumb policy was implemented by some of the Commissions quite rigidly, and by others not at all. The 1906 McKenna Commission, for example, allowed the aboriginal peoples to self-identity. In his report, McKenna said that they all looked the same to him and that they all lived the same; therefore, he let them decide whether they wished to choose Treaty or Scrip.[81]

The question of identification was not one of ancestry, but primarily one of culture and lifestyle. By 1886, there indeed were few full-blooded Indians in the Northwest.

This fact did not escape the notice of the speculators and they soon began a campaign of agitation among the people of mixed-ancestry living on newly formed reserves in the Northwest. The pitch was that they would be better off taking Scrip and should lobby the government to allow them to withdraw from Treaty and take Scrip. The speculators would buy their Scrip at a good price.[82] As a result, those Indians of mixed-ancstry did begin to agitate for their release from Treaty.

Before 1884, there already was a policy in place allowing withdrawal from Treaty by"half-breeds".[83] The reason for this policy is unclear but it must have related to Manitoba Indians. There was no definition of who fitted this category.[84] Applications for withdrawal from Treaty were approved unless it was quite clear that the applicant had always associated with an Indian band or always had been identified as an Indian by his/her band. The withdrawals from Treaty were to be granted on the basis that the value of any annuity money received by the allottee would be subtracted from the value of his/her Scrip

entitlement. Also, it was ruled that discharged "half-breeds" could not retain land on a reserve. The government amended the Indian Act in 1884 to provide for withdrawal by "half-breeds" from Treaty without the penalty referred to above.

As withdrawal applications were approved, Scrip applications were accepted and the Scrip certificates issued. Since the speculators had bought most of these Scrip entitlements, the Scrip immediately passed into the hands of speculators and the Metis after spending the little cash they received were left poor and, as they quickly discovered, had no place to live. The speculators had never informed the Indians of mixed-ancestry that they could not live on the reserves, and they assumed that they could do so, continuing their life-style. They soon discovered that Indian agents were attempting to evict them from reserves. They had no place else to go and were destitute. They would have been in extreme poverty if removed from reserves. This resulted in agitation by some to re-enter Treaty. The Indian Act was again amended to provide for this change, since to re-instate them under existing law was illegal, in the opinion of Reimer, a clerk of the Privy Council.[85]

In 1901, the policy of re-admitting "half-breeds" to Treaty was approved on the condition that the value of Scrip would have to be deducted from future annuity payments (Treaty money) before these persons could receive any more annuities.[86] As indicated above, the provision to deduct annuities received from the value of the Scrip issued was discontinued by an amendment to the Indian Act and Ministerial Order.[87] Not to do so would have put the speculators at a disadvantage, since

the Indians of mixed-ancestry would not have applied for withdrawal if there was no financial gain for them. The exact number of persons withdrawing from Treaty has not been tabulated but the numbers reached in excess of 1,500 families. During the period 1892 and 1901, approximately 100 families were discharged from Treaty and in 1885 to 1886 the number was approximately 750.[88] Some Indians withdrew from Treaty prior to 1884 and considerable numbers of persons applied for withdrawal between 1885 and 1890 and between 1900 and 1910. Many of these lists are to be found in Sessional Papers.[89]

Many of those Indian families withdrawing from Treaty were later allowed to re-enter Treaty. The result was that the government had to honor the Scrip issued to these persons, almost all of which passed to the speculators. The persons involved benefitted little from the money they received for their Scrip, since the proceeds had to be used to cover their living expenses. Having withdrawn from Treaty, these families could no longer qualify for Indian Affairs rations and had to support themselves.

The money was quickly used, leaving these persons destitute. The government's options were to let them starve, risk further trouble with the Indians and Metis , or accept them back into Treaty. The latter course was adopted. These events came to pass in spite of the fact that officials on the spot informed the political decision-makers of the activities of the speculators and of the possible consequences.[90] The result was suffering and deprivation for the Indians of mixed-ancestry, a double cost to the taxpayers (land grants, plus Treaty benefits) and a boon to the speculators who acquired the Scrip for approximately one-third of its value and who located it on lands of their choice.

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K. How Policy Encouraged Speculation

The government policy was designed and/or changed in a number of ways to aid the speculators and to ensure that only a few Metis would ever benefit from Scrip. These policies and their effects included the following:

- in Manitoba there were long delays in implementing the provisions of the Manitoba Act, numerous changes to legislation and policy and, in general, the process of proving title to occupied lands was made difficult. Also, lots were divided up by surveys and road allowances. In addition, the rigid interpretation of regulations resulted in many occupants not receiving title to lands they occupied. The result was a large-scale exodus of persons from the Red River to areas in the Northwest where no restrictions on land use yet existed. Speculators were able to acquire assignments to entitlement and/or to title at fire-sale prices;

- parish lists of"half-breed"children entitled to Scrip in the reserves were duplicated and sold to speculators. There were long delays in distribution and much of the land selected was outside the existing parishes. As families left, so did the children, and entitlement and title were assigned to speculators;

- the Indian entitlement of heads of families was granted in money Scrip in small denominations easily distributed to and negotiable by speculators for land. As people left the area, Scrip entitlement was sold at low prices;

- title and access to haylands was denied. A Scrip issue was given to river lot owners to compensate them. This entitlement went with the river lots, many of which had already been sold, and since the Manitoba Scrip had no use outside Manitoba or in reserved areas, it too was sold.[91]

Outside Manitoba, in the Northwest Territories, policies also aided the speculators. Some of these policies and their effects were as follows:

- the grant was again to be made a personal property grant - money Scrip. As has been seen, this Scrip was negotiable and easily located by speculators. Since Metis were in desperate financial circumstances, their first priority was to acquire cash to survive. Also, their lack of education and knowledge of the English language made them easy prey for unscrupulous speculators who obtained signatures to Powers-of-attorney and blank quit-claim deeds;[92]

- although the Commissioners originally decided not to accept Powers-of-attorney, this decision was challenged by speculators as being contrary to the accepted law of the country. Powers-of-attorney were then accepted, allowing an agent to apply on behalf of the grantee;[93]

- assignments of money Scrip entitlement were also refused and challenged as in violation of personal property laws. The Commissioners were then instructed to accept assignments if they were satisfied they had been validly obtained. In 1893, it was decided that all assignments held by speculators for Scrip issued in Manitoba in the 1870s would be accepted. In 1897, it was decided that properly executed assignments for Scrip of children or minors would be accepted. In 1899, it was agreed that all properly accepted assignments of Scrip would be recognized.[94] All of these special rules were designed to accommodate speculators who held most of the Scrip;

- withdrawals from Treaty were accepted even though they were of little benefit to the Metis It was ruled that the value of annuities received had to be repaid or deducted from the Scrip entitlement. This ruling was quickly changed and Metis withdrawing from Treaty did not have to repay annuities. If they returned to Treaty, as many of them did, the value of the Scrip received was deducted from future Treaty annuities. Again, this

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practice facilitated the goal of the speculators and penalized the unsuspecting Metis who ended up with less cash than if he/she had not accepted the Scrip. A more interesting ruling was one which allowed Scrip to be granted to the children of Metis who entered Treaty if the children's names did not appear on the band register. Since such children could automatically be entered on the band lists, this seems to have been solely designed to aid speculators;[95]

