ASSOCIATION OF METIS AND NON-STATUS
INDIANS OF SASKATCHEWAN

FINAL REPORT UNDER THE
1979-80 RESEARCH CONTRACT

A SUMMARY AND REVIEW OF RESEARCH FINDINGS
REGARDING THE RIGHTS AND CLAIMS OF
THE NON-STATUS INDIAN PEOPLES OF SASKATCHEWAN

April 8, 1980

TABLE OF CONTENTS

Page

I. INTRODUCTION. 1

II. THE ASSOCIATION'S APPROACH TO THE REVIEW PROCESS 2

III. THE HUMAN RIGHTS BASIS FOR THE CLAIM

A) The Basis of Modern Rights 4
B) The Laws of Nature 6
C) The Law of Nations - Its Application to Native Sovereignity 7
D) The Question of Indian Rights - Vittoria . . . 10

IV. HUMAN RIGHTS OF NATIVE PEOPLE AND COLONIAL PRACTICE

A) The Purpose and Intent of Colonial Nations. . . 13
B) The General Application of Colonial Policy. . . 15
C) Spanish Practice. 17
D) French Practice 17
E) English Practice. 19

V. ABORIGINAL TITLE? ITS IMPLICATIONS AND PRACTICE

A) What Is It? 20
B) Why Aboriginal Title? 21
C) The Implications of Aboriginal Title. 23
D) A Position on Aboriginal Title 23

VI. THE APPLICATION OF INTERNATIONAL LAW TO DEALINGS WITH NATIVE PEOPLE IN CANADA

A) Early Practices in the Colonies 24
B) The Royal Proclamation of 1763 26
C) The Intent of the Canadian Government and The Policy of Acquiring New Terriroy. 28
D) Links To British and Hudson's Bay Company Policy. 29
E) Indian Treaties and Indian Policy 31

VII. THE BASIS OF THE METIS CLAIM TO NATIONHOOD RIGHTS

A) Origins of the Metis. 33
B) The Metis Role in the Economic System 34
C) The Development of a Metis National Identity. . 35
D) Metis Conflicts with the Hudson's Bay Company before 1870 37

ASSOCIATION OF METIS AND NON-STATUS INDIANS OF SASKATCHEWAN

ABORIGINAL AND LAND CLAIMS RESEARCH

FINAL PROGRESS REPORT ON LEGAL AND HISTORICAL RESEARCH

I INTRODUCTION:

This report will not be in the form of a progress report on work completed during the last quarter of the contract, nor will it outline the future plans for the research-claims process. This report will instead provide a summary of the findings of our research. The report will set out the general basis of the claim as seen by the Saskatchewan Association, and will support the findings with some references to source documents or to secondary reference materials. Although the report generally sets out the basis of the case, it is not a definitive or complete presentation of the case or of the evidence in support of that case. It is the view of the Association that material from various sources now requires in-depth study and evaluation, and correlation and integration before the final presentation of the case and supporting evidence are put forward.

That is not to suggest that the general conclusions are tentative and will change in any substantial way prior to the public presentation of the case. Indeed, our evaluation, integration and correlation of information, attempted to date has always clarified, strengthened and supported the general and overall assumptions drawn. Therefore, we have arrived at the conclusion that if we are to present the strongest possible arguments in support of the case, that a preparation phase is necessary to allow for the in-depth evaluation, and the comprehensive preparation of the case and of the evidence in support of the case. Any other approach would do a disservice to the Metis people of this province in particular, and to the non-status native people of Canada in general. The issue is too important to them and the potential consequences for them of a decision on the alleged claim, is too great to justify other than a thorough, comprehensive and completely lucid presentation of the facts and of the conclusions which must be reached, based on these facts.

It has also been, from the beginning of this process, the position of the Association, that the findings must be presented before an impartial public body which can provide a fair and objective appraisal of the findings and reach conclusions as to remedies and recommend such remedies to the Government of Canada. The Association has from the beginning opposed the idea of behind closed doors negotiations with bureaucratic structures or political structures. It is the Association's position that such negotiations, at best, would result in decisions of a highly legalistic nature based on technicalities which do not deal with the real nature of the Aboriginal Rights case, and which the Association sees as being a Human Rights issue. At worst, that behind closed doors process is vulnerable to manipulation for political and government policy purposes, which again would circumvent the Association's basic rationale for following through with this research exercise. That rationale is to ensure a fair and impartial examination of the evidence in support of the case for an aboriginal claim by the Metis people.

II THE ASSOCIATION'S APPROACH TO THE RESEARCH PROCESS:

The Association began its research program in January 1976 with funds it received from the province and from non-government sources. The decision was made early in the process to treat the problem as one of Human and National rights and not to limit the research effort to a narrow examination of "Aboriginal Title" and "land claims". Therefore, the Association has approached the research task from a broad historical, chronological and legal perspective. The position has been that it is necessary to determine, (a) the origins and nature of the rights of aboriginal people; and (b) how these were reflected in International Law Doctrines such as the Laws of Nature and the Law of Nations, before it is possible to determine whether the methods used to expunge such rights were legal and just. From this followed the necessity to examine both the legal prescriptions used by Colonial Nations to deal with native rights as well as the prevailing public and private policies which governments were pursuing and implementing through the use of these prescriptions.

Such an approach to the rights issue was considered necessary to determine whether the legal prescriptions were consistent with International Law practice and if these prescriptions were fair, just, and in the interests of native people. It was then necessary to determine if they were consistent with the general legal prescriptions and whether they recognized the full range of national and human rights possessed by the aboriginal people. Finally, it is necessary to examine if the administrative methods used to implement legal prescriptions themselves were carried out in ways which were legal, just, fair and which protected the interests of the aboriginal people.

In our original submission for funding assistance to the Government of Canada in January of 1977, such a broadly based research program was laid out. The government's approach to the research exercise, however, was to attempt to define the task very narrowly as a land claims issue and to restrict research to land claims questions. The Association and the government were in dispute over this approach for a number of months before an agreement was reached which enabled us to arrive at a mutually agreeable approach to the research. This approach enabled us, by pooling our resources and information with Manitoba, to continue our broadly based approach to the research.[1]

It also soon became evident from the preliminary research that we were not dealing with an aboriginal rights claim which was unique and special to native people, but we were dealing with a question of the human rights of a people in their own land. We believe these rights are the same as the human rights possessed by any national group in any part of the world within the context of their own land area and national culture. In other words, the Metis and non-status people are not asking for special rights different from those possessed by other aboriginal peoples and their descendants, in other countries and nations. They are only asking that those human rights they share in common with all peoples be recognized, that these rights be granted where this is possible and/or compensated for where this is not possible, such as in the case of land and economic rights.

The Association therefore views the claims of the Metis and non-status people as a case where a grave violation of Human Rights is

involved and not a question of an unsatisfied claim under some arbitrarily prescribed British laws which were applied so as to divest the people of their land and other rights according to some legally acceptable prescription.

III A HUMAN RIGHTS BASIS FOR THE CLAIM:

A) The Basis of Modern Rights

The basis of human rights in modern societies is the United Nations Universal Declaration of Human Rights.[2] This is a document to which all nations ascribe in theory and which most nations violate in practice. Even Canada, which is fond of holding itself up as the model of a nation which respects the human rights of its citizens, does not even have a piece of human rights legislation with any legal clout. In fact, Canada's record on human rights is a very shoddy one particularly as it relates to the situation of its native peoples.

The U.N. Charter sets out what are considered to be fundamental human rights in a series of thirty articles.[3] This modern charter grew out of the San Francisco meeting of nations in 1947, which organized the United Nations, in an attempt to develop some more effective form of International Law and government.[4] The idea of human rights and some of the particular individual rights enunciated were not new. They have their roots in the oldest known International Law. We will not repeat all of these rights here, but list those we believe to be most fundamental and the ones which have been consistently violated by the Government of Canada and the predecessor Colonial government of Great Britain.

Article 2 states that all people are entitled to the full range of rights and freedoms regardless of their race, colour, sex, language, religion, political or other opinion, national and social origin, property or other status. It further states that no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory within which people live.

Article 7 states in part that "All are equal before the law and are entitled without any discrimination to equal protection

before the law."

Article 8 states that "Everyone has the right to an effective remedy by the competent tribunal for acts violating the fundamental rights granted them by the constitution or by law."

Article 10 states that "Everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights ...."

Article 15 states that "Everyone has the right to nationality. No one shall arbitrarily be deprived of his nationality ...."

Article 17-2 states that no one shall be arbitrarily deprived of his property.

Article 18 includes the right to freedom of religion.

Article 20 covers the right to peaceful assembly and association.

Article 21-1 refers to the right to take part in the government of his country directly or through freely chosen representatives.

Article 21-3 states that the will of the people shall be the basis of the authority of government ...."[5]

The rights set out in this universal declaration are rights which nations prescribing to the charter, were to be bound to grant to their citizens. Although the emphasis is on individual rights, we would also argue that they apply to groups of people, since groups are made up of individuals and if the rights of the group are violated, so are the rights of all of the members of the groups. In this paper we shall set out the origins and basis of these rights in International Law, briefly examine advocacy for the recognition of these rights and how they were dealt with and restricted by Colonial nations. We shall further examine how these rights were consistently violated in the case of Canada's native people with particular concentration on the violation of the rights of the Metis people.

B) <u>The Laws of Nature</u>

The Laws of Nature were recognized by courts in Great Britain and United States as valid international laws and were often quoted by courts when ruling in cases where the rights of indigenous peoples were being considered. These laws in effect were based on the idea that where people settled on unoccupied territory it was natural for them to do certain concrete things. These included the right to:[6]

a) establish their own form of government to protect the life and property of the people;

b) the right to develop their own language, religion and nationality;

c) the right to develop their own customs, laws and usages;

d) the right to develop their own institutions such as law enforcement agencies, judicial procedures, educational processes, etc.; and,

e) the right to their property both private and commercial.

These arguments further set out the premise that this territory could be acquired by someone else or some other national group either by conquest, cession, occupation, or purchase. Regardless of the method by which the territory passed from one sovereign group to another, International Laws considered it important that the rights of the people, particularly to their property, not be ~~distributed~~ disturbed by a change of sovereign. This fact is referred to by a number of authorities. In the History of the Backward Nations, it is pointed out that in the case of aboriginal people in the Pacific Islands of Australia, New Zealand and Figi, these rights were guaranteed by an Act of the British Parliament known as "The Pacific Islanders Protection Act 1875". This Act empowered Britain to exercise power and jurisdiction over her subjects in these islands, but it specifically protects the native rights in Section 7 of the Act which states as follows:[7]

"Nothing herein or in any such order in council contained shall extend or be construed to extend to invest Her Majesty, her heirs or successors, with any claim or title whatsoever to dominion or sovereignty over any such Islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of Chiefs or Rulers thereof, to such sovereignty or dominion."

The concept of the rights of occupants was explicitly recognized in a number of precedent setting cases in the United States.[8] These included the case of Worcester v. McIntosh where the chief justice Marshall ruled that Indians were the rightful occupants with a legal claim. In 1787, the U.S. Congress gave further recognition to this doctrine by passing an ordinance which stated, "The utmost good faith shall always be observed towards the Indians; their land and property shall not be taken from them without their consent."

This idea of the rights of occupants was applied to Canada through the Royal Proclamation of 1763. Even though the Proclamation did not apply to all parts of Canada, Canadian courts have ruled that the rights enunciated in the Proclamation do apply in all parts of Canada.

C) The Law of Nations - Its Application to Native Sovereignty.

As particular national groups began to agressively acquire territories belonging to other peoples, the question of the rights of these people began to receive attention in the legal covenants of conquering nations. Early colonialists such as the Romans in their laws recognized no rights of indigenous peoples. However, in practice the Romans allowed conquered peoples to maintain their own languages, religion, civil laws, and cultural practices as long as they obeyed Roman laws and paid Roman taxes. With the emergence during the middle ages of a number of new nations, such as Britain, France, Spain, and other smaller European nations, these nations often found themselves in competition with each other for land areas and subjects. Through treaties and similar agreements, these nations, which became known as the International Family, began to develop legal arrangements which

were recognized as International Law or the Law of Nations. For example, these nations did not dispute each others right to acquire new territory if any of them did not have a prior claim.[9] Also the recognition of another nation's claim did not depend upon the method by which the territory was acquired.

The rules laid down were as follows:

a) If the territory is uninhabited or is inhabited only by a number of individuals who do not form a political society, then the acquisition may be made by way of occupation.[10]

b) If the inhabitants exhibit collective political activity which, although of a crude and rudimentary form, possesses the elements of permanence, the acquisition can only be made by way of cession or conquest or presciption.

c) Acquired rights of the occupants must be respected regardless of the method of acquisition. A conqueror could exercise sovereignty and assume Dominion but must grant the private rights of persons to property.[11]

d) A successor state could only cancel private rights by legislative acts or by expropriation or by the grant of new titles of an equivalent value.

e) Private acquired rights were, all rights, properly vested in a natural or legal person, and of an assessable monetary value.[12]

The emphasis on rights in International Law during earlier periods was primarily on corporeal or property rights. Little attention was given to other rights such as language, religion, civil laws, etc. As European nations conquered smaller surrounding groups or countries, the tendency was to impose the language, laws, and government systems of the conquering nation on the people conquered. This was certainly the case when England conquered Scotland, Ireland, and Wales, and it was also the case when Russia was putting together its European Empire in the early period. It is, of course, a fact that a conqueror cannot control or direct every aspect of the life of a new

territory or of its people. Therefore, the prevailing practice tended to be to allow the conquered to continue their customs and cultural practices in areas which did not threaten the colonizing nation or interfere with its own plans for government and development of the area.

Most of the colonizing activities of European nations, however, were outside of Europe, in either known or newly discovered areas of the world. In most of these areas the culture of the people was radically different from that of Europe. In particular, the kind of technological and economic development was such that the European nations quickly concluded that the people were underdeveloped and therefore interior to White Europeans. This led the conquering nations to view the native populations, in North America in particular, as part of the animal life. They were to be subdued and put to work to achieve colonial commercial interests. They were not recognized as human beings entitled to the full rights accorded White Europeans.

The position widely expressed in England both during the early and later colonial periods was that International Law had no place for rules protecting the rights of backward peoples. This position, however, was not so generally adopted by European jurists or by classical writers on International Law.[13] For example, the Jurist Phillimore referred to the doctrine, "that International Law is confined in its application to European territories", as a detestable one, and he maintained that the principles of international justice, "do govern or ought to govern" the dealings with the non-christian community and that they are binding in the dealings of European powers in various parts of the world and upon the United States of North America in their intercourse with native Indians."[14]

Chapter V of the book, "The Acquisition and Government of Backward Territory in International Law", states that International Law cannot ignore native sovereignties. The following is a direct quote from Chapter V, page 146:

> It is, of course, true that International Law has, in the main, been evolved out of the mutual relations of the advanced states who are considered to form the International Family. It is

> equally true that most of its rules are inapplicable to the conditions of backward peoples. It is, however, one of the admitted functions of International Law to lay down rules by which the goodness or badness of a territorial title claimed by a member of the International Family may be tested, and, in so doing, it would simply ignore facts if it were to declare that all the territory that has been acquired by members of the International Family, otherwise then from other of its members, has been acquired by the same process, and that process occupation.

The question of native sovereignty has been recognized by a number of nations by the making of treaties with the native peoples.

In the history of the Backward Nations, the writer points out that the fact that one sovereign state acquires territory from another state by a treaty recognizes that the acquiring state did not consider that the territory belonged to "nobody". He further goes on to indicate that the ability to make an agreement or treaty is a recognition of the sovereign claim of the occupants and their leaders. It also acknowledges an ability to refuse to make an agreement and this fact is a mark or test of the independence of a people.[15]

D) <u>The Question of Indian Rights - Vittoria</u>.

In spite of some evidence that early concepts of International Law did or should have applied to indigenous peoples, the issues remained a very controversial one. It was commonly held by some leading jurists, cannonists and theologians of the time that infidel nations were non-nations, that their rulers lacked jurisdiction and that their lands were appropriable without compensation.[16] The arguments continued in the church for several centuries. There were three main contributors to these lines of argument. They were Thomas Aquinas, Innocent the IV, and Hostiensis. The main line of argument was as follows:[17]

a) Thomas Aquinas, born 1225, argued that the legitimacy of dominion does not depend upon the religious beliefs of the party exercising them, therefore the authority of the infidel is as natural and valid as the authority of the christian.

b) Innocent IV, born 1190, developed the views of Aquinas in more detail to say that principles of the legitimate nature and moral of the state are not limited to christian states. They, in fact, extend to all states even to those of the unbelievers.

c) Hostiensis who died in 1271, represented an opposing view. His view is stated above, that being that infidel nations are non-nations, and the rulers had no jurisdiction.

With the discovery of North America by Spain in the late 15th century, the question of the status of the native peoples in the new territory became more urgent. The Spanish rulers faced with pressure for the development of trade and commerce with the new territories and with the prospects of settlement, were uncertain as to how to deal with the many legal and practical questions which arose regarding sovereignty, land ownership, and other native rights. They, therefore, referred the question of the rights of aboriginal people in North America, to the church, with a commission to study the matter and make a report and recommendation to the government.

This study was undertaken mainly by a Spanish theologian, who taught at Salamanca University, by the name of Francisco De Vittoria. Based on his studies, he gave a series of lectures in 1532, entitled De Indis and De Jure Belli, in which he dealt with basic questions of Indian rights.[18] He was probably the greatest defender of the rights of native North Americans and other non-christian peoples in general. Because of this, he is credited with having developed the concepts of aboriginal rights which is often confused with the doctrines of Aboriginal Title. It is often assumed that this doctrine derived from Vittoria's work. However, this is far from the truth since Vittoria in his writing never uses the term 'aboriginal rights' and the doctrine of aboriginal title was a later invention of the British.

Vittoria's main thesis in his lectures was that non-christian native people had the same rights in all respects as White Europeans. He raised the following basic question of whether or not the indigenous North Americans "were true owners in both private and public law before the arrival of the Spaniards; that is, whether they were true owners of private property and possessions and also whether

there were among them any who were true princes and overlords of others."[19] Vittoria then went on to examine and demolish arguments denying dominion and ownership to the American Indians on the grounds that they were so-called sinners, unbelievers, unsound of mind or slaves by nature.

He concluded by arguing as follows:

> The upshot of all the preceding arguments is, then, that the aborigines undoubtedly had true Dominion in both public and private matters, just like christians, and that neither their princes nor private persons could be dispoiled of their property on the grounds of their not being true owners.[20]

"To do so," said Vittoria, "would be theft and robbery no less than if it were done by Christians."[21]

It is clear that Vittoria is establishing the principle that native peoples and non-christians have the same rights as White Europeans. These are the rights that were generally recognized in Europeans Law and in the International Law conventions of the time. They were not a special class of rights somehow different from those of White Europeans. At best, it can be said that Vittoria's position was that aboriginal peoples had the same rights all christian people had.

Vittoria's thesis was further developed by other theologians at a later date such as Hugo Grotius. We do not plan to pursue these in this paper since the point we make here is that Vittoria established conclusively that the rights of aboriginal people were the human rights that inurred to all people and which must be recognized as belonging to all peoples and not just christians.

The result of this study and debate was that the Catholic Church in 1837, issued a Papal Bull which was to guide the dealings of the Spanish rulers with native peoples, but which was further extended to be a guidline for the rulers of all Christian nations. Pope Paul III issued the Bull Sublimis Deus which in part stated "... Indians are truly men ... they may and should freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in

any way enslaved; should the contrary happen it should be null and of no effect."[22]

This Papal Bull clearly establishes that native people are not just to enjoy their property rights but also their liberty. Liberty in the full sense implies the freedom of the Indian people to pursue all aspects of their culture, including governments, economics, legal codes, etc., without interference or restriction by colonizing powers.

It is within the context of such clearly defined and recognized Human Rights, by the leading authorities of the day, that we shall examine how the Colonial Nations either observed or violated the rights of native people. In our definition of native peoples in Canada, we include the Metis people who were the offspring of White men and Indian women. As descendents of the original occupants of North America, they inherited the rights of their ancestors. The balance of their inheritance is almost exclusively from their Indian ancestors for reasons we shall examine later in this paper. The fact of this inheritance was also clearly recognized by authorities on the subject who referred to their position as that of a moiety [23] with the Indians, or half-share. The fact that Metis people had native rights, the same as or at least similar to those of the Indians, was recognized in Canadian Law. This will also be explored in more detail later in this paper.

IV HUMAN RIGHTS OF NATIVE PEOPLE AND COLONIAL PRACTICE:

A) The Purpose and Intent of Colonial Nations.

The question of colonial policies and their relationship to indigenous people in newly discovered land areas was reviewed in some detail in a paper on this subject dated December 19, 1978.[24] During the 15th and 16th centuries, colonial policy in Great Britain in particular and in Europe in general, was in theory dominated by the capitalist liasse faire doctrine of Adam Smith.[25] In practice, there was a good deal of monopoly control exercised by large and powerful financial interests with the support of governments. Nowhere was this more true than in the dealings of large corporations in and with

colonial territories. The concepts of International Law regarding territory and conquest ensured this monopoly. One nation did not normally challenge another nation's claim to unclaimed territory. The nations claiming the new sovereignty consistently gave monopolistic trade charters to large territories to influential companies and supporters. The monopoly charter of the Company of New France, the Hudson's Bay Company, and the Massachusetts Bay Company are good examples of such land grants. In general, these charters concerned themselves with control of trade and commerce. They usually involved trading manufactured goods from European factories for the raw materials of the new frontier countries. In some cases the charters also gave companies the right to settle immigrants in the new territories.[26]

The general intent of colonial nations therefore was that of claiming new territories for the purpose of establishing and expanding trade and commerce in the first instance, and to establish new settlements in the second instance. The first goal would ensure that idle capital which was being accumulated by the new merchant class would be put to work earning still more profit and thus wealth and power for both the wealthy class and for the government of the nation. The second goal would ensure an outlet for surplus population being forced from the land by the industrial revolution. It would also provide an outlet for surplus managerial, entrepreneurial and professional skills developing in Europe, by recruiting such skills for employment in the new world. The effect was to help maintain some stability at home both among the poor working classes and among the middle classes who might provide the potential leadership for uprisings and revolutions, should they be unhappy with their lot.[27]

For trade and/or immigration to be successful, certain conditions were necessary. These included the following:

a) unchallenged sovereign claim to the newly discovered territory. This was ensured by existing and developing International Law.

b) the ability to devise a system to get clear title to land and resources as needed.

c) the existence of law and order and relative peace among and with the indigenous native populations;

d) the availability of a cheap supply of labor to produce the raw materials and other goods coveted by the merchants; and

e) a system of trade which would ensure a free exchange of goods among the native people and the merchants, in a way which would generate huge profits for the merchants, as well as an outlet for manufactured goods from European factories.

B) <u>The General Application of Colonial Policy</u>.

The doctrines which denied that native peoples were intelligent human beings not capable of having their own leadership, forms of government, their own institutions, and therefore not capable of exercising sovereignty or competent to enjoy full human rights, was a convenient and popular view with the capitalist and merchant class and with governments. If these classes could be successful in having the church give theological legitimacy to these views, not only would this give legal standing to practices which were developing, but the good offices of the church could be used to help impose colonial rule and control over native peoples. To some extent this approach to the church succeeded even though church authorities were split on the issue. It is a well known fact that new liberal ideas based on theological interpretation of the christian bible, generally do not become practice for many years after they are first enunciated. Therefore, at the level at which the merchants had contact with the native people, the church willingly and deliberately supported the policy of the commercial interests. The church's role was to both civilize and christianize the native peoples. Since these people were generally considered as inferior beings compared to whites, these two objectives were often undertaken in a very paternalistic and authoritarian way. The extent to which the churches were successful in achieving their objectives, influenced the degree of success experienced by merchants in their trade and by colonization companies in their colonizing efforts.

The merchant class could also count on the colonial governments to dispatch troops to protect the settlers and to put down native

uprisings when these occurred. However, it was important for purposes of trade to maintain peace with the natives. It was also important for trade and settlement to maintain law and order. Therefore, various methods were used to appease the native population. These appeasement policies did generally include the practice of granting full citizenship, legal and human rights to the native workers, which were granted to workers in Europe, at least in theory.

The other convenient aspects of the policy of treating native people as inferior was that territories could simply be acquired by occupation rather than by war, cession, or purchase. Since native sovereignty was not recognized, there was no problem in International Law, for the colonial nations to claim sovereignty, or in confiscating the title to land and resources for themselves. The extent to which other rights and cultural practices of the native people were interfered with varied depending on the circumstances. If allowing native people to maintain their culture and life style did not hinder trade and commerce or if it enhanced it, as in the case of the fur trade, the interference in those areas was minimal. If it was important to have a readily available and captive labour force to facilitate trade and commerce, there was generally maximum interference which in some cases resulted in the practice of slavery. In North America, Indians were seldom enslaved since they made better hunters and trappers, than domestic workers. Also, it was difficult to make slaves of people in their own territory, which was large and not possible to police in any effective way. As a result, it was more convenient to bring slaves from a foreign country like Africa to work on the plantations of North America.

Colonial policies were therefore in general applied so as to achieve the two goals of trade and settlement in ways which each nation saw as being most successful in achieving these goals. General practices which were common to all colonizing nations were the following:

a) treatment of the native people as inferior to whites;
b) denial of any public or private rights of the people;
c) the claiming and acquisition of land and resources for the colonial masters;

d) the use of the native people as labourers in the production of raw materials;

e) interference with native culture and lifestyle to the extent necessary to achieve colonial goals.