- several other interesting rulings allowed patents to be issued to minors who owned land Scrip. However, title could not be issued or transferred until the minor reached the age of consent. As well, there were no requirements that Metis live on the land or improve it. Both of these rulings aided the speculation in Scrip. The first ruling was given because it was consistent with the laws applying to non-aboriginal children. On the other hand, unconditional land grants deviated from the government policy and practice in dealing with and encouraging settlement under the Homestead Act;[96]

- speculators were allowed to travel with the Scrip Commissioners. Fillmore, in his article on "Half-breed Scrip" describes this fact. Mr. Gregory, an MLA from the Battlefords, in a speech to the Saskatchewan Legislature on February 28, 1938, outlined this practice as

scandalous and common knowledge. In a letter dated March 10, 1900, a Department official, by the name of Cooper, suggested the activities of speculators in the company of Commissioners be closely regulated and set out some proposed conditions. Commissioner McKenna rejected the proposals as impossible to implement and requiring new laws;[97]

- the records are full of indications that speculators had advance notice of Scrip issues or rulings. In 1885, some speculators were buying assignments of Scrip entitlement before the P.C. Order was passed. That same year and the following years, speculators were buying Scrip from Metis who had entered Treaty. In 1896, speculators were buying Scrip assignments in the Athabasca district in anticipation of the signing of Treaty 8. Also, between 1896 and 1900, speculators were buying Scrip assignments from children born between July 15, 1870 and July 15, 1885. This Scrip wasn't issued until 1900. In 1901, R.C. Macdonald had agents in the U.S. buying Scrip from U.S. "half-breeds" who had formerly resided in the Canadian Northwest, and which Scrip was not issued until 1904. In October, 1896, a Department official alleged that a powerful group of politicians and bankers were organizing the Scrip buying. These complaints and warnings also came from clergy and others working in the Northwest. The letters all appear to have been ignored, with no official responses recorded, nor was there any investigation or even suggestions

that these allegations be investigated;[98]

- a number of special exceptions were made to the rules to accommodate all and, in some cases, specific speculators. Although the Department refused assignments for land Scrip, the government allowed speculators to exchange such land Scrip for money Scrip. In 1904, a P.C. Order was passed, authorizing a Scrip issue to U.S."half-breeds", formerly resident in Canada, to apply for Scrip. The Scrip could not be used in the U.S. and had only limited cash value. Since almost all these Scrip assignments were purchased by agents for one R.C. Macdonald, and since all the Scrip issues was land Scrip, Macdonald was the only one who stood to reap any great benefits. A court case was launched against Macdonald in North Dakota, alleging that his agents used fraud in acquiring Scrip. His ownership and location of the Scrip was also challenged by another Scrip buyer in Canada, named Chaffey. As a result, the government appointed Judge Myers as a one-man commission to investigate Macdonald's dealings. Myers found that Macdonald was not quilty of any criminal offenses and exonerated him of all charges. The Deputy Minister then immediately issued an order which allowed Macdonald to locate all his land Scrip, obtained from Metis resident in the U.S., to receive the patents in place of the Metis allottees;[99]

L.(2) Scrip Fraud:

There were numerous charges of fraud made by various officials and others knowledgeable about the activities of Scrip speculators. The frauds appear to have been of three kinds. The most common appears to have been fraudulent misrepresentation of the documents which agents asked the Metis to sign and the promise of further payment of money after the Scrip was issued. The agent generally made a down payment of $25, got the signatures on the documents and then was never seen again by the allottee.

The second kind of fraud was the agent presenting himself as a government employee who would look after the interests of the allottee and, again, the necessary documents would be signed (Powers-of-attorney and quit-claim deeds).

The third type of fraud was in regard to the location of land Scrip in particular. As implied by Fillmore and others, persons representing themselves as the allottee would accompany the speculator to the land office, identify the land desired and receive the patent. The speculator would then complete the blank quit-claim deed and have the land title registered in his/her name.[100]

There were some court cases over Scrip fraud. Most of these cases dealt with disputes between speculators. One case was launched in Edmonton by one L'Hirondelle, an allottee, against McDougall and Secord, an Edmonton law firm, in 1920, almost 20 years after the offense occurred. The preliminary hearing found sufficient evidence to proceed to trail.

At this point a political move was quickly organized in the Senate and a Bill was introduced to amend the criminal code to insert a limitations clause on Scrip fraud. This was the first limitation on prosecution in Canadian criminal law.[101] It limited to three years the period during which a charge for an alleged offense must be laid. This Bill quickly passed both Houses. The provisions of the Bill were not retroactive. The Crown, however, did not proceed with the case but dropped all charges.[102]

M. Scrip Accounts

Another practice that was a great asset to the speculators was the keeping of Scrip accounts by the Department of the Interior. As speculators obtained Scrip certificates they would send a letter with the certificate to the Department. The Department would then write to the speculator informing him/her of the numbers of Scrip notes. When the speculators wanted these notes applied to land they selected, or to some other transaction, this would be requested by letter and the necessary debit entries would be made in the account. It is not clear whether Scrip notes were actually sent to the land offices. This is unlikely, since the notes had to be returned and filed in Ottawa in any event. Not everyone could open a Scrip account. This privilege was limited to approximately 20 corporations or individuals.

Those who had Scrip accounts included:

Dixon Brothers (Maple Creek)
Osler, Hammond and Nanton (Toronto)

Alloway and Champion (Winnipeg)

Banks:

Imperial	Merchants
Dominion	Federal
Nova Scotia	
Union	
Commerce	

Lawyers:

Bradshaw, Richards and Affleck

McDougall and Secord

The small speculators did not receive such privileges.

The banks usually had their Scrip applied to someone else's land transaction. This possibly constituted a Scrip sale, since the banks did not show as shareholders in such companies - a practice prohibited by the Bank Act. For example, the Scrip accounts show that the Imperial Bank transferred $125,000 in money Scrip to the Saskatchewan Valley Land Company, which was used to make payment on a 250,000 acre colonization scheme.[103] Although most of the Scrip entered in Scrip accounts was money Scrip, some land Scrip was banked. This was likely land Scrip where special policy exceptions were made, such as the 1892 exception for Manitoba Scrip and the R.C. Macdonald exception for U.S. residents' Scrip. However, the Imperial Bank entered a considerable amount of land Scrip in their account, which did not originate from either of the above sources. How they obtained this Scrip and the rationale for allowing the bank to do this is unclear.[104]

As indicated earlier in this Chapter, the government apparently followed a regular practice of posting in land offices the names of Scrip buyers and buyers who also sold Scrip.

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A letter of May 1, 1900, gives specific instruction to land offices to advertise the Scrip of Alloway and Champion, and Osler, Hammond and Nanton.[105]

N. J Scrip Use:

The Department approved a number of uses of Scrip other than those for which the Scrip was intended, namely to bestow a land grant on the Metis. . The right to locate the Scrip on open Dominion land made sense based on this intent. However, the other varied uses of Scrip approved, could only be of aid to the speculators and to those interested in using Scrip to acquire certain assets or access to resources. This included the following uses:

- to buy timber leases
- to buy coal rights
- to pay for colonization lands
- to pay recreation lease rents
- to pay for homestead not proved up
- to pay for pre-emption lands
- to pay rent on pasture and hay lands

None of these were uses to which a Metis person would put his/her Scrip. However, these uses greatly enhanced the value of the Scrip to speculators.[106]

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o) Government Action on Fraud:

As indicated earlier in this Chapter, the government was quite definitely aware of the activities of speculators and of allegations of fraud in the obtaining of Powers-of-attorney and of assignments, and even in the location of Scrip. As already indicated in the R.C. Macdonald case, the government set up a Commission to investigate Macdonald's dealings with "half-breeds" resident in the U.S. The Commission report limited itself to whether or not Macdonald committed any offenses in locating Scrip. The finding was that he had not. The use of fraud in acquiring assignments was not dealt with in any depth, since those making the allegations of fraud all resided in the U.S. , where Judge Myers had no authority to conduct an investigation.