C) Spanish Practice.

The Spanish government reflected the sentiments of the Papal Bull in their laws which applied to the West Indies. These laws required that Indians be placed in a position of equity with Spaniards. These laws also provided for the protection of Indian Lands.[28] These legal provisions, however, were mostly ignored by the Spanish Conquistadors who plundered and stole from the Indians, enslaved many and who practiced excessive cruelty and oppression toward the Indian people. They established themselves as dictators and rulers, with all the privileges and prerogatives which go with such power. The results of this blatant disregard of native rights is still evident in the social, and economic situation in Spanish America today.

D) French Practice.

The French took a more direct position of dominance over native people. They followed the old conservative tradition of applying human rights to only white and Europeans and considered natives inferior and not competent of claiming sovereignty or of governing themselves. Therefore, they considered they were acting legally by claiming sovereignty to new land areas they discovered. The French practice was based on two overriding policies. These are best expressed in following excerpts from the Charter of the Company of New France:

> To establish, extend, and make known the name, power and authority of his Majesty, and to the latter to subject, subdue and make obey all the peoples of the said lands.[29]
>
> Have them instructed, provoke, and move them to the knowledge and service of God and by the light of the Catholic faith and religion, apostolic and Roman, there to establish in the exercise and profession of it ...[30]

The French at no time had a well defined policy regarding Indian Title. It was simply assumed that the title to Indian lands passed to the French sovereign when it was claimed. The Indians were seen as fit subjects to the christianized and frenchified. Once having accomplished these two goals, Indians were seen as French subjects. There was no recognition of the Indians having any rights in law until they became French citizens. The French traders and merchants were for the most part only interested in the Indians for economic reasons. They were vital to the fur trade and it was believed that if they acquired christian ideas and habits, they would be spurred by self-interest to participate in the fur trade.[31]

As a result of this policy, the French had no problems acquiring native lands for settlement or with the granting of title to such land to its citizens. The taking of land for actual settlement, however, was limited to the area around the St. Lawrence River. The great Interior of North America was granted to the Company of New France as an area where they could carry on trade and commerce and make laws to govern the trade. First, the land was not required for settlement. Secondly, it was necessary to allow the land to remain in an untamed state, with the Indians having the right to move freely on the land and to follow their traditional hunting and gathering lifestlye. This lifestyle was necessary to the success of the fur trade and this was not interfered with to any degree. Indeed, the French traders and explorers adjusted their activities and their own lifestyle to the frontier conditions.

It is of interest, however, that when the French in Quebec were faced with the loss of their own rights, when New France was ceded to Canada in 1760, the governor of Montreal, Vaudreil, negotiated an agreement with General Amherst which resulted in British recognition of Indian land rights. The articles of capitulation, Article XL, provided as follows.

> The Savages or Indian Allies of his most christian Majesty, shall be maintained in the lands they inhabit; if they chose to remain there; they shall not be molested on any pretense whatsoever, for having carried arms,

> and served his most christian Majesty; they shall have, as well as the French, liberty, religion and shall keep their missionaries.[32]

The fact that the French did not recognize native rights does not mean that they did not exist, or that they might not be recognized in International Law, at a later date.

E) <u>English Practice</u>.

The British were the most active colonizers on a global basis. Their policy was most influential in shaping native policy in North America. The British goals were the same as those of the other colonial nations, trade and settlement. The object of trade and commercial activities was to make profits and nowhere was the art of making money better developed or more cultivated then it was in England. The merchant class had gained control of government and used the power of government to enhance their own interests. In the early colonial period, Great Britain was most concerned about trade. The trade was in handcrafted goods in exchange for raw materials and exotic products such as jewels, spices, perfumes, etc. The settlement activities tended to be limited to the settling of a managerial and professional class, and an entrepreneurial class. The entrepreneurs were to establish and run the plantations on which some of the trade depended. The managers looked after business and related administrative activities. The professional class served the settlers and concentrated some attention on civilizing the native inhabitants.[33]

To maintain maximum profits, it was necessary to keep down the costs of colonial government, policing, and other services, and to appease the native population. A reasonably satisfied native populace could be called on as producers of raw products, workers in trading activities, and customers for the goods of English factories. As the industrial revolution developed in England, the need for raw products increased and so did the need for markets. Also the industrial revolution created a large class of landless workers in Great Britain which was threatening the political stability of that country. At this point it became important for the new colonies to be used as

an outlet for the surplus population and the policy of encouraging settlement developed. However, the profit motive was still king and settlement was encouraged in ways which enhanced trade and commerece. Settlement, however quickly brought the British settlers into conflict with local native people and it was necessary to find new ways to appease them.[34]

The British became masters of the art of expediency. This practice was based on the belief that one must avoid conflict by granting the native inhabitants enough to satisfy their demands while doing that in a way which would ensure that the British would achieve their economic and political goals.

As a result, all the trading charters and land grants the government gave were based on the idea that the rights of native people must be safeguarded. For example, the provisions regarding native rights included in the charter of the Massachusetts Bay Company were typical of provisions made in other charters and letters of instruction given to local colonial governors and the proprietors of trading companies. These provisions were also later incorporated into constitutional documents such as the Royal Proclamation. The provisions in the charter of the Massachusett Bay Company read as follows:

> Above all we pray you to be careful that there be none in our precincts permitted to do injury in the least kind to the heathen people ... if any of the savages pretend right of inheritance to all or any of the lands granted in our Patent we pray you endeavour to purchase their title ....[35]

The acquiring of land for settlement resulted in the gradual evolution of a concept of Aboriginal Title. This concept and its implications will be examined in more detail below.

V ABORIGINAL TITLE? ITS IMPLICATIONS AND PRACTICE:

A) What is it?

The term Aboriginal Rights is a modern term used by historians and jurists. It was not used in any of the early constitutional

documents, charters, letters of instruction, or acts of parliament dealing with the question of native rights. Even the Royal Proclamation does not use this term. The rights of ownership or the claim to ownership of the occupants was the terminology applied. Early instructions required the land to be purchased[36] from the inhabitants or occupants. Since Great Britain always claimed sovereignty over newly discovered territories, it is clear that the British government did not recognize the native ownership as a sovereign title. Also since land could be purchased, it would appear that some form of native title was recognized. This appears to have been seen as a collective or communal title and not individual ownership. The negotiations for purchase were generally carried on with the tribe or the chief of a tribe. No individual ownership was recognized. The transaction was generally recorded by way of an agreement or treaty.[37]

In terms of International Law the British practice appears confused. The recognized methods of acquiring new land territories were conquest, occupation or cession. Since the British generally tried to avoid wars of conquest with the native people, the claim has always been made that the method of acquisition was not conquest. The acquisition of land by occupation was based on the idea that the native inhabitants had no form of government or laws or the ability to exercise these. Therefore, it was considered legal for the discoverer to claim sovereignty and impose his way of government, his laws and culture on the native inhabitants. In such cases no ownership rights of the inhabitants were recognized.

B) Why Aboriginal Title?

The British practice seemed to say on the one hand we do not recognize your competence as a sovereign nation; therefore, we claim sovereignty. We do, however, recognize your claim to ownership; therefore, we will acquire your land by way of cession and purchase. The use of the concept of cession was very beneficial since the process implied natives were voluntarily putting themselves under the new sovereign. Therefore, they willingly were relinguishing their national rights. The process of purchasing land established a recognized form

of ownership of the land and clear title to the land, that British courts could deal with. However, as stated in the Delogas Bay case, "the power to make an agreement implies the ability to refuse to make such an agreement, and it is a mark and test of independence."[38] Another way of stating this would be to say that it is a recognition of native sovereignty.

The practice of private acquisition and purchase of land led to much difficulty and many abuses. Indian dissatisfaction led to Indian wars, Indian raids on settlements on what Indians considered to be their land, atrociously inadequate compensation for land and as a result legal questions about the whole process. In 1760, Great Britain attempted to get its North American colonies to adopt a common Indian policy. When this failed, it moved to take over central control of Indian policy. To implement this decision, it enacted the Royal Proclamation.[39] This proclamation was designed to overcome the legal problems which existed with the previous process.

The proclamation adopted several new ideas and gave legal standing to some old practices. The central provision was that in future only the Crown could acquire land from the native peoples. In practice, this was always done by cession and treaties. This raised an awkward legal problem of who had sovereign claim to the land, Great Britain or the native people. This problem was overcome by the courts by defining the native rights as a usufructuary right. The native people had the right to the use of the land and to compensation for the loss of this right, but they had no other rights in relation to the land. They could not establish their own system of governing their territory, of granting titles to pieces of land to the members of their own community, or of exercising any other rights in relation to the land.

What was now developing is a new legal approach which seriously limited principles recognized in early tribunal hearings and in the Pacific Island Act that native chiefs were competent to claim and exercise sovereignty. However, such a policy interfered with the goals of trade and settlement. To get large land areas cheaply or often for no immediate monetary payment, the concept of Indian Title

was invented. This eventually became known as Aboriginal Title. The concept, when applied in legal cases, seriously limited the rights of native people. It, in effect, said that native people had no rights other than use of the land. Once they consented to relinguish this right in return for some arbitrarily defined "equitable compensation", they became wards of the state with no rights other than those which the state was prepared to grant.

C) The Implications of Aboriginal Title.

Aboriginal Title, therefore, is a very limited title and with the consent of the native occupants, even this right can be extinguished. Extinguishment could be by agreement or by a unilateral act of the legislative body. In practice, the British and their colonies used the treaties as the instrument for extinguishing aboriginal title. The English had no compunction about "ripping off" the native people, but they wanted to be certain the process had the appearance of being fair and that it could not be legally challenged.

The implications of aboriginal title for native people was devastating. It relegated them to a position of inferior beings, not capable of looking after themselves. It put them in a debilitating position of dependency which bred poverty, social and cultural disintergration and general chaos in native communities and among native people.

D) A Position on Aboriginal Title.

The Association's position is that aboriginal title is a sham and an injustice to the native people. Further, it is not in keeping with the generally accepted legal provisions of International Law. It is also a violation of earlier legal positions of native rights recognized by the British. Finally, the Association is of the view that the concept of aboriginal title is a clear violation of the human rights of the native peoples. The Association rejects this concept as having any valid legal application even to native land rights and therefore that its use led to illegal confiscation of native lands under the pretense of legality and fairness.

As we established earlier in this paper, the Association views aboriginal rights as the Human Rights of the original native people and of their descendents. Human rights can be violated, they can be denied or they can be ignored. However, they cannot be extinguished nor can they be for all time denied by some simple legal prescription which serves the convenience and legal niceties of the conquering European nations.

VI THE APPLICATION OF INTERNATIONAL LAW TO DEALING WITH THE NATIVE PEOPLE IN CANADA:

A) Early Practices in the Colonies.

As indicated earlier, the first colonizers in what is now Canada were the French. They did not recognize aboriginal people as having any special rights or claims to the territory they occupied. The approach was to acquire land by conquest or occupation for the French king and the question of applying International Law concepts to their dealings with native peoples was never considered. The French, however, mingled rather freely with the Indian population, the men taking Indian wives. The Indians were treated more as equals, with wives, children and other Indians who settled in the French settlements being integrated into the general population and being accepted as French citizens with all the rights this implied. This practice was followed by the French both in the maritime provinces and in Quebec.[41]

All of the lands claimed by the French in Canada were eventually ceded to Great Britain. Under the International conventions of the time, the British need not have recognized the Indians as possessing aboriginal title in this territory since it was assumed that the first colonial power would have dealt with and somehow extinguished the native land claims. As such Great Britain was under no obligation to treat the Indians any differently then it treated French citizens.

However, as stated earlier, from the beginning Great Britain recognized native land rights or Indian Title. The first legal provision in Canada was in 1760 in a document known as the articles of capitualtion. This document was generally applied to all areas of New

France. In the maritimes, which the British had acquired by early cessions from and treaties with France, the recognition of Indian Title was contained in a proclamation issued in Nova Scotia in 1762. This proclamation was superseded by the Royal Proclamation issued in 1763, which applied to all North American colonies and to their dealings with the native people. It has been argued that the territory held under charter by the Hudson's Bay Company was excluded from the operation of the Royal Proclamation. However, it is the Association's position that such an interpretation is not valid since the proclamation states as follows:

> As also that no Governor or Commander in Chief in any of our other colonies or plantations in America do presume for the present, and until our pleasure be known, to grant warrants of survey, or pass patents for any land beyond the Heads or sources of any of the Rivers which fall into the Atlantic Ocean from the West and Northwest, or upon any lands whatsoever, which have not having been ceded to or purchased by us as aforesaid, are served to the said Indians, or any of them.[42]

The next paragraph in the proclamation, on which arguments as to the exclusion of Hudson's Bay Company territories from the operations of the proclamation are based, in the Association's opinion does no more than state that Great Britain is also laying claim to territories beyond recognized colonies or charter areas, and is also applying the Royal Proclamation to these undefined territories.[43]

The Association's position is that these early constitutional documents had no validity in International Law, and were only instruments by which Great Britain limited native rights and not by which it recognized their existence. The Association, however, also recognizes that these legal documents plus others which follow, are nevertheless the basis on which Great Britain and Canada dealt with the native peoples. Therefore, it is well to examine their provisions briefly to determine whether even these restricted concepts of native Human Rights were honored.

The earliest constitutional documents were the articles of capitulation, 1760, and the Nova Scotia Proclamation of 1762. The

Articles of Capitulation provided for three basic conditions relating to the native people who lived in New France. They were:

a) the native people should be maintained in their lands if they wish;
b) no punitive action should be taken against them for having allied themselves with the French; and
c) they be granted freedom of religion.

The Association did not research the situation in Quebec and therefore does not feel competent to comment on whether these conditions were met particularly as they relate to the land question. However, it is known that reserves were established and brought under the provisions of the Indian Acts. Whether these reserves are the traditional lands Indians occupied at the time is not known. The other two conditions appear to have been honored as far as can be ascertained from historical records.

The 1762 proclamation provided for the following:

a) persons illegally occupying unceded Indian lands to remove themselves from such lands; and
b) the rights of Indians to hunt and fish in specific areas identified in the proclamation.[45]

As stated previously, the Association did not research the maritime situation specifically, therefore it can not comment on whether this proclamation was enforced and what steps were taken to acquire Indian lands in the maritimes. However, it is known that no specific treaties have been entered into between Canada and the Maritime Indians. In addition, it is known that the Government of Canada has seen fit to interfere with native hunting and fishing rights through the Migratory Birds Act and conventions, and the Fisheries Act. Further, it is known that Canadian courts have upheld the Canadian Government's right to enact such legislation and provide for it to apply to native peoples as well as non-native peoples.[46]

B) <u>The Royal Proclamation of 1763</u>.

The Royal Proclamation is often hailed as a charter of

native rights. The Association's position is to the contrary, that this was the first of the British and Canadian legal documents which legitimized the process by which native rights were severely limited and curtailed. It also provided the legal basis behind which authorities could hide devious acts designed to divest the native people of even their land, to ensure the success of government policies which prompted trade and commerce, and settlement.

Nevertheless, even this restrictive legal document would have operated to the partial benefit of native people if its provisions had been strictly followed. Therefore, it is of importance to examine what this document purported to do. The most important provisions of the proclamation were the following:

a) it gave legal status to the idea of Indian title;
b) it perpetuated the myth that Great Britain or her colonies would acquire land only by way of cessation;
c) it prohibited private purchase of Indian land from the Indians;
d) Indian lands could only be acquired by the Crown;
e) cession of Indian land must be with their consent;
f) the process must take place at a public assembly of the Indians; and
g) it guaranteed free trade by British subjects with the Indians.

The Royal Proclamation was the basis of the dealings of Great Britain and her colonies with Indian people. The provisions of the Royal Proclamation were incorporated into early Indian acts as the basis for obtaining cessions and surrenders from the Indians. Generally these provisions have been followed since it was to the advantage of Canada to do so. The one area which could be disputed is the question of consent.

In almost all treaty negotiations the Canadian Government dealt from a position of strength, while the Indians were weak, their economy and way of life destroyed and their survival dependent on welfare. Various pressure tactics were used such as a show of force when Treaty 4 was signed, police harrassment, the manipulation of relief

rations to pressure Indians to sign treaties and move onto reserves, and the making of verbal promises which were never recorded and consequently almost never honored. In this context, consent had limited meaning. There is also the question as to whether Indians understood what they were consenting to. It is almost certain they did not comprehend the implications of giving their consent to ceding their land.

C) The Intent of the Canadian Government and the Policy in Acquiring New Territory.

The French King Louis had laid claim to much of the Northwestern portion of the continent of North America. When New France was ceded to Great Britain by treaty in 1760, this cession was believed to cover all of the Northwest to the Rocky Mountains. In the early period from 1760 to 1840, there is little evidence that Upper Canada (Ontario) showed any significant interest in the area. The problems of establishing the new British colony, the pre-occupation with the formation of a Canadian entity out of Upper and Lower Canada and the fact that there was a plentiful supply of land and resources in the old colonies, meant that there was neither the time nor the pressure to expand into the Northwest. This was so even though the western boundary of Upper Canada had never definitely been established and there was some dispute about where Ontario's jurisdiction ended.[47]

The first indication that the idea of a union of the western territory (Rupertsland) with Canada, was being considered occurred during the free trade disputes in the Red River in 1846 - 49. The Hudson's Bay Company had exercised a trade monopoly in the area for many years. A small merchant and trader class was developing and they wanted to be able to trade freely with companies other than the Hudson's Bay Company. When they began to trade with American traders in violation of the Hudson's Bay Company laws, it was not uncommon for the Company to arrest the traders, seize their furs and goods and prosecute them. These problems led to petitions or memorials from the Red River inhabitants to Great Britain protesting the rule and monopoly of the Company.[48] They were represented by a former Metis resident of the Red River, one Alexander Isbister Kennedy, who by that time had established a successful law practice in England and who had acquired some

creditibility in legal and judicial circles in Britain.

Kennedy, at the time, agitated for the charter of the Hudson's Bay Company to be cancelled and for the western territory to be joined to Canada. The more vocal and powerful of the local residents also agitated for such a change. They saw this as a way of getting out from under the monopoly of the Hudson's Bay Company and gaining free access to markets, for furs and other products being produced in the Red River. Canada and specifically Ontario, had shown no particular interest in these proceedings and made no representations for such a union at that time.[49]

In 1857, the charters of the Hudson's Bay Company came up for renewal and special hearings were conducted by Great Britain to gather evidence for a decision on whether the charters should be renewed. At the time of these hearings the residents of the Red River seemed satisfied with the administration of the Hudson's Bay Company and did not make any representations against the renewal of the charter. However, by this time the Canadian colonies (Ontario) were interested in acquiring the territory. This was in part motivated by population pressures, the fear that the United States would attempt to acquire the territory, the desire by eastern capitalists to get access to rich western resources, and the desire to expand the market areas for the manufactured products from the factories of central Canada. As a result, the Canadian government made representations to the special committee on the Hudson's Bay Company protesting the Company charter, challenging the Company's claim to the territory, and claiming the territory for Canada.[50] It is obvious from the memorandum that Canada's intent is to acquire the territory at no cost and to add it to the existing colonies to be developed by them at their discretion. The Canadian position gives no indication that it recognized any rights to the land of the native people, either the Indian or Metis. However, the memo does not specifically address itself to this question.

D) <u>Links to British and Hudson's Bay Company Policy</u>.

The agitation of the Canadians to acquire the territory for settlement and development, cannot be looked upon in isolation from

other pressures that were developing within the British capitalist class and within the Hudson's Bay Company itself. As early as 1856, there was agitation by British capitalists, including principals in the Hudson's Bay Company, promoting the idea of the development of the Northwest of the continent either as a separate colony or as part of Canada.[51] High British officials and leading politicians favored Canada taking over the territory and accepting responsibility for its development. They did not believe that the British Parliament or public would be prepared to foot the bill for the costs of development, particularly when there was no hope of a return of tax revenues to Britain. The ideas discussed during the period to 1865, included the building of a railway and road and a telegraph link, to the Pacific.[52] The way in which this would be accomplished would be by land grants to capitalists prepared to invest in the projects.

Sir Edmund Head, one time Governor General to Canada and British Colonial Secretary, and now president of the Hudson's Bay Company recognized that the fur trade would no longer be profitable, except possibly on a short-term basis.[53] He stated that the Hudson's Bay Company must find some alternate way of developing its trade interests in Rupertsland. This must be done in a way which would ensure the Company compensation for its interests in the area, but which at the same time ensured that government functions and expense would be assumed by Canada or Great Britain.[54]

To accomplish this goal, the Hudson's Bay Company had brought in a new management group and had re-financed the Company through a financial consortium known as the International Finance Society. The capitalization of the Company had been increased from 500,000 pounds to 3 million pounds. This was done in part because it was believed that the sale of Hudson's Bay Company interests in the Northwest would realize a large cash settlement and also to raise cash for potential resource development (forestry, coal, etc.), should the transportation links be built.[55]

Therefore, the Hudson's Bay Company did not resist the relinguishment of its charter or the transfer of the territories to Canada. Indeed this would accomplish Hudson's Bay Company objectives

in the long term, provided that the terms of the transfer were favorable.

During the transfer negotiations, neither the Hudson's Bay Company nor the Canadian Government raised the question of the rights of the native people. The clause which was included in the Transfer Agreement and the orders-in-council, passed under section 146 of the B.N.A. Act, were included at the insistence of the British Colonial Office.[56] Sir John A. Macdonald did not object to the inclusion of this clause. First, it was established British policy to deal with the Indians for their land before making land available for settlement. Second, Macdonald didn't want the kind of trouble with the Indians that the Americans had. This meant they had to be appeased and placed on reserves where they could be controlled.[57] This would get them out of the way of surveyors and would ensure that there would be no conflicts between settlers and Indians. Third, it would give the Canadian Government clear title to the Indian lands. The government could then establish and implement its railway policies, its settlement policies and its resource exploitation policies.

The question of settling the land claims of the Metis or of other settlers was never raised in the course of discussions or negotiations. Neither were any of these groups consulted about the planned transfer or about what Canada had in mind. It would appear that the Canadian Government considered the people on the frontier as largely uncivilized savages. Those who lived like the Indians would be dealt with as Indians. The others, the settlers and the more civilized inhabitants, were not considered as having any special rights.[58] It isn't even clear if the Canadian Government intended to recognize the land holdings that were already occupied by the settlers. The transfer agreement, as well as the corresondence surrounding the negotiations for the transfer, are silent on this question.

D) Indian Treaties and Indian Policy.

The government's Indian policy was quite clearly based on the objective of getting the Indian's land by way of cessation and to get the Indians out of the way of the settlers by putting them on

reserves.[59] This would accomplish Macdonald's goals of obtaining clear title to the land and of avoiding an Indian war. The treaties were the instruments for doing this. In its early dealings with the Indians, the Canadian colonies did not distinguish between full-blood and mixed-blood Indian people. If they lived with and like the Indians, they were also classed as Indians. This definition was clearly spelled out in the 1851 Indian Act,[60] and in the Act to establish the Department of the Secretary of State in 1868.[61] It must, therefore, be assumed that when the term "Indian" is used in the Rupertsland Transfer Agreement, and in the B.N.A. Act,[62] that the same definition of Indian applies as was used in other statutes at the time. This would suggest that Macdonald's plan was to treat the Metis people as Indians, except those who were settlers, who would not fit the definition of Indian. The established settlers should fit in with the incoming settlers.

The fact that the Metis were dealt with differently than the Indians was realted to their own view of themselves and of how they wanted to live. This will be explored in more detail in the next section of this paper.

Between 1873 and 1878, the Government of Canada entered into the numbered treaties one through six. In the process they acquired most of the land in what was then referred to as the fertile belt. This was the area which, it was believed, was capable of being settled. During this period, the government policy was to allow those Metis who lived with and like the Indians to join treaty.[63] The remaining Metis were not recognized as having any rights as Indians. This position was outlined by Macdonald in House of Commons Debates as late as 1884.[64] In the actual signing of the treaties, the commissioners always took the position that they had authority to deal with the Indians, but no authority to "treat" with the Metis. Morris and others promised the Metis that they would relay their petitions to Ottawa and further promised that the Canadian Government would deal with them fairly.[65] No specific commitments were, however, made.

The Government took no steps until the Rebellion of 1885 was underway, to deal with the Metis claims. After that time, the

Government was always quite careful, when signing adhesions, or negotiating new treaties, to make certain that the Metis were dealt with at the same time as the Indians. This was known as concurrent extinguishment of Indian Title.[66]

To get the Indians onto reserves, various devises such as half-rations, police harrassment, and other forms of intimidation were used. This was particularly true in the period immediately following the Northwest Rebellion.[67] The Indian Acts became the legal instruments by which the government formalized its policy of dealing with the Indians and by which they applied these policies to all Indians across Canada, even those with whom no treaties were signed. In one case, a band of Metis people were deliberately included in the treaty by way of adhesion. This was done in Treaty 3, with the Rainy River half-breeds.[68] In another case at Lac La Biche in Alberta, a band of half-breeds were included in the treaty by the commissioners who believed they were Indians. In all other cases where Metis joined treaty, they had to do so by becoming a member of an existing Indian band.[69]

VII THE BASIS OF THE METIS CLAIM TO NATIONAL RIGHTS:

A) Origins of the Metis.