In the McDougall and Secord case, the government acted to stop the legal proceedings. However, an appeal was launched by L'Hirondelle's lawyer. This was terminated by using the lawyer's fees as a bargaining tool. The Justice Department had agreed to cover L'Hirondelle's legal fees, as he was destitute. However, the payment was authorized only on condition that the lawyer would drop L'Hirondelle's appeal against the trial judge's decision.[107]

In 1897, D.M. Rothwell, Deputy Minister of the Interior, in a letter to his Minister, said that the policy of protecting Metis rights was no longer an issue. He argued that the Department should drop the requirement that the allottee appear in person to locate his/her land Scrip, so the holders could do this legally and thereby enable the Department to clear up a number of outstanding cases of un-

redeemed Scrip.[108] In a letter to Commissioner Smith on October 19, 1896, an Indian agent in Calgary informed the government that he was aware that hundreds of illegal Powers-of-attorney had been acquired.[109] He recommended against any further issues of Scrip. The Department appears to have ignored this warning and proceeded with the two largest Scrip issues in the Northwest, namely the 1898 Athabasca Issue and the 1900 Issue to children born between 1870 and 1885.

On April 24, 1904, a buyer by the name of Hitchcock was alleged to have illegally acquired all the "half-breed" Scrip in the Lac La Biche area. The Department investigated and agreed not to press charges if Hitchcock would pay all the Metis full market value for their Scrip.

In 1903, a Mr. Robinson, in a letter to Keyes, said large amounts of Scrip were being illegally located by speculators. He wanted to change the regulations to make such locations legal. In 1917, the government agreed to pay court costs for two Metis who claimed their names had been forged on Scrip documents. They lost the case.[110] In 1913, the government adopted a policy of refusing to investigate allegations of illegal practices involving Scrip. The government said allottees could take their cases to court if they had a grievance.[111] Earlier, in 1896 , after receiving a number of complaints of fraud, the Department conducted an investigation.[112] No report was prepared on the investigation, but in 1897 the Deputy Minister recommended another Scrip issue.[113] On May 2, 1910, a Reverend Holmes wrote the Minister, Frank Oliver, about a Scrip scandal and illegalities in Northern Alberta. On May 11, 1910, Oliver replied, saying that the government had no control over what the Metis

did with their Scrip. However, he indicated that if Reverend Holmes would name the persons against whom he was making allegations, the Minister would investigate his allegations. Reverend Holmes declined to name the individual involved in the scandal.[114]

It is quite clear that the government could have taken action to prevent the Scrip abuses if it had so wished. Yet, the government choose to do nothing, claiming that its only responsibility was to:

a) determine who was entitled;

b) deliver Scrip to the allottee, his agent or assignee;

c) in the case of land Scrip, to ensure that the Scrip was located in accordance with proper technical procedures.

As admitted by Sifton in Parliament, the benefit of the Metis was not the government's primary concern in issuing Scrip.

VI. The Dominion Lands Act and Scrip as a Method of Extinguishing Aboriginal Rights

A. Introduction

International policy, as well as the policies and laws of the major colonial nations - Spain, Britain and France - were contradictory on the issue of what the rights of aboriginal

people were, including whether they had the right to the land.

The Spanish believed that, based on the doctrine of first discovery, they had the right to claim sovereignty and ownership to the lands of the Indians. Due to abuses of the land grants to Spanish landlords, the religious orders succeeded in having the Royal Court refer the question of whether Indians, because they were heathens, should be recognized as having any rights for study by the Vatican. It will be recalled that Vitoria expressed the view that rights did not rest on one's religious beliefs, and the Indian rights were every bit as good and full as the rights of Europeans. The religious orders set up missions to "train, civilize and christianize" the Indians. When this task was accomplished to their satisfaction, they resettled the Indians in villages adjacent to the missions and where they were given a plot of land and legal title to that land.[115]

The British also claimed sovereignty in North America on the basis of the doctrine of first discovery and refused to recognize Indian title in law. However, British colonies were developed as proprietary colonies by commercial companies. They could not afford wars with the Indians and depended on them for trade and as allies. Therefore, in practice, they recognized them as sovereign nations with all the rights which a sovereign nation has. This included the control and ownership of land and the right to make war. The most expedient thing to do was to buy the land from the Indians. This practice became law in some colonies. This system was also abused, leading to wars with the Indians.

The result was that in 1763 Britain took over complete control of Indian Affairs in the colonies, and by way of the Royal Proclamation, recognized the policy of Indian sovereignty and land ownership and the practice of purchasing Indian land as constitutional law. This policy was continued by the Americans after independence. It was also introduced into the Canadian colonies by the British. However, the Canadian government, in its dealings with the Indians, did not apply the doctrine of Indian sovereignty as it had been applied and practiced in the United States. Only land rights in the form of "Indian title" were recognized.[116]

The French policy was to claim complete sovereignty in areas they settled and to proceed as the Spanish to civilize and christianize Indians and then grant them full citizenship rights. However, in the vast areas where they traded for furs, they did not disturb the Indians and de facto recognized their sovereignty.[117] However, even this land right, as has been seen, was limited by judicial decisions to being a usufructory right and not the right to "fee simple title". The concept of fee simple title is, of course, a European concept based on the individual ownership of land.

No similar concept of individual land title had developed among the Indian tribes of North America. Although individual ownership of land was not uncommon among the Indians, the right of access to or use of land varied considerably among Indian nations.[118] In some cases, land ownership was considered to be a collective right. In other cases, land was leased as in feudal estates, and in other cases, private hunting areas were recognized.[119] There was, however, no real estate

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practice of buying or selling land, but land could be inherited or transferred to other Indian persons of the nation. Sales of land to other Indian nations could only be made by the sovereign nation.[120]

International law at the same time was, to a large degree, dictated by the Catholic Church. The christian kings were believed to hold their rights to territory from the Pope and he, in effect, divided the known world up among the christian kings. It was for this reason that the Spanish government asked the Church for some direction on how to deal with aboriginal people. Were they humans like christians and did they have the same rights? Were they part of the plant and animal life? How should they be treated? The Church, as is known, referred the matter to its theologians at the Salamanca University in Spain. Here, one De Vittoria directed his attention to the problem.