The question of Metis rights during the period from 1800 to 1885, arose not in the context of an aboriginal claim. Rather, it was raised by the Metis people as a question of Human Rights and National Rights. This was probably due to the way in which the Metis emerged as a separate people and the role they played in the early development of the Northwest. In central and eastern Canada the question of the Metis people as a separate group did not arise in the early days. As indicated above, the mixed-blood people were included within the definition of Indian in the early Indian Acts. Those who were absorbed into the white communities were not distinguished as a separate group from the settlers.

According to Tremaudan, it was a practice of French explorers and traders to venture into the west starting in 1618, either individually or as part of expeditions. Some of these explorers stayed in the Northwest, settled, took Indian wives and began to establish

themselves as new settlers in the area.[70] Although some of these people were absorbed into the Indian tribes, others established themselves separately from the Indian tribes. By the time the Company of New France began to establish its fur trading posts in the Northwest, after 1715, there was already, an indigenous population of Metis people in the area. It was natural that they would play a major role in the fur trade. With the increase in the fur trade by the French and the gradual penetration of the interior by the explorers of the Hudson's Bay Company, the number of mixed-blood people grew rapidly until by the early 1800's, it is estimated their numbers may have been 50% of that of the Indians in the territory.[71] They moved freely across the Northwest from the isolated tribes to the trading posts, to the centers of education and culture, such as the Red River, St. Albert, St. Laurent, etc. Many of them were interrelated by blood. This was true even to some extent among the English half-breeds. They gradually developed a common language, French, and some common cultural characteristics and institutions. In the early days, the French Catholic missionaries predominated. As the Anglican Church established its presence at the Red River in the early 1800's, some distinctiveness developed between the English and French half-breeds but they nevertheless continued to see their interests as being the same, that being the maintenance and perpetuation of the fur trade.

B) The Metis Role in the Economic System.

In the fur trade the Indians were the producers. The Metis became the working and middle class. The management positions in the fur trade were filled by whites. The Company of New France of course employed Frenchmen. The Hudson's Bay Company employed primarily Scots and the Northwest Company a combination of both French and English managers. The Metis people became an important link between the Indians and the trading companies. They filled positions of company traders, freighters, boatsmen, labourers, and clerical positions in the trading posts.[72]

Among the English half-breeds, a class of independent traders and merchants gradually developed. In the French community,

a small elite class of educated people emerged. They were educated in church institutions and included people like Jean Riel, Louis Riel, Louis Schmidt, Nolin and others. The English half-breed professionals were generally clerics, such as Henry Budd, or they went to England for professional education where they often stayed to practice their profession. An example of this group was Alexander Isbister Kennedy who became a champion of Metis causes with the British government.[73]

The Metis peole also were encouraged to organize themselves into para-military groups, who patrolled the plains and maintained some semblance of law and order in the territory to ensure the profitable operation of the trade. Cuthbert Grant, who was known as the warden of the plains, played this role during the early period and Gabriel Dumont played a similar role in the 1870's and 1880's. In addition, the Metis people were the backbone of the Buffalo Hunt and the trade in hides and tallow which developed.[74]

The Metis became the first substantial group of settlers engaging in agriculture. They supplemented the natural food supply of the area and produced much of their own food. They also developed the new overland freight service, provided by the use of the oxen, and the development of the Red River carts. They led the free trade movement of the 1840's which resulted in breaking the trade monopoly of the Hudson's Bay Company. This had a profound impact on the profitability of the free trade. and speeded up the need to find a new economic order for the Northwest.[75] In addition, they led movements to improve the lot of the working class labourers. In general they were the early pioneers of the Northwest, without whom both the economic system and the commercial development would not likely have developed.

C) The Development of a Metis National Identity.

The development within the Metis people and the Metis community, of the idea of a distinct national identity is related to several diverse factors. First, the Metis were not generally accepted by the Indian people as being the same as themselves. Although in treaty negotiations, the Indians usually raised the question of how their Metis brothers were to be dealt with, they did recognize them as

a separate group and recognized that the government would deal with them separately.[76] The Cree even had a separate word and symbol to describe the Metis. They were not accepted by the trading companies as whites, since they were excluded from management positions and from positions as chief traders.[77] In other words, they were treated by the other two cultural groups as different.

The second factor which contributed to this development was the particular role they played in the economic system. This led to the Metis developing a kind of communal relationship among most of their members of the mixed races. This promoted the development of a national identity where the people had common lifestyles, institutions, customs, and language.[78] A third factor in the development of a national identity, particularly among the French Metis, was their close relationship with the Catholic church. This led to a common religious outlook and the development of social customs and educational institutions around the church. In particular in the the Red River, and in other areas such as the Prince Albert area, St. Albert, St. Laurent and at the Qu'Appelle Lakes, settlements tended to develop on the church parish system which was common in Quebec. This parish system also developed among the Anglican half-breeds in the Red River.

The Northwest Company, in particular, promoted the idea that the Metis people had an ownership claim to the soil. Although, as George Stanley claims,[79] this may have been only done to serve the commercial interests of the companies, it does not change the fact that it added to the feeling of national identity among the Metis. This included the development of the idea that they had a claim to the land and resources in the Northwest. The idea was strengthened by the para-military role played by the Metis in maintaining some form of peace and order in the territory.

The development of the Metis' role in the Buffalo Hunt and the use of the universal laws of the prairies were also factors which contributed to the development of Metis government institutions. This sense of Metis government was further developed in communities such as St. Laurent and St. Albert, where the people actually made up their own laws, held annual assemblies, conducted courts, collected fines and

carried out other government functions.[80] In the Red River the Metis people played an increasingly important role in the Council of Assiniboia. As soon as these institutions and the Metis lifestyle were threatened, the people organized themselves to take more definite steps to protect what they identified as their national interests and their individual human rights. This movement took the form of the Provisional Government and the list of rights in the Red River. In the Northwest, it took the form of the movement leading to the declaration of a provisional government by Riel at St. Laurent and the development of the charter of rights.

The feeling of a national identity was recognized by a number of writers of that era. There are a number of references to the Metis people seeing themselves as owners of the soil. This feeling was noted by the commissioner who came to the Red River to investigate the affairs of the Hudson's Bay Company in 1848. In his report he refers to the Metis as believing that they were "Ye Lords of the soil."[81] In this respect the Metis were different than the Indians who were organized in small bands. Their orientation and loyalty was to the band only and not to the larger cultural groups. The Metis on the other hand had an orientation to the Metis community at large as well as to their own local parish.

D) Metis Conflicts with the Hudson's Bay Company before 1870.

Another factor which contributed to the development of a feeling of Metis solidarity and sense of national destiny, were their frequent conflicts with the Hudson's Bay Company. The first conflict of significance occurred when Lord Selkirk brought settlers into the Red River from Scotland. At that time the Metis saw settlement as a threat to their way of life and the established economic system. Although the conflict is characterized as one of commercial competition between the Northwest Company and the Hudson's Bay Company, the Metis basically led and were the core of the resistance.[82] As is well known, this led to the so-called Seven Oaks Massacre. In this particular conflict the Metis were also in many ways divided, since some of them worked for each of the companies. Although the employees of the Hudson's

Bay Company tended to be the English half-breeds, and the Metis generally worked for the Northwest Company, the employment patterns and divisions were not entirely along ethnic lines. Regardless of which side the Metis were on, they were united in their belief that settlement should be discouraged.[83]

In a sense the Metis both won and lost this confiict. They won the battle of Seven Oaks and prevented further European settlement. However, the conflict was to lead to a merger of the trading companies which had an immediate and far reaching effects on the Metis workers and traders as well as the economic system. One result was that the Metis themselves became settlers and within several decades they became the dominant settlers in the Northwest.

In this new role they continued to work for the Hudson's Bay Company, particularly in the transportation system. They provided the labor for the long boats, and also developed the overland freighting services. The Metis labourers had confrontations with the Hudson's Bay Company over wages and working conditions on a number of occasions between 1821 and 1870. Some of these confrontations led to strikes with the Metis winning some of their demands.[84] The free trade conflicts with the company which led to the breakup of the company monopoly over trade and commerce in the Northwest, was another victory for the Metis. Although there were always some divisions between the French and English Metis, in terms of conflict, they united to pursue common goals and interests. This happened in the Red River in 1870 despite attempts to divide them, and it happened again at the time of the Northwest Rebellion in 1885. All of these events contributed to the Metis nationalist movement and the feeling of and belief in a Metis national identity.

VIII <u>THE RECOGNITION OF METIS RIGHTS IN LAW:</u>

A) <u>In the British North America Act</u>.

The question of who is an Indian or who qualifies as having Indian rights in Canada, has never been defined with any degree of precision. It would appear from court decisions and federal legislation

that the question was determined on the basis of lifestyle as well as ancestry. In other words, persons who lived with and like the Indians were defined as being Indians. This was confirmed by the MacDonald Commission in Alberta in 1944, which was considering who should be allowed to be members of treaty in Northern Alberta. The Department of Indian Affairs was removing from treaty roles persons who had been earlier registered as band members. In addition, it was attempting to evict these people from the reserves. MacDonald ruled this action illegal on the basis that blood lines had never been the major criteria for deciding who entered treaty.[85] This is confirmed by the reports of commissioners such as McKenna who, when signing Treaty 10 and enrolling Indian people in the bands, allowed people to make the decision on whether they wished to be dealt with as Indians or half-breeds. He claimed that the people all followed the same lifestyle and looked the same. Therefore, he did not feel competent to make the decision as to who should join the treaties and who should not.[86]

The British North America Act sheds little light on this question of who is an Indian. Section 91-24 of the Act says the federal government is responsible for Indians and Indian lands. Section 146 of the Act includes as a schedule, the Rupertsland's Transfer Agreement, which states that Canada accepts responsibility to deal with the land claims of the Indians. Another schedule to Section 146 says Canada will discharge this obligation on the basis of the equitable principles which have governed the British Crown.[87]

As has already been stated earlier in the 1851 Indian Act, the definition of Indian included all people of Indian ancestry who lived with or like the Indian bands.[88] This definition was repeated in subsequent Indian Acts and in the Act which established the Department of the Secretary of State in 1868. In the first major Indian Act of 1876 enacted following confederation, this definition was amended to exclude those half-breeds in Manitoba who had been dealt with separately under the Indian Act.[89]

There can, therefore, be little argument that the Metis people are included under the B.N.A. Act definition of Indian, and as such have native rights and are a federal responsibility. According to

the opinions of constitutional lawyers, the government could make constitutional amendments to change this responsibility, but they have not done so to date. If the Metis are Indians under the constitution, they would then have a claim to the same rights and to the same benefits as the status Indians.

B) <u>The Rupertsland Transfer and the Red River Resistance</u>.

As has been stated above, the Rupertsland Transfer Agreement made Canada responsible for satisfying the claims of the Indians. The agreement itself was not statute law but by virtue of the general provisions of Section 146, this agreement, along with a memorial from the Parliament of Canada, were incorporated as O.C.'s under Section 146 and therefore became part of Canadian constitutional law. Based on the assumption that the term "Indian" encompasses those native people of mixed blood, this is further statutory recognition of the rights of the Metis people.

The British government and the Government of Canada, however, did not recognize any of the native peoples as having any national claim or land claim beyond the narrow definition of aboriginal title. They operated on the assumption that Great Britain had sovereign claim to the territory and therefore could transfer the territory without consulting the local people. Although the British claim to sovereignty could be questioned on the basis of International Law, the Metis themselves did recognize the British Crown as the legitimate sovereign. Whenever they had grievances against the Hudson's Bay Company, they appealed to the British government for assistance. In 1869 - 70, they also requested that the British government establish a commission to hear and settle their grievances. Therefore, the British claim had become an established fact.

Canada and Britain seemed to assume that they could deal with the question of Indian rights after the transfer took place. The Metis who were concerned about what happened to native people in Central Canada and the United States, did not trust the Canadian Government to deal with them fairly. They wanted guarantees to their rights and they were determined to take action to block the transfer until these guarantees were given.[90]

In negotiations leading up to the Manitoba Act, Macdonald took the position that the Metis people, as civilized people who had established their own government, could not lay claim to the Indian title which rested in the uncivilized savages.[91] Canada seems to have taken the position that not only was Indian Title a very limited right, but that it could only be claimed legally, by uncivilized people. The Metis, of course, had not based their claim on aboriginal title but on national rights. The Macdonald government attempted to deny that there was a legal claim on either basis. However, the position was contradictory since Macdonald in correspondence to Rose, recognized the legal right of the settlers of the Red River to establish their own government under International Law if there was no established authority in the Red River.[92] He also agreed to negotiate with representatives of the Red River on their national rights. Although he attempted to maintain the myth that the provisional government had no legal status, he did recognize the representatives of the Red River people and he recognized that they had national rights. The basic question is whether this was done in good faith or as a matter of expediency. It is the contention of the Manitoba Association that the Manitoba Act was a monumental fraud perpetuated upon the people and that the Government of Canada never intended to keep the promises it made or to carry out the terms of the agreement.[93] We agree with Manitoba's contention. We will further examine below the legal provisions of the Manitoba Act and how they did or did not conform with earlier positions taken by Macdonald.