As already outlined earlier in this report, he concluded that the rights of aborigines were every bit as good as those of Europeans.[121] He did not limit those rights to land rights but stated quite clearly that all rights exercised by the aborigines were valid. In the Papal Bull, which followed, it was stated clearly and comprehensively that the aboriginal people should not be disturbed in the enjoyment of their lands. Certainly this implied more than a land use right and suggested all those rights humans normally exercised in their homelands or on lands over which they had control.[122]

The actual practices of colonial nations, however,

were generally designed to achieve the political and economic goals of the colonizers and not to protect rights. The Church, which was supposed to be the guardian of these rights, had no system to monitor or enforce its Papal Bulls, other than moral suasion exercised through its missionaries, which oft as not was ignored.[123]

The Spanish, in their laws for the West Indies, did grant land title and guaranteed the land rights of the aborigines once they were civilized. There does not seem to be a recognition in those laws of other rights, since the Spanish were firm in the belief that they had the right to impose their religion, lifestyle and economic systems upon the aboriginal people.[124] The French had no statute law recognizing the rights of aboriginal people. However, some of their treaties of friendship, plus the Indian provisions in the Articles of Capitulation and various documents of instruction to explorers, as well as the manner in which the French dealt with aboriginal peoples outside the St. Lawrence River Valley, in fact, did recognize aboriginal peoples as possessing both land and other rights. Nevertheless, the French also felt quite justified in imposing their religion, language, lifestyle and citizenship on the aborigines of those areas which the French occupied and claimed as their own.[125]

Official British practice was to not recognize that the aborigines owned their land. They tried to discourage land purchase and even passed laws to this effect. However, individuals and colonies insisted on pursuing purchase arrangements. Since this was detrimental to British economic and settlement policies, Britain, in 1760, took over control of Indian policy. It provided that, in future, land could only be obtained from Indians by the Crown.[126] The Royal Proclamation

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confirmed this practice in 1763 because of alleged abuses of Indian lands. There is no reference to the idea of extinguishment of "Indian title" in the Royal Proclamation, 1763.

Land purchased belonged to the Crown and if Indians wanted to stay on this land they would be subject to British laws and could receive land grants from the Crown. However, land not purchased belonged to the Indians and they were allowed to use and enjoy their lands without interference as previously.[127] That approach confirms that the British, for purposes of expediency, recognized rights other than land use rights which the Indians were free to continue to exercise.

This same concept is reflected in the instructions to the Hudson's Bay Company officers[128] and their actual practice and relationships to the Indians in Rupertsland. Their Charter only gave them trading rights and jurisdiction over British subjects other than Indians. The other British treaties with aboriginal peoples, as well as the Pacific Islanders Protection Act, all give further proof of the fact that the British recognized rights other than land rights.[129]

In practice in North America, the early precedents were set by American courts, after the United States gained its independence from Britain in 1776. The case law which developed is based on British Common Law and the colonial practices and provisions in the Royal Proclamation. (These cases have been reviewed in detail in the early chapters of this report). Some of these cases recognize the Indian groups as nations with their own laws, customs, methods of land use,

economies, etc. Others limited the rights of the Indians to land. In treaties and agreements, the British generally granted rights other than land rights, such as local self-government, education, etc.

6.1 Rights recognized in Treaties and Agreements in North America

The provisions in Canada's treaties with the Indians were based on precedents set in treaties signed in New Zealand, Australia and Africa by the British and patterned as well on American treaties.[130] Many of these treaties provided for the cession of certain specified land areas to the Crown and the relinquishment of all claims in the area. The exceptions were hunting, fishing and trapping rights. What was being ceded was the land and the right to use the land in traditional ways, except Indians were allowed some hunting, fishing and trapping rights. There is no suggestion in the cession clauses that any other rights were being extinguished. In addition, numbered treaties set aside reserves for land where certain rights could be exercised. These included:

i) the right to live on and to cultivate reserve lands;

ii) the right to all other surface resources on reserve lands (the question of who owned mineral rights had not been discussed, but courts have recently ruled that these belong to the reserve);

iii) the right to self-government structures (traditional) and traditional methods of selecting their leaders was to be allowed. These rights are still provided for in the Indian Act;

iv) the right to make laws for local self-government and to operate such band programs as desired and which could be funded;

v) the right to schools on the reserve. (Since the Indians had no schools as we know them, this was the adoption of a whiteman's institution). Whether Indian languages could be used in these schools and whether Indian history, customs, etc., could be taught, is not addressed in treaties. However, early Indian Acts assumed this provision meant traditional school curriculum taught in English;

vi) the question of Indian rights to their own usages, customs and religion were not considered. However, again the Indian Act assumed these rights were not recognized and, therefore, assimilation policies were adopted and, at times, Indians were prohibited from practicing their own religions;

vii) in some treaties the rights to certain health services;

viii) the right of chiefs and headmen to symbols of office, such as uniforms and medals;

ix) the right to aid to assist Indians to become established in agricultural pursuits.[131]

In other agreements such as that concluded with the Metis of the Red River, a number of the above rights of the aborigines - in this case, the Metis - were also recognized. It is quite clear that the rights of the aboriginal people, both in law and practice, were not limited to land rights.

c) Method of Acquiring Rights:

There were two methods used in acquiring aboriginal land. The most common was a treaty which spelled out the terms of the agreement between the Indians and the Crown. The very use of the term "treaty" was a recognition of aboriginal sovereignty and therefore the recognition of all rights exercised by a sovereign nation. It was also clear in British law that the Crown or government could proceed by way of legislation to acquire aboriginal lands. However, which ever method was used, it was clear that the key provisions spelled out in the Royal Proclamation had to be applied to the acquisition of land. These included:

i) consent of the aboriginal peoples to the sale of their land;

ii) negotiations for the sale with the Crown;

iii) agreed terms of the sale assented to by the aboriginal peoples who had a claim in the area;

iv) equitable compensation for land ceded.

It is the Association's position that actions taken under the provisions of the Dominion Lands Act and the Orders-in-Council governing Scrip do not conform or adhere to any of the conditions set out in the Royal Proclamation and, therefore, are unconstitutional. As well, they do not meet prescriptions as spelled out in International Law. For example, the 1537 Papal Bull specified that if certain actions taken by colonial nations contravened the provisions of the "Bull", they would be null and void. Since the christian kings accepted the doctrine that they received their temporal powers from the Pope, this Papal Bull applied internationally. Therefore, the actions taken under Orders-in-Council designed to extinguish aboriginal land rights were, in our opinion, null and void.

Furthermore, when Metis applied for Scrip or when they received their Scrip, they were never informed that in accepting Scrip they were relinguishing their rights as descendents of the aborigines. Nor did they ever sign any documents indicating that they were relinguishing their rights to land. Likewise, there was nothing on the Scrip applications, Scrip certificates, or the Scrip notes, which made any reference to the concept of an "Indian title".

It must be assumed that Scrip was meant as partial compensation for the loss of land rights. Therefore, if Scrip could be supported as being constitutional and the compensation deemed adequate, the process did not deal with any of the other rights of aboriginal people, such as self-government, language, religion, culture, etc., which were recognized by the British and Americans in law and practice.

D. The Legal Validity of Extinguishment

Human rights are defined in the United Nations Charter and in the constitutions of a number of nation states, including Canada. These rights are considered fundamental and inalienable. Such rights are possessed by virtue of being human. Such rights can therefore not be taken from an individual although they may be violated or denied.[132]

What are the rights of aboriginal peoples other than their human rights? They are not a special class of rights different from the rights of other persons and nations. In what is now Canada, it is taken for granted that human rights are guaranteed to all citizens by their government. In particular, this is now a fact, as a Charter of Rights has been entrenched by the Canada Act, 1982. However, it must not be forgotten that before the ancestors of the present population of Canada resided in Canada, the land was occupied by the aborigines of the area. They had human rights as well; and as the indigenous persons, their rights superceded those of the immigrants. These rights were recognized in International Law at the time of early colonial activity and are still recognized in International Law today. It follows that their descendents still possess these rights. These rights are both individual and collective rights.

At some point in history, the origins of which appear to be with American courts, the idea of limited land ownership was developed. (Modern writers have referred to this concept as "aboriginal title"). Following this, governments and courts unilaterally developed the concept that it was possible to extinguish or put out such title which, in Canada, was referred to as "Indian title". This concept is not spelled out nor is the terminology used in the Royal Proclamation. The Proclamation simply speaks of Indian lands and states that Indians can choose to sell their land to the Crown under certain conditions. These provisions were designed to protect Indian rights - not to extinguish them.[133] The term "extinguishment" is not used in pre-confederation Indian Acts nor is there any reference to such an idea in either Subsection 91(24) or Section 146 of the B.N.A. Act, 1867. In treaties the term "extinguishment" is not used either, but the concept of extinguishment as far as land is concerned is certainly spelled out in the treaties. Certain land areas are ceded by the Indians to the Crown and the Indians gave up all claim to the areas in return for certain compensation and other rights spelled out in the Treaty.[134]

The idea that an individual or group could sell its land was certainly not novel. This could be negotiated for an agreed price or compensation. Therefore, why acquire a cession and extinguishment of rights in the area ceded? This question can only be answered by examining the policies the government was attempting to implement. To promote settlement, build a transportation and communications system and to develop the resources the government needed the title

to the land. This could have been accomplished by purchasing the land from the Indians at its fair market value. This process could have proved rather expensive. Canada needed to acquire its title cheaply if its development plans were to prove economical and feasible. The same was true earlier in the United States and in other areas where the British signed treaties with the Indian peoples. This required the invention of a new legal doctrine of Indian land ownership, which would limit the nature of their title. With the Crown the only legal authority able to acquire the land, compensation could be limited. Because the economic base on which the Indians depended was to a large extent destroyed, it was not difficult to use the promise of reserves, rations, and other aid to gain the consent of the Indians. The Indians in all cases negotiated from a position of weakness and had little bargaining power. It is true that Canada's negotiators made some concessions to gain agreements. Annuities were increased a few dollars per head, schools were provided, a medicine chest promised and other minor concessions were made. None of these cost the government anything immediately, and did not significantly add to the government's long-term commitment to the Indian peoples. The aborigines, in fact, had generally to accept what they were offered by the government.

The first time that the words "extinguishment of the Indian title..." were used in a legal document was in the Manitoba Act. This term was later incorporated into the Dominion Lands Act and into the Orders-in-Council passed under that Act. This terminology appears in no other legal documents in Canada, except other Orders-in-Council. If the concept of extinguishment had any validity then, it could not be claimed to apply to rights other than land rights.

It is the Association's contention that, even in relation to land title, such title could not be extinguished under International or British Law. It could only be bought and/or sold. The aborigines' land was in fact taken from them with only limited compensation in the case of the Indians and no compensation in the case of the Metis. The setting aside of reserves for Indians and the provision of land grants to the Metis cannot be considered compensation. The land was theirs as sovereign nations to begin with, and this is confirmed by the Royal Proclamation. In addition, many other groups were given conditional and/or unconditional land grants, who had no claims as aborigines. These included:

- United Empire loyalists;
- volunteers in Wolsel Armies;
- the old settlers;
- the Selkirk settlers;
- the South African veterans;
- immigrants applying for homesteads;
- the R.C.M.P. officers.

Surely, if any or all of the above were entitled to land grants, the principles of equity would demand that aboriginal peoples receive equitable treatment. Above that,

they would still be entitled to compensation for selling their land. As for the proposition that rights other than land title can either be extinguished or sold, the Association rejects such an idea entirely. The Association also sees no evidence for such a proposition in any British or Canadian laws. As indicated above, those documents (treaties and statutes), which do address the issue of extinguishment, only deal with it insofar as land title is concerned.

E.) The Nature of Aboriginal Rights:

What are the rights of the aborigines? This is the central most important issue in any discussion of whether aboriginal rights can be or have been extinguished. The favorite view of those government officials attempting to limit aboriginal rights is that they were a "personal usufructory right". This was the standard view of what was referred to as aboriginal title or "Indian title". That view held that the aborigines had a personal right to the use of the land and its surface resources (game, plants, wood, water, etc.) but that aborigines, because they were believed to have had no system of individual land ownership or title, did not own the land. The usufruct, therefore, was only a burden against the title of the sovereign which the sovereign alone could remove.

Once this was done the aborigines ceased to have any rights, except those spelled out in treaties or agreements. These agreements seldom recognized language, cultural or customary rights. Where other rights were granted, the treaties and legislation limited the citizenship rights of aborigines as compared to those of other citizens of the sovereign.

This certianly was the practice with the Indians of Canada. This practice was institutionalized in the Indian Act and provided for a process called "enfranchisement", which an Indian must go through if he/she wanted full citizenship rights. The process, of course, required the aboriginal person to give up any special rights granted under treaty agreements.[135]

A second concept of "aboriginal rights" is that they were both a collective or communal right, as well as a personal right. Any personal rights which the aborigines had were those protected by and recognized by the collective of which they were a part.

The idea of Indian land rights and that all rights flowed from the control of land is spelled out in a Paper by Leroy Littlebear, a Native Studies Professor at the Lethbridge University.[136] This concept holds that Indian land title was held collectively by the group or community to which one belonged. Insofar as Indian tribes recognized each other's territories and right to the territory, an Indian group was sovereign in the land area it used.

Although the collective may not have had political, social and economic institutions as they were structured in European societies, they nevertheless did have their institutions to govern their varied activities, often accompanied by elaborate rules and regulations. Every group had its headman and its own method of selecting that headman. Every group had accepted methods of using the land and its resources. In the

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case of the buffalo hunt, for example, both the Indians and the Metis had elaborate organizations for the hunt, well-understood rules of behavior surrounding the hunt, and well-established customs for dividing up the animals that were killed. In the area of social relationships, each person, each sex and each age group had a well-developed role in the social life of the community. There were accepted family structures and rules governing the role of family members. Religious ceremonies were elaborate and were governed by accepted traditions and customs. There were many social events and ceremonies which were also covered by elaborate rules, customs and traditions.[137]

The essential difference between aboriginal cultures in much of North America and European cultures related to the degree of technological development and oral - as compared to written - traditions. In those cases where Indians had simpler lifestyles, their institutions also were less complex.[138] The other major difference related to the fact that some aboriginal collectives were believed to be nomadic - that is, moved about their territory. Europeans thought of themselves as having fixed and stable settlements. This difference was in part real and in part illusory. Europeans did have fixed settlements and fixed places of work. However, for the European-style economy to function, it was still necessary for many people to be very mobile. Mobility, however, was at a personal level and highly specialized. European cultures had developed a series of new institutions (hotels, rest houses, etc.) and a number of new forms of technology (railways) to accommodate their mobility needs.

The essential point to be made from an extensive examination of Indian culture is that land and other rights were both personal and collective rights, as in European society. As in European society, personal rights were those recognized and/or granted in law by the community or nation state of which one was a citizen.[139] As has been detailed earlier in this report, such rights were protected in International Law. Also as detailed, some authorities as far back as the 13th Century were of the view that the aborigines possessed the same rights as Europeans. In more modern times, this view has been built on and expanded through International agencies such as the United Nations, the U.N. Human Rights Commission, the Russell Tribunal and the International Association of Jurists.