C) <u>The Manitoba Act</u>.

The implementation of the provisions of the Manitoba Act and whether they conformed with the Act, were legal or illegal, as well as the thrust of government policy, are examined in detail in the Manitoba report. Our purpose here is only to examine the legal basis of Metis rights in this Act. It is our contention that the Metis people were claiming national and human rights and not aboriginal rights when they were negotiating with Ottawa.[94] That is not to suggest that they did not see themselves as having such rights. However, it would appear that they proceeded on the assumptions that such rights could best be protected if their national rights were guaranteed. In particular, this

would be so if the new province had control over its own land and resources. When the land question became a major stumbling block in negotiations, a compromise had to be sought if an agreement was to be reached. The eventual compromise was the setting aside of 1.4 million acres of land for the mixed-blood children. This was seen by the Metis as compensation for giving up their claim to the land.[95] Macdonald now had the problem of explaining and justifying this decision to his Orange friends and to members of parliament.

The Red River delegates were presented with a draft act which dealt with the land allocation as an extinguishment of Indian Title. Ritchot objected strenuously to this provision, but was told that the bill could not pass the House of Commons if it were changed. He was promised by Macdonald that the local legislature would be allowed to select and distribute the land. He was even assured that an order-in-council would be passed before he left Ottawa to facilitate this matter.[96] Macdonald had now recognized the Metis claim on two basis. The heads of families who were occupants were recognized as having Settlers' rights or claims to the land they occupied. These rights were recognized in both English common law and in International Law. Second, he had recognized that the children at least had some claim to aboriginal title.

Macdonald now had the problem of selling this idea to the House of Commons. He presented this provision to the House of Commons not as a question of aboriginal claim, but as a provision similar to the land grants given to the children of United Empire Loyalists.[97] Northcott, in his papers, refers to this as a brilliant idea. This helped Macdonald get around the problem of the opposition of his Orange supporters in Ontario, who were opposed to the recognition of any right of or claim by the Metis to the land. With these deft and deceptive manoeuvres Macdonald managed to get his Manitoba Act through the House of Commons. This Act provided for many of the provisions in the Metis list of rights. In particular, it guaranteed language rights in schools, the legislature, courts, etc. It also provided for separate schools. Section 31 and 32 of the Act provided for the Metis land claims. Section 31 was the clause dealing with the extinguishment of

the Indian Title of the Metis; Section 32 dealt with the riverlot claims of all of the settlers.[98]

It was generally conceded that several of the provisions of the Manitoba Act were ultra vires the B.N.A. Act. As a result, a special bill of the British House of Parliament was passed to deal with these deficiencies and which gave the Act the status of a constitutional document. The clause of the Act which retained the control of the land for Canada was the one most obviously in conflict with the B.N.A. Act, since that act reserved the control of the land and resources for the colonies or local government. This was based on the principal that such control was necessary in the development period to generate the money required to carry out local government functions.[99]

Why did Macdonald include the land grants to the children, as a question of the extinguishment of an aboriginal claim when this was an unpopular move. We can only assume he wanted to cover the possibility of a legal claim being made at a later date, on the basis of aboriginal title. However, the Act itself does not extinguish the claim, it only provides the terms of reference for such an extinguishment. The actual land distribution was to be provided for in Privy Council orders. It is reasonable to assume that such Orders-in-Council must conform to the equitable practices followed by the British Crown in dealing with native people. As is well illustrated in the Manitoba report, neither Macdonald's government nor the civil servants responsible for implementing the provisions of the Manitoba Act, paid much attention to these fair and equitable practices. The important point about the Act is that it did recognize that the Metis had land claims on both the basis of being first settlers and as descendants of the original Indian people. It is the fourth constitutional document in which the aboriginal claim is specifically recognized.[100]

D) The Agitation for Rights from the Metis of the Northwest.

The questions of national rights, human rights and land rights of the Metis people in Rupertsland and the Northwest territories was not dealt with by the Manitoba Act. That act only constituted an agreement between the people of the new tiny province of Manitoba, and

Ottawa. The claim of all the other inhabitants of the Northwest, as well as of the Indians in Manitoba remained to be dealt with under the provision of the Rupertsland transfer agreement.

Up to 1873, Canada took no steps to deal with the Indian claims. After that time, as we have seen, it dealt only with the claims of the Indian tribes. The treaty commissioners refused to deal with the claims of the Metis. They did not deny that such claims existed, but they claimed they were not sent to deal with the Metis people. They agreed to refer these claims to Ottawa and promised the Indians that their Metis brothers would be dealt with fairly.[101] This contention of Morris that he only had authority to deal with the Indians is confirmed by correspondence in which he received his instructions and orders.[102] Although the claims of the Metis were referred to Ottawa, no steps were taken by the government to deal with these claims. It would appear that the lack of any official response indicated that the government had no intention of recognizing such claims. Some of the senior officials such as Morris, Dennis and McMicken counselled Macdonald against recognizing such claims.[103]

Beginning in 1873, the Metis people began sending petitions to Ottawa, asking for certain guarantees of their rights and making land claims of various forms.[104] Between 1873 and 1879, at least ten such petitions were forwarded to Ottawa from various communities in what is now Saskatchewan and Alberta. These petitions covered many of the same claims included in the Red River bill of rights. They included titles for the land of occupants, language rights, religious rights, civil law rights, etc. The question of an aboriginal claim is never mentioned.[105] In one petition, from the Cypress Hills area, the petitioners ask for a separate territory to be set aside for the Metis of the Northwest. The tract was to be 150 by 50 miles to be situated in what is now southern Manitoba and southern Saskatchewan. This was seen as a second Metis province.[106]

E) <u>The Dominion Lands Act.</u>

It will be recalled that the Macdonald government was defeated in 1874. In 1878, Macdonald was again successful in bringing his party back to power. One of the promises the Conservatives made in

the Northwest during the election was that they would deal with the Metis land claims. Macdonald took over the ministry of the Department of the Interior in the new government. In 1879, he introduced amendments to the Dominion Lands Act which included a clause permitting the government to grant lands to the Metis to satisfy their claim to Indian Title.[107] However, the government took no action to implement this provision of the Act. As a result, petitions continued to be forwarded to Ottawa. The petitions came not only from the Metis themselves but from priests, missionaries, and the Northwest Territories Council. The request for land grants in the form of scrip grants began to be raised after 1878. The correspondence and petitions indicate that this idea was promoted by priests and the Northwest Territories Council as the Metis themselves made little mention of scrip. Their petitions continued to deal with more traditional nationalist concerns. The government even went so far as to commission one Flood Davin to investigate the Metis claims. He submitted a comprehensive report in 1880 in which he made recommendations as to how the government could deal with the problems being experienced by the Metis.[108] The government did not act on this report.

The petitions continued to be forwarded to Ottawa and the pressures continued to mount on Ottawa to take action. When the question of Metis rights was raised in the House of Commons in 1884, Macdonald took a hard position, denying that such rights existed. He said that if the Metis wanted land they had two choices. They could either claim a homestead as settlers or they could apply to join an Indian Band and thus enter treaty.[109]

Metis people had been promised title to the land they occupied in places like the Qu'Appelle Valley and on the Saskatchewan River. They had even been promised that their traditional river lot surveys would be respected. William Pearce, the Chief Dominion surveyor was sent to deal with the question of title to these lands. In the case of the Qu'Appelle Valley lots, they were all resurveyed according to the Torrence System even though the people had been promised that river lot surveys would be observed.[110] It has not been possible to check who in the Qu'Appelle Valley received title to their land, since the

records of this survey have been merged with the other survey records. In the case of the claims of the residents of the South Saskatchewan River, Pearce after investigating the claims in 1884, denied 82% of the claims on the basis that the residents had already received land grants in Manitoba.[111]

It was this lack of response to Metis petitions, the denial of land titles to which the people felt they were entitled, and the failure to carry through with promises to treat the Metis of the Northwest in a similar manner to those in Manitoba, which led directly to the unrest among the Metis that saw them bring Riel back to lead their cause. As indicated earlier, it was not until the confrontation at Duck Lake that the government finally decided to implement the provisions of the Dominion Land Act. The government's move, however, was too late to ward off the crisis which resulted in the Northwest Rebellion.

All the orders-in-council providing for scrip, made it clear that the grant of scrip was to be compensation for the extinguishment of the Indian Title of the Metis. The 1885 O.C. which reads in part as follows, is typical of these orders.

By sub-clause (e) of Clause 81, of the Dominion Lands Act, 1883, it is provided that the Governor-in-Council shall have power "to satisfy any claims existing in connection with the extinguishment of the Indian Title, preferred by half-breeds resident in the Northwest Territories, outside of the limits of Manitoba, previous to the fifteenth day of July, one thousand eight hundred and seventy by granting land to such persons, to such extent and on such terms and conditions as may be deemed expedient and it is the opinion that it is expedient that those claims be satisfied by granting ..."[112] The O.C. 688/85 then goes on to set out the nature of the grants and how the grant is to be given. The O.C. itself does not say that it is actually extinguishing that title. The assumption would appear to be that the title was extinguished by the treaties and that some form of claim for compensation still existed since the benefits of the treaty were not available to the Metis.

F) Legal Recognition of Metis Claims after 1855.

There was no further legislation after 1883 dealing with the question of Metis aboriginal claims. All further provisions for compensation were made by orders-in-council. These O.C.'s were numerous dealing with individual cases, special classes of cases, areas covered by adhesions to treaties and regular scrip issues in areas where new treaties were being signed. By 1899, there was a more definitely formulated policy on Indian Title of the Metis and how that title should be extinguished. The following principles are recognized in the May 6, 1899, Privy Council order.

1. that the Metis claim co-existed with that of the Indians;
2. that half-breed claims should be dealt with concurrently with the signing of Indian treaties;
3. that all those born prior to the effective date of surrender had an aboriginal claim;
4. that the rights of the Metis must be properly extinguished;
5. the Metis claims would be dealt with differently and separately from that of the Indians;
6. that the half-breed claims were well-founded and must be admitted;
7. that if half-breed rights are not extinguished at the signing of the treaties that such rights continue to exist until "such time as action is duly taken for their extinguishment."
8. that the effective date of extinguishment in such case is not the date of surrender by the Indians of their territory but the date on which the Metis were dealt with.[113]

This order-in-council is interesting because it sets out a number of important principles which were never followed. For example, The P.C. order say that the rights of the Metis be properly extinguished. What is proper extinguishment? We have already stated that human and national rights cannot be extinguished. The narrow definition of land title used by the English could in their view be extinguished.

Since, under the British system, the state always has an overriding interest in the land, it can expropriate any land at any time. Extinguishment is, therefore, a form of expropriation. If British law were to be satisfied, the first proper steps to take would be those spelled out under the Royal Proclamation of 1763. There must be consent, there must be negotiations, and there must be agreements.

Outside Manitoba, the government simply ignored these processes when dealing with the Metis. It seems the government assumed that negotiating treaties with the Indians was sufficient to meet these conditions. Even when Treaties 8, 10 and 11 were negotiated, there were no separate negotiations with the Metis. After the treaties were signed, scrip (or in the case of Treaty 11, money) compensation was issued. People had to make applications. There were no negotiations with the Metis leaders, the Metis signed nothing which said they were giving up their Indian Title. It cannot be claimed that applying for scrip was a form of consent since the people were given no other choice.

Since P.C. 918/99 recognized that the Metis have a separate legal claim, there should have been separate negotiations and agreements with them. This was never done, as the government always acted unilaterally when passing P.C. orders. That violated the requirement of consent. If half-breeds' rights were not extinguished, they continued to exist even though Indian title had been extinguished. This would mean that in effect, between 1870 and 1885, the government could at best claim that 50% of the land had been acquired since the Metis were considered as having a half-share to land in the Northwest. This further meant that the government was in violation of its constitutional commitments by acting as if it owned all the land outside Manitoba after 1870.

The above resume is further evidence that the government did recognize Metis rights legally. It was expedient to do that and it would also prevent future claims against the land by native people from being successful. In spite of going through the legal niceties to which it had agreed, Canada generally violated the rights of the people in practice. The people themselves who were not aware of the laws and had little recourse to judicial processes, were not in a position to protect

themselves against a powerful government determined to accomplish its goals and carry out its land acquisition settlement, and development policies.

IX LAND AND SCRIP ALLOCATIONS AS EXTINGUISHMENT OF INDIAN TITLE:

A) Introduction.

By the early 1800's, the situation of many of the Metis in the Northwest was desperate. The buffalo and game had become virtually extinct, with the result that the natural food supply could no longer meet their needs. For those who were farming, the early 1800's, had seen a series of crop failures. The Metis who worked as freighters often hardly cleared enough from their efforts to cover their expenses.[114] Since they were not covered by treaties, the government would take no responsibility for them. No rations or relief were available. Further, for those who had land there was the threat that even this land would be lost.

It is little wonder that there were numerous petitions from the Metis, the clergy, the Northwest Council, and other concerned citizens, that action be taken to deal with Metis grievances. The advice of the clergy, the Lieutenant-Governor and people like Flood Davin was against the issue of scrip. Davin, in his report, recommended that the Metis be given vested land grants, seed, implements and farm animals. He also recommended that a system of industrial schools be established to help the Metis prepare for the transition to agriculture.[115] Father LaCombe made similar representations and pushed for the implementation of similar policies. He spoke against a scrip issue and asked for vested land grants plus other suitable help to ensure that the Metis would become established as successful farmers.[116]

If the Metis hadn't asked for scrip and if people like LaCombe and Davin were recommending against scrip, where did the pressure come from for a scrip issue? The Northwest Territories Council had consistently pushed for scrip. That council was made up primarily of white government supporters. Many of the council members also had interests in real estate or other similar business ventures. There was never more than one token Metis member on the council. That individual,

Breland, had worked as a spy for the government against the Metis. He rarely attended council meetings and hardly represented the interests of the Metis. Other pressures came from land speculators and politicians in the area.[117] It was already known from the experience in Manitoba that unfettered land grants to the Metis offered numerous opportunities for land speculation. In particular, scrip had proved to facilitate this speculation in Metis land. It will be revealed that the land policy advocated by Lieutenant-Governor Archibald, and implemented by the government, was based on a grant of free title. This, Archibald claimed, would promote orderly and rapid settlement and development of the land. He recognized that many Metis would be deprived of their land by speculators, but passed this off as unimportant compared to opening up the land as quickly as possible for new settlers.[11] The government also knew from its experience in Manitoba that the Metis land grants would quickly fall into the hands of speculators if scrip was used as the method of land distribution. Indeed, Macdonald repeatedly used this fact as an excuse for not granting scrip in the Northwest.[119]

In spite of advice to take other more appropriate steps to satisfy Metis claims, Macdonald refused to act. Indeed if he had acted he could have dealt with the people as the first settlers and pioneers of the land, who as the loyalists, and other settlers in central and eastern Canada, were entitled to land grants and help to get established in farming. Instead, at the last minute Macdonald chose to provide for a scrip issue, knowing full well the inevitable result. There was no consultation or negotiation with the Metis, no efforts to respond to their petitions, and no agreement on the terms of a settlement. The government acted unilaterally using the dubious provisions of the Dominion Land Act, which provided for the extinguishment of the questionable concept of Indian title. The stage was now set for the greatest land grab by speculators which ever took place in North America.[120]

B) Extinguishment--What is it?

To extinguish means to put out or to cancel. The government by a mere act of the legislature and the issue of scrip claimed

to extinguish the rights of the Metis. We, however, reject this idea as having any sound basis in either medieval or modern International Law. The Metis rights were national and human rights. An important part of their claim was of course access to their land. Land provided food, clothing and shelter. With control over the land they were able to establish communities, laws, government, and follow their own social customs and lifestyle. Such national and human rights cannot be extinguished. They can be violated, they can be denied, they can be ignored, but they cannot be extinguished. The individual or collective ownership of land can only be interfered with by a process of expropriation. This can be done in the best interests of the peope.

First, until such time as the Metis had been dealt with as a foreign power, through negotiation and agreement, they were not citizens of Canada and could not be subject to the usual Canadian laws. The negotiation of treaties with the Indians recognized this fact. If the Metis had rights equivalent to those of the Indians, then they must be dealt with in the same way. As Trudeau, so aptly stated in a speech in Vancouver, in 1969, you don't sign treaties with your own citizens (yourself). Therefore, by implication you sign them with a foreign power. If the Indian tribes were foreign powers, then so were the Metis. They had their communities, they had their leaders, and they had their own distinct lifestyle. They were not extensions of the Indian bands, and could not be dealt with indirectly by negotiating with the Indians.

Even if one grants, that as occupants of a so-called British colony, the Metis were British citizens, then only expropriation procedures could be applied. If expropriation is used it must be for the benefit of the people in the area, not for the people in the east or for the European settlers yet to come. How can it be seriously argued that it was for the benefit of the Indian and Metis (citizens) to have their land taken from them. This act was not going to benefit one single Indian or Metis person in western Canada. Even if some devious arguement of benefit can be put forward, there is a second principle of expropriation which must apply and that is that the owner must receive equitable compensation in return. This would be equivalent land or goods, or fair cash value for the land.[120(a)] In the case of the--

Metis, they had for several centuries made a living off the land. Whatever they received in return should have offered them an equivalent standard of living. Did a small tract of unbroken prairie land offer people a chance to make a living? Only if they had access to seed grain, farm implements, farm animals, and markets for their produce. They had no cash or other assets of their own to acquire these capital resources. The government, we have seen, refused such help, even in the face of advice to the contrary. The Metis couldn't borrow from the private lending institutions. More important, even if the capital resources had been provided, there were no markets for their produce. At best they could have carried on a subsistance type of agriculture. Their farms would not have generated the cash they needed to pay off loans or acquire additional capital assets.

C) The Purpose of Land Grants and of Extinguishment.

The land grants to children in Manitoba, and later scrip issues to the heads of families, were to be an extinguishment of the Indian Title of the Metis. Manitoba, in their report, will establish that there was monumental fraud and numerous other illegalities involved in the distribution of land and scrip in Manitoba. They will quite clearly establish that even most of the river lots passed into the hands of white settlers and speculators. We will not elaborate on the details of what happened in Manitoba here. The Manitoba Association is in a better position to do this then the Saskatchewan Association. We would, however, draw attention to the fact that the Manitoba findings support the basic contentions of the Saskatchewan Associations. These are that:

a) In spite of legislation in the form of the Manitoba Act and Dominion Lands Act, which attributed "Indian Title" to the Metis, the government never took the question of Metis rights seriously. They were only recognized for purposes of expediency and in ways which would accomplish government policies.

b) The goal of the government was to get clear and unchallenged title to the lands in the Northwest.

c) To do this, the government must appease the natives first, and then get them out of the way of the surveyors and incoming

settlers.

d) This was either done through the use of reserves for Indians and by forcing the Metis people off their lands and into the hinterland and frontier areas.

e) The government and its agents resorted to trickery, fraud, collusion, and the manipulation of legal rules and regulations to accomplish these goals.

f) It was in the government's interest to have some land pass into the hands of private speculators, with no strings attached. This accomplished several goals. It rewarded political supporters and it encouraged them to recruit settlers to turn a profit on their land acquisitions. It also encouraged the investment of private capital and in the case of bank speculation, encouraged the creation of capital required for development.

Land grants were used sparingly in the Northwest. The government had learned from its experience in Manitoba, that the methods required for ensuring that land grants passed into the hands of speculators were very risky. They also learned that the use of money scrip was a much neater way of distributing land and ensuring its acquisition by speculators. It did not as easily run afoul of existing real estate and other civil laws. As a result, the only land grants given to occupants in Saskatchewan were the river lots in the Prince Albert-St. Laurent area, and at the Qu'Appelle Lakes. In the Saskatchewan River area, approximately 300 land claims were registered by occupants. Only a small fraction of these approximately 10% were given clear title. The remainder were required to take their land as homesteads. The argument used was that these occupants had already been dealt with in Manitoba. The Manitoba research, however, indicates that many of these people were no longer residents of the Red River when their land grants or scrip was issued and in most cases, they did not know that their land claim had allegedly been extinguished.

In the case of the Qu'Appelle river lots, we have not been able to identify who the recipients were because of the way the land was resurveyed and the land grants were issued. It would be necessary

to do a complete review of all the original land titles issued in the area. These would then have to be checked with local people to see if we could determine which of the recipients were Metis. It was our view that what this would tell us would be of limited value in terms of the overall picture. Therefore, we concluded that at least for the present, the research efforts required would not be justified.

D) Scrip as Extinguishment of Metis Title.

In our last report and in a discussion paper attached, we provided a fairly extensive assessment of the many facets of scrip. We will not repeat all of that information here, but we only summarize previous findings already reported.

Scrip was initially issued as money scrip only. These certificates were made out to the bearer and were easily negotiated. In the case of half-breed scrip, they were considered to be personal property and governed by personal property laws.[121] The scrip notes could be applied by the bearer to surveyed and open Dominion Lands of a value equivalent to the scrip.[122] This type of scrip was in great demand by the speculators. It is clear from the records and from the correspondence of certain clergy and government officials, that the Metis were coached by the buyers as to what type of scrip to request.[123] In many cases buyers acquired Powers of Attorney and applied on behalf of the allottee. In those cases the buyers requested the type of scrip they desired.[124]

In the original issue in the Northwest, approximately $650,000 of money scrip was issued and 61,000 acres of land scrip was issued. Since land was at the time arbitrarily valued at $1.00 an acre, the issue was the equivalent of 711,000 acres of land. Of this amount, the money scrip accounted for 90% of the issue. The next major issue was in 1898 when $287,000 money scrip and 110,520 acres land scrip was issued for a total of almost 400,000 acres equivalent. Money scrip accounted for approximately 70% of this issue. Land was now becoming more valuable and some speculators were prepared to go through the more difficult process of locating the land scrip.[125]

It should be clarified that land scrip was issued in the

name of the allottee and was ruled to be real estate. It could be located only by the allottee and patents were initially issued in the name of the allottee. Later assignments were recognized but the allottee had to locate his land before the assignment was considered legal. Patents could then be issued to the assignee.[126] Land scrip transactions were governed by real estate laws. (See Appendix 'A').

The next large issue of scrip was in 1900 and 1901. A total of $660,000 of money scrip was issued and 596,000 acres of land scrip was issued or nearly 50% of the issue was land scrip. Land by this time had been increased in value by the government. Therefore, a dollar's worth of money scrip could no longer acquire an acre of land. Therefore, land scrip was more in demand by speculators and the rules governing land scrip began to change to make it easier for speculators to use the land scrip. It is of note that from 1903 to 1908, approximately $147,000 of money scrip was issued and during the same period, approximately 435,000 acres of land scrip was issued.[127] The results, however, were the same in that most of the scrip continued to pass into the hands of speculators.

E) Was the Scrip Process Responsible and Legal?

The claim of the government was that the granting of scrip was an extinguishment of the Indian Title of the Metis. Even if this proposition is granted, then the process by which scrip was issued must be both legal and in keeping with the trust responsibility of the government, if extinguishment is to be considered valid. It is the contention of the Association that the process failed on both counts. First, the government did not exercise its trust responsibility in a valid way.[128] If the government claim to sovereign title was legally valid, and if the government only was competent to deal with the native people for their land, then that same government had a trustee relationship with the native people. The government claimed sovereign title to the land and based its legal position on the assumption that the land remained Indian land until the native people ceded the land to the government for agreed compensation. Therefore, the government in a sense held the land in trust for the native people and it was responsible

under trust laws to ensure that the native people benefitted from the disposal of their land.[129]

The government, however, accepted no such trust responsibility. It only considered itself responsible to see that some form of compensation was provided. It did not ensure that the method of compensation benefitted the native people. The government knew full well that the scrip issues would benefit not the Metis, but the speculators. Macdonald himself repeated this proposition on a number of occasions.[130] Nevertheless, the government selected, against advice, a method of land distribution it knew would not benefit the Metis people. Furthermore, when complaints of fraud and other irregularities were brought to the government by Metis people or other interested parties, the government denied it had any responsibility. It claimed that complainants could have recourse to legal action through the courts.[131] The government refused to take any action on behalf of aggrieved Metis parties. When legal action was brought against large speculators which appeared to have a chance of being successful, the government quickly moved to undermine such actions. In the case of R. C. McDonald, the government established a special commission to investigate his scrip dealings. The commission concluded he had done nothing illegal and exonerated him. This was so even though evidence showed that his agents were purchasing scrip entitlements as much as three years before the scrip was issued. Evidence also showed that the allottees were often induced to sign documents which they were not familiar with, such as quit claim deeds and powers of attorney, in the belief they were only authorizing agents to pursue their claim. After the commission's ruling in McDonald's favor, the government passed an order-in-council allowing McDonald to personally locate all of the land scrip. This practice was in direct contradiction to the normal requirements the government had always insisted upon.[132]

In the case of McDougall and Secord, the preliminary hearing on alleged fraud charges into scrip acquisition, indicated that there was sufficient evidence to proceed to trial. The evidence indicated that this company's agents made false claims regarding documents they were having allottees sign, plus false promises of further payments

to allottees when the scrip was issued. Friends of the principals in the House of Commons and the Senate quickly moved to introduce and pass the Statute of Limitations in 1920, to try to prevent the case from going to trial.[133] The Crown promptly dropped the charges even though it was believed that this new statute could not be applied retroactively. One can only conclude that the government did not honor its trust responsibility to the Metis. (See Appendix 'B').