F. Transferability of Rights:

In the distribution of Scrip, one of the essential questions which arose was whether the Scrip was transferable. The answer to this question depends on how a person views the nature of aboriginal rights. Although the government in its alleged "extinguishment of rights" dealt with them as personal property rights, the statutes and Orders-in-Council governing Scrip did recognize that the personal right emanated due to the fact that one belonged to or was accepted as a member of a particular collectivity - "Indians or half-breeds". The legislation also recognized that one possessed rights by virtue of one being a descendent from a collectivity of aboriginal ancestors. It is of further interest to note that blood quantum has never been part of the Canadian definition of whether one belonged to one of the aboriginal groups or to which group one belonged. As we have detailed earlier,

the essential criteria for deciding whether one was Indian or Metis were:

- Indian ancestry;
- lifestyle maintained;
- personal preference (to which group did one wish to belong);
- self-identity;

In the case of self-identity, governments did exercise some control over who could join an Indian band, take Scrip, or who was white and therefore not Indian. However, notably in early Indian Acts, whites who lived with Indians were not excluded from the band if accepted by the band. White women who marry an Indian male still gain Indian status today.

The original position of the Government of Canada, when it began issuing Scrip, was that land rights were not assignable and therefore not transferable to someone else. Although the reasons for this were not clearly spelled out in policy statements, it can be concluded that the reason for this was that the government viewed this right as a right emanating from one's ancestry and connections to a certain collective group, namely "Indians". Therefore, only individuals who were of "Indian" ancestry could claim or benefit from such a right. This right was not considered to be a personal property right or a real estate right, which could be sold or assigned to someone else. Therefore, the government's

insistence that the benefit must be delivered to the allottee. In the case of money Scrip, this benefit was considered to be the Scrip note itself, which was highly negotiable. In the case of land Scrip, it was considered that the benefit had not been received by the allottee until he/she had received his/her land patent. Once the benefit had been delivered into the hands of the allottee, his/her benefit was then subject to domestic Canadian law and could be disposed of according to the personal property and real estate laws of the land.

The government, even before issuing Scrip or land grants, recognized that the real benefit would not likely go to the Metis but would be reaped by others.[140] For reasons already outlined, the government, in spite of this knowledge, took no action to protect the Metis rights and the benefits which flowed from them. This was in spite of requests from the Metis themselves for such protection, and of recommendations by officials such as Flood Davin, Dewdney, and others, and clerics such as Tache and Lacombe, which would have ensured greater protection to the Metis However, the direction of government policy and the influence of the speculators won out over recognized practices in International Law and the principles of equity to which the Government of Canada had committed itself.[141]

It is the Association's view that aboriginal rights, because of their nature, were not transferable and therefore the practice of purchasing such rights before they were recognized or before the benefit was received by the allottee

was clearly illegal. Furthermore, because an aboriginal right cannot be transferred to another collectivity, individual benefits in the form of compensation must only accrue to the aboriginal allottee and to no one else. In almost ninety per cent of all cases of Scrip grants, the benefits were reaped by speculators who were not part of an aboriginal collective and not by the allottees. The Metis grantees, therefore, were not adequately compensated for their loss of rights. As compensation is another of the essential features of the ceding of land, such claims to compensation still exist. As far as other rights such as language, culture, customs, self-government, etc., are concerned, no one would claim that such rights can be transferred to someone else. There are no laws, either domestic or international, to support such a proposition.

VII. The Implication of Law, Policy and Practice for Aboriginal Claims:

These implications have been discussed to some degree in the preceding presentation in this chapter. However, it is important to summarize and clarify them. The major of conclusions reached above are as follows:

a) one sovereign is not competent in any way to take actions affecting the rights of another sovereign on a unilateral basis (without consultation and formal agreement), as was done by the Government of Canada in its dealing with the Metis through the Dominion Lands Act and the Orders-in-Council providing for the issuance of Scrip.

The Royal Proclamation, which quite clearly applied to territory under Charter to the Hudson's Bay Company, set out a procedure by which the sovereign could acquire the lands of the aboriginal peoples.[142] In dealing with the Metis of the Northwest, outside the Province of Manitoba, at no time did the government follow the required procedures. Therefore, actions taken under the Dominion Lands Act are, in the view of the Association, unconstitutional;

b) the concept of "Indian title" which the Supreme Court of Canada has equated with aboriginal title was a fabrication of British, American and Canadian politicians and policy-makers, perpetuated by modern legal writers and invented as a convenient way of dis-possessing aboriginal peoples of their lands and of all other rights. It also ensured the implementation of the settlement and development policies of the government. The Royal Proclamation speaks of "Indian lands". It speaks of these lands as being protected for the use and enjoyment of the Indians, and it says the Indians can sell their lands if they are so inclined. Further, the sale could only be made to the Crown. There is nothing in the Proclamation from which one can infer a concept of aboriginal title as

a limited (unsufructuory) right, nor is there anything in the Proclamation to suggest that selling one's land in any way affects one's human rights.[143]

It is the view of the Association that the concept of "Indian title (aboriginal title)" as used in the Northwest outside Manitoba is unconstitutional. Therefore, the construction that successive governments and court rulings have put on the concept are legally incorrect.

c) the idea of extinguishment as enunciated in legislation, Orders-in-Council, and in policy statements, as well, has no validity in Constitutional Law. The Royal Proclamation provided that Indians could sell their lands to the Crown. It is clear that the purpose of this provision in the Proclamation was to protect and guarantee existing land and other rights - not to provide a process by which they could be extinguished. The Royal Proclamation gave no right of expropriation of Indian lands. Even if it were agreed that the sovereign is supreme and can, therefore, pass laws to expropriate the lands of all its citizens, including the Indian subjects, then the laws of expropriation must be applied. There must be compensation of equal value for expropriated property. This had to be the principle of equity referred to in the

Address from the Parliament of Canada to the Queen, regarding the transfer to Canada of Rupertsland and the Northwest Territories.[144]

d) the Association is of the view that the compensation of 160 acres or 240 acres of Scrip provided to the Metis of Canada was not an equitable payment for the Metis interest in the land. Since when can equity result from a transaction where someone takes everything you have traditionally owned by giving you back a small fraction of it?

The Metis had made their living from the land and they had developed their cultural lifestyle on that land. Whatever was given in compensation, therefore, would have to ensure an equal standard of living and the ability to continue to exercise their other rights. Since the Scrip settlement left most of the Metis homeless and poverty stricken, it fails the test of Canada's legal commitment to the aboriginal peoples;[145]

e) the Association further claims that, because of the nature of aboriginal rights, the method of settlement and compensation selected must guarantee that the benefits of the settlement will go only to those who are entitled to them - namely the Metis The government

took no steps to ensure that the Metis benefitted from the "Scrip settlement" of their land claims. This was so even though the government was fully aware of the consequences of its policy before it was implemented. Quite clearly, the government took the position that whether or not the Metis benefitted was not important. What was important was that certain prescriptions purported to be legal were followed to ensure that the government's claim to the land and the actions taken to obtain the land could not be successfully challenged in a court of law;

f) the Association is further of the view that the fraud, bureaucratic irregularities, and obvious government collusion with the speculators, brought about policies favourable to speculation and aided and abetted speculators in using Scrip in a number of rather imaginative ways, and for which it was not intended. The administrative processes followed in the Scrip issues and in the conversion of Scrip to other purposes were illegal under the legislation which provided for Scrip, notwithstanding our view that such legislation was not constitutional.

FOOTNOTES

[1]Manitoba, the Birth of a Province, Supra, Ritchott's Diary, p. 141; Also see Archibald to Howe, March 27, 1872 - Archibald Papers, Public Archives of Manitoba, 762 - No. 85.

[2]House of Commons Debates, 1886, Supra, p. 834.

[3]Records of the correspondence and reports dealing with the Red River Memorial, Supra, 1846, p. 58.

[4]Wording of the Manitoba Act, Supra, Section 31: "Since it is expedient... ."

[5]Wording of the Dominion Lands Act, 1879, Subsection 125(e): "...as may be deemed expedient."

A.D. Hall Article, Supra, Sifton's comments in Parliament, 1904.

[5]Ibid. The Dominion Lands Act, 1883 Amendments.

[6]P.C. 688, March 30, 1885, Public Archives of Canada.

[7]Order of Her Majesty in Council admitting Rupertsland and the Northwestern Territory into the Union, June 23, 1870, found at R.S.S. 1965, Volume 6, p. 142.

[8]W.C. MacLeod, Supra, The American Indian Frontier, p. 533.

[9]As stated by Dr. Lloyd Barber during interview in Regina, May 10, 1977, Indian Claims Commissioner.

[10]Royal Proclamation as found in "Native Rights in Canada", Cumming and Mickenberg, Appendix 2; Also see Chapter III.

[11]Alexander Morris, Supra, The Treaties of Canada with the Indians.

[12]An Act providing for the organization of the Department of the Secretary of State of Canada and for the Management of Indian and Ordinance Lands, Supra, 1868.

[13]Macdonald Correspondence, Supra, September 29, 1869, to Carroll, Macdonald Papers, No. 13, p. 209, Public Archives of Ottawa.

[14]Ibid. Macdonald to Rose, February 23, 1870.

[15]P.C. 688, 1885, Supra.

[16]Archibald's Letter, December 27, 1870, Supra.

[17]"Half-breed Claims", report by N.O. Coté, Esq., of the Department of the Interior, dated December 3, 1929, Public Archives of Canada.

[18]P.C. 309, March 1, 1886.

[19]P.C. 918, May 6, 1899.

[20]Noonan and Hodges, Supra.

[21]Department of the Interior Correspondence, R.G. 15, Volume 281, File #49579, Public Archives of Canada.

[22]Report by N.O. Coté, Supra, pp. 1-17.

[23]Ibid.

[24]Department of the Interior Correspondence, R.G. 15, Volume 239, File #13765, Public Archives of Canada.

[25]Ibid. March 15, 1876; November 26, 1885; See also P.C. 596, March 13, 1900.

[26]Ibid. November 26, 1885.

[27]Ibid. December 8, 1898; August 30, 1900.

[28]Department of the Interior, R.G. 15, Volume 503, File #153347/141427, May 19, 1886, Public Archives of Canada.

[29]Statutes of Canada, 47 Victorie, Chap. 27, Section 4.

[30]R.G. 15, Volume 239, File #13765, Supra, March 25, 1902.

[31]Ibid. April 6, 1900, Keyes to McDougall and Secord.

[32]N.O. Coté, Supra, p. 1

[33]R.G. 15, Volume 239, File #13765, Supra, various correspondence (a-c).

[34]R.G. 15, Volume 503, File #153347/141427, Supra, various correspondence (g-f).

[35]Department of the Interior, R.G. 15, Volume 783, File #556321(1-4), March 31, 1905, and various other correspondence, Public Archives of Canada.

[36]Noonan and Hodges, Supra, p. 119.

[37]Ibid. p. 120.

[38]Ibid. pp. 74-86.

[39]Ibid.

[40]Ibid. p. 72.

[41]Individual Scrip Files of the Department of the Interior, Public Archives of Canada.

[42]Scrip Account Files, Department of the Interior, Public Archives of Canada.

[43]Ibid.

[44]Ibid.

[45]Manitoba Metis Federation Report, Supra, p. 45.

[46]Letter by R.A. Ruttan to Commissioner Smith, October 19, 1896, Dewdney Papers, Glenbow Foundation.

[47]Fillmore, Supra.

[48]R.G. 15, Volume 784, File #557941, Supra, March 20 and May 1, 1900.

[49]Clippings in Newspaper File, Volume 24, Gabriel Dumont Library, Regina. taken from Public Archives, University of Regina.

[50]Dixon Brothers File, Public Archives, University of Regina.

[51]Fillmore, Supra.

[52]Cote', Supra.

[53]Fillmore, Supra.

[54]Department of the Interior Correspondence, R.G. 15, Volume 983, January 28, 1920, Public Archives of Canada.

[55]An Act to amend the Criminal Code, Stat. Can., 11-12 Geo. V, C. 25, S 20.

[56]Peter Lowe, All Western Dollars, Manitoba Historical Society.

[57]File R.G. 15, Volume 784, Supra.

[58]R.G. 15, Volume 239, Supra.

[59]Article on Public Domain, p. 12, Timber License Deals, Volume 35, Land Companies, Gabriel Dumont Library, Regina.

[60]Dominion Lands Act, 1879, Stat. of Can.

[61]Ibid.

[62]Information was gathered from the records of original patents found in the Saskatchewan Land Archives, University of Saskatchewan.

[63]Jackson Papers, Letter 13.9 b., University of Saskatchewan Archives; Grievances and Conditions in the N.W.T., 13.9 d and other papers in Jackson Files.

[64]Personnel Recollections of early settlers (After 1886) related to the writer.

[65]Records of Individual Scrip Transactions, Supra.

[66]Peter Lowe, Supra.

[67]Newspaper Clipping File, Supra.

[68]See Bank Acts, 1878 to 1930, Statutes of Canada.

[69]Scrip Buyers Accounts, Supra.

[70]Peter Lowe, Supra.

[71]House of Commons Debates, March 1, 1934, p. 1073.

[72]Bank Mortgage Documents from 1880-1910, Public Archives of Canada.

[73]Newspaper Clippings File, Supra.

[74]Scrip Buyers Accounts, Supra.

[75]R.G. 15, Volume 784, File #55794, Supra, May 1, 1900.

[76]Manitoba Metis Federation, Final Report, Supra, pp. 82-83.

[77]Compiled from Scrip Files and Scrip Buyers Accounts, Supra.

Supra, Footnotes 75, 76 and also see footnote 79.

[78]Ibid.

[79]Ruttan to Smith, October 19, 1896, Correspondence Re: R.C. Macdonald and the U.S.A. Scrip issue, R.G. 15, Volume 239, File #73765, Supra.

[80]House of Commons Debates, 1886, Supra, p. 834.

[81]McKenna Commission Report, 1906 - In 1909, Sessional Papers, Paper No. 27, p. 43.

[82]Report of the Supt. General, Indian Affairs, June 1886, Department of the Interior, Public Archives of Canada.

[83]Report of Commissioner of Indian Affairs to Supt. General, July 1886, Department of the Interior Correspondence, Public Archives of Canada.

[84]Sessional Paper No. 7, 1886, p. 5.

[85]Reimer, June 1899, Department of the Interior Correspondence, Public Archives of Canada.

[86]McKenna to McLean, December 1901, Department of the Interior Correspondence, Public Archives of Canada.

[87]Department of Justice, July-May 19, 1886, Margaret McLeod Case, R.G. 15, Volume 503, Public Archives of Canada.

[88]List of discharged half-breeds, Department of the Interior, 1892-1901 and for 1885, Department of the Interior Reports, Public Archives of Canada.

[89]Department of Indian Affairs, W.M. Graham to Commissioner, August 17, 1992, Registry of Half-breeds withdrawing from Treaty, 1885-86, plus list of half-breeds re-entering Treaty.

[90]Commissioner to Supt. General, Supra, July 1886.

[91]Manitoba Metis Federation, Final Report, Supra.

[92]March 1885 and April 1885, O.C. setting up Scrip Commission and providing for Scrip allocations.

[93]Department of the Interior Correspondence, December 4, 1893, P.C. Order No. 3058, R.G. 15, Volume 503; March 20, 1897, P.C. Order No. 670, R.G. 15, Volume 503; December 1, 1899, R.G. 15, Volume 503, Public Archives of Canada.

[94]December 26, 1900, R.G. 15, Volume 503; March 1, 1903, R.G. 15, Volume 503; 1899, Department ruling - Scrip can be issued to assignee if he/she has a properly executed assignment, Public Archives of Canada.

[95]Department of the Interior Correspondence, May 19, 1886, Annuities do not have to be repaid, R.G. 15, Volume 783 and 784, Margaret McLeod Case; R.G. 15, Volume 783 and 784, Children of H.B. who enter Treaty can receive Scrip if not on band list, Public Archives of Canada.

[96]Department of the Interior Correspondence, memo attached to letter dated August 19, 1927, Re: unconditional grants, Document No. 7114, R.G. 15, Volume 783 and 784; July 30, 1886, R.G. 15, Volume 784 Re: Patents to Minors. Children can buy land for cash. No law preventing patents to be issued to H.B. children outside Manitoba, Public Archives of Canada.

[97]J.A. Gregory to Legislature, February 18, 1983. Legislative Journals of Saskatchewan; Department of the Interior Correspondence, Cooper, March 10, 1900, R.G. 15, Volume 783 and 784; April 7, 1900, McKenna's Response, R.G. 15, Volume 783 and 784, Public Archives of Canada.

[98]Department of Interior Correspondence, letters from 1896 dealing with the activities of the speculators, dated October 1, 2, 16, 19, 22 and 28, R.G. 15, Volume 492, Public Archives of Canada.

[99]Department of the Interior Correspondence, dated October 22, 1900, R.G. 15, Volume 783 and 784, Macdonald insists that half-breeds have right to assign their Scrip entitlement, December 1, 1904, R.G. 15, Volume 239; March 30, 1906, R.G. 15, Volume 760, Macdonald Judge Myers' Commission Report to Wilfred Laurier, August 8, 1904, Public Archives of Canada.

[100]Ruttan to Smith, Supra, October 19, 1896, R.G. 16, Volume 492, Department of the Interior Correspondence; Department of the Interio Correspondence, R.B. Bennet, 1904, R.G. 15, Volume 868; Robinson to Keyes, March 17, 1903, R.G. 15, Volume 868; September 18, 1886, R.G. 15, Volume 492, 1885 Speculation; April 15, 1910, R.G. 15, Volume 782, Second Case.

[101]Fillmore, Supra, "Half-breed Scrip", L'Hirondelle Case, R.G. 15, Volume 1, Department of the Interior Correspondence, November 30/20, House of Commons Debates, 1920.

[102]Supra, See Footnote 55.

[103]Scrip Accounts, Department of the Interior, July 15, 1904, R.G. 15, Volume 857, Ref. 695671, No. 2.

[104]Individual Scrip Accounts, Volume 79(a-j) as found in the Gabriel Dumont Library; Department of the Interior Instructions Re: The Opening of Scrip Accounts, R.G. 15, Volume 784; April 1, 1900; May 1, 1900; May 16, 1900; May 25, 1900; June 18, 1900; July 2, 1900; July 13, 1900.

[105]R.G. 15, Volume 783 and 784, May 1, 1900, Department of the Interior Correspondence.

[106]Department of the Interior Papers: April 28, 1902, R.G. 15, Volume 784, Rent on land in a Federal Park; 1901, R.G. 15, Volume 239, Allow Scrip to be used to purchase pre-emption lands; November 29, 1904, R.G. 15, Volume 736, Various Uses of Scrip Outlined.

[107]Department of the Interior Correspondence Re: Lawyers fees in L'Hirondelle Case, dated March, April, May, 1920, found in Volume 67b, Gabriel Dumont Institute Library, Regina, Saskatchewan.

[108]Ibid. Rothwell to Sifton, February 16, 1897, R.G. 15, Volume 239, Pulbic Archives, Ottawa.

[109]Ibid. Ruttan to Smith, October 19, 1896, R.G. 15, Volume 503.

[110]Ibid. Robinson to Keyes, R.G. 15, Volume 868.

[111]Ibid. November 30, 1920, Not to Investigate Fraud Charges, Policy since 1913, R.G. 15, Volume 983.

[112]Ibid. Agree to Investigate Claims of Fraud, 1896, R.G. 15, Volume 235.

[113]Ibid. Recommend Another Scrip Issue, R.G. 15, Volume 492.

[114]Ibid. Rev. Holmes to Oliver, May 2, 1910, and Oliver's Reply, May 11, 1910, R.G. 15, Volume 784

[115]W.C. MacLeod, Supra, p. 100 and following.

[116]Ibid. pp. 402-404.

[117]Cumming and Mickenberg, Supra, Native Rights in Canada, pp. 75-88.

[118]W.C. MacLeod, Supra, pp. 17-18.

[119]Ibid.

[120]Ibid. Pp. 17-18, and pp. 533 and following.

[121]De Vittoria, Supra, p. 120 and following.

[122]Brian Slattery, Supra, pp. 47-48.

[123]W.C. MacLeod, Supra, Chapters VI, VII, VIII & IX.

[124]Ibid.

[125]Brian Slattery, Supra, p. 86.

[126]W.C. MacLeod, Supra, pp. 193-198.

[127]Supra, Royal Proclamation.

[128]Supra, Letters Outward

[129]Pacific Islanders Protection Acts, 1872 and 1875(35&36 Vict.) C.19(38&39 Vict.) C. 51, S. 7.

[130]Dr. Lloyd Barber, former Indian Claims Commissioner for Canada, Supra, personal interview.

[131]Supra, See Numbered Treaties 1 to 11.

[132]Stanely I. Stuber, "Human Rights and Fundamental Freedoms in Your Community", pp. 194-198, Universal Declaration of Human Rights.

[133]Supra, Royal Proclamation.

[134]Alexander Morris, Supra.

[135]Supra, Footnote 12.

[136]Leroy Littlebear, "A Concept of Native Title", Volume 27, Gabriel Dumont Institute Library, Regina, Saskatchewan.

[137]Ibid.

[138]W.C. MacLeod, Supra, pp. 24-26.

[139]Ibid.

[140]Supra, Archibald to Dewdney, December 2, 1870.

[141]Supra, See Footnote 55.

[142]Supra, Royal Proclamation.

[143]Ibid.

[144]Ibid. Proclamation; Supra, 146 O.C. 9, Appendix 3.

[145]Ibid.