The second question which we must examine is whether the process by which scrip was issued and used was legal. On the first point, the department land agents were always very careful to ensure that scrip was issued according to the established rules. If a case did not fit a legal ruling, one would be established for this case. If one could not be made to cover the situation, an order-in-council was often passed to cover a particular case or class of cases. For example, the government refused to accept assignments or powers of attorney during the first scrip issue. They insisted that scrip certificates must be redeemed by the allottee and that the scrip notes must be delivered to the allottee. This was true in the case of both money and land scrip. In the case of land scrip, the department insisted that the allottee must locate his scrip and that the patents must be issued in his name.[134]

Some of these practices were eventually modified after prolonged pressures from politicians and land speculators. The alterations, although they were always made in ways which facilitated land speculation, were made within the framework of existing legal practices. Therefore, we have concluded that the process of issuing scrip used by the government, always scrupulously followed accepted legal practice to ensure the government could not be legally challenged on any cases, and to give the pretense of fairness and legality to the government's role in the process.

F) Who Acquired Scrip and How was it Used?

The question of who acquired scrip gives us an interesting picture of what was taking place through the pretense of using scrip to extinguish "Indian Title". If scrip was to benefit the Metis, one

might reasonably assume that they would be the ones who used the scrip. Since it was meant to bestow a land grant, it might also be reasonable to assume that most Metis scrip was used by Metis to acquire a land base. This was necessary if they were to receive any meaningful benefit from the so-called compensation, in exchange for their aboriginal title.

However, an examination of approximately 80% of all scrip issued, and the computer analysis of that scrip shows that it was not the Metis at all who benefitted from the scrip. In our third progress report we provided a more-detailed outline of the information we gathered.[135] In summary, that report indicated that 14 different chartered banks acquired a minimum of 56% to 60% of all scrip issued. The banks acquired a minimum of 11,500 scrip notes and probably between 13 and 14 thousand in total. This scrip based on $1.00 per acre value would have a land equivalent of approximately 2.1 to 2.5 million acres. Private banks and other financial institutions, plus a number of major buyers acquired an additional 21% of the scrip or a land equivalent of 700,000 to 800,000 acres. Approximately 13% was acquired by small speculators such as merchants, lawyers, small-town businesses, and scrip agents buying for themselves. Only approximately 10% of the scrip was ever used by the Metis people to acquire land.[136]

One bank alone, the Imperial Bank of Canada, acquired approximately 6,400 to 7,500 scrip notes for a land equivalent of 1.3 to 1.4 million acres. Other banks which were substantial buyers were the Merchants Bank of Canada and the Bank of Hamilton. An examination of the shareholders of banks indicates that the banks who were large buyers in particular, had good political connections. Well know politicians such as Donald Smith, appear among the shareholders. Senators were notorious for being on the boards of banks. The private banks and institutions included companies like Osler, Hammond and Nanton, who operated out of Toronto, and Alloway and Champion, who operated out of Winnipeg. The former acquired scrip with a land equivalent of approximately 450,000 acres, the latter a land equivalent of approximately 150,000 acres.[137]

Other speculators included politicians such as A. O. Davis, from Princt Albert, and A. J. Adamson from Rosthern. There were also

civil servants involved in speculation such as the Deputy Minister of Agriculture, Lowe, D. H. McDonald of Fort Qu'Appelle, first Indian Agent in the Northwest, Sgt. Watson of the N.W.M.P., and Issac Cowie, a Dominion Land Agent. There were also a number of prestigious legal firms such as McDougall and Secord of Edmonton, Lougheed and McCarthy of Calgary, and Aikens, Culver and Hamilton of Winnipeg. These are but a few of the corporations or individuals who dealt in scrip.[138] They are, nevertheless, those who accounted for the bulk of the scrip speculation.

The government was also exceptionally co-operative with these speculators. It operated a virtual banking service for them known as the scrip buyers accounts. This privilege was not extended to everyone, but to a select list of corporations and persons approved by the government. This privilege was extended to all large corporations and to certain favored individuals. The buyer deposited his scrip with the Dominion Lands Branch in Ottawa. The Department entered scrip deposited to the buyer's credit in a ledger. When the buyer wanted to use the scrip to acquire land, he would ask that his account be debited by the appropriate amount and to have that amount of scrip transferred to a particular land office or to the account of a particular company. For example, the Imperial Bank transferred large quantities of scrip to the account of the Saskatchewan Valley Land Company as payment for colonization lands acquired by the company from the government.[139] Companies which had substantial accounts with the government included the Imperial Bank (1366 individual scrip notes), the Merchants Bank (583), the Bank of Hamilton (439), and Osler, Hammond and Nanton (394).

Money scrip was most popular with banks, financial institutions, and other large speculators. Nevertheless, the banks acquired close to 2,500 land scrip notes. The small-town speculators or one-time buyers acquired primarily land scrip. They had easy access to the allottees in most cases and, therefore, had few problems locating the scrip.[140]

Why was scrip being bought in large quantities by the banks and in general how was scrip being used? In the first instance scrip was only to be used to acquire open Dominion lands. As time went on, the government gradually passed a number of orders-in-council to

facilitate other uses of scrip. One of these allowed scrip to be applied to the purchase of coal and timber leases. Another allowed settlers to use scrip to acquire their pre-emptions without proving up or before proving up their homestead claims.[141] In addition, the government allowed scrip to be used to pay the rental on pasture leases and to acquire Crown lots in urban townsites. The government also allowed colonization companies to use scrip to pay for lands acquired under colonization agreements.

Companies like Alloway and Champion; Osler, Hammond and Nanton, and others used scrip to acquire land. In addition, they bought and sold scrip to other speculators, farmers, land companies, and the C.P.R. at a profit.[142] Scrip was openly advertised in newspapers by many companies, some of whom had bought scrip from allottees, but many of whom were acquiring it from other sources, probably the banks. We have gathered together dozens of such ads from newspapers in the period 1890 to 1910.[143]

One of the more interesting questions relates to why chartered banks were buying scrip. We have checked the land archives and found they never used any of the scrip to acquire land. They did sell some scrip over the counter.[144] Some was sold to land companies, as in the case of the Imperial Bank and the Saskatchewan Valley Land Company. It would appear some was sold to small brokers, real estate firms, and insurance companies. The banks would have made a profit on these transactions, which in total would likely have amounted to more than one million dollars on all of the scrip purchased. The profit when spread among 14 banks is not sufficient to explain the banks' involvement in this speculation in such a major way. We have, therefore, concluded that the banks purchases were made to acquire an asset against which banks could make low-risk loans. Prior to 1885, money in the western economy was in short supply and loans were difficult to come by without adequate collateral.[145] Banks were not prepared to risk their money in the west when there were good profits to be made loaning money in central and eastern Canada. After 1886, money in the form of loans was easily available.

The policy of the government at the time was to stimulate the economy. Therefore, the ratio of loans which could be made against bank-owned assets, was at times as high as $10.00 in loans for every $1.00 in assets.[146] The scrip was bought for approximately 30 cents on the dollar. This enabled banks to use scrip as an asset against which low-risk loans could be made. Even if the banks' loss ratio was high, there were still large profits to be made. This would help explain why loans were easy to acquire during the early days of settlement after 1886.

G) Why Did the Metis Sell Their Scrip?

This is a question which is frequently asked by people who may be sympathetic to the problems of the Metis, but who reject the idea that a valid aboriginal claim still exists. The position is that the Metis had an opportunity to develop a land base for themselves and their families. They obviously made a conscious choice to dispose of their scrip because they didn't recognize the value of the land. Therefore, it's too bad if they got ripped off by speculators but they have no one to blame but themselves.

Such a position makes some assuptions which are not valid. First, it assumes that the Metis people fully understood what was going on, what the scrip could be used for, that they knew what was in documents they signed, or that they even knew their scrip had been issued. Certainly some like Riel, Nolin and other leaders were aware that scrip was supposed to be compensation for their "Indian Title". Also there were probably some Metis people who were improvident, and who knew they were exchanging a valuable land base for a small amount of ready cash. The evidence, however, suggests that most of the Metis did not fall into these two groups. Why, then, did they sell?

First, communications, at the time, with isolated communities was poor, and many people only heard rumors of the alleged land settlement. Speculators frequently took advantage of the Metis' lack of information to pose as agents for the government or as agents who would act on their behalf. In numerous cases, the agents approached Metis people and purchased their claims long before scrip was issued.

This was the case in the 1903 issue in the United States, and in the 1900 issue when eligibility was extended to include those born between July 15, 1870, and July 15, 1885. There were rumors for several years that these issues would take place. The government at the same time denied it would change its policies.[147] At the same time, agents were buying up peoples' entitlement alleging scrip would be issued to them. Some of this buying began two to three years before the laws were actually changed.[148] The Metis, in need of cash, agreed to sign papers which they believed were only appointing speculators as agents. They were also told that the $25.00 they were given was only a down payment with more money to be paid when the scrip was issued.[149]

Second, there was tremendous pressure exerted by the speculators on the Metis to sell. People were told, they didn't need their land, since they could still qualify for homesteads. Also, their children could apply for homesteads when they became of age. Many who had entered treaty were talked into leaving treaty to receive scrip and a relatively large cash payment. They were not told that they would have to move off the reserves.[150]

Third, there were outright cases of fraud where Metis people signed documents, whose content they believed to be something other than they actually were. They didn't know they were relinguishing their scrip claim. In some cases, signatures were forged to documents made out in the name of a particular Metis person without his/her knowledge.[151]

Fourth, in certain areas in the North, scrip was of no value to the people since there was no open dominion land where they could locate the scrip. In addition, a small plot of land did not fit the lifestyle of the people. Land in the north had little agriculture potential and hunting and fishing required access to large tracts of land. In these areas almost 100% of the scrip was sold by people to acquire some cash for immediate needs or to pay off debts.[152]

Fifth, the Metis were often desperately poor and needed immediate cash. They received no help from the federal Indian Department. There were no provincial or local welfare systems and the people

needed cash to survive. They sold out of necessity believing they could move further west and north and live off the land, or that they could claim land later when homesteads became available in their area.

Finally, few people understood that scrip was compensation for Indian Title. They saw it primarily as a recognition of their role as early settlers. Indian title and aboriginal claims were probably not understood by the great majority of the people.

H) Were Scrip Dealings Legal?

Although the government was careful to ensure that it carefully followed the provisions of legislation, orders-in-council and legal rulings in the issue of scrip, there are serious questions about the legality of the activity of scrip speculators. The biggest speculators, as we have seen, were the chartered banks. The chartered banks at the time were prohibited by law from dealing in real estate.[153] As indicated earlier in this paper, land scrip was clearly ruled as being real estate. Therefore, the dealings of the banks in land scrip clearly had to be illegal. Money scrip was ruled to be personal property when being issued to the allottee. However, the department also ruled that once money scrip entitlement or the scrip itself passed to heirs or other assignees, it also became real estate.[154] From that ruling, one must conclude that when banks acquired scrip they were dealing in real estate. This clearly makes close to 60% of all scrip transactions illegal.

Other areas of illegalities included acquiring scrip through fraudulent means. We don't know the extent or numbers of scrip so acquired. However, based on the Ruttan correspondence,[155] the McDougall and Secord evidence, and the numerous letters from other people, particularly missionaries, the practice of acquiring powers of attorney and signatures to quit claim deeds, by means of false representations, was widespread in the 1898 to 1903 era. Since approximately one million acres of land plus one million dollars of money scrip was issued during this period,[156] we must conclude that a substantial additional portion of the scrip not acquired by banks was acquired by

In the 1906 issue connected with Treaty No. 10, we have the article by the lawyer Fillmore, who participated in the buying of scrip, and later observed how it was used by his superiors in his law firm. It, again, is evident that a substantial portion, if not most of the land scrip acquired by speculators in connection with Treaty 10, was located on land fraudulently.[157] We have also checked through on some individual cases of land scrip where the Imperial Bank is shown as the agent for the allottee. Patents are issued in the name of the allottee but the land title was registered in the name of someone else, probably a farmer who was using it to acquire a homestead or pre-emption. In one case, the scrip was acquired from a Metis resident in Montana, by a branch in Regina, and was located on land in the area north of Kamsack,[158] in the vicinity of Pelly, Saskatchewan. It is likely that this location of scrip was fraudulent. Whether this was facilitated by the bank or some other speculator is not known since the banks were constantly buying and selling scrip.

The government can hardly claim it was unaware of the speculation by banks since it maintained scrip buyers accounts for them. Also, at least some banks (the Imperial, Montreal and Dominion) openly advertised that they bought and sold scrip.[159] In the case of the fraudulent acquisition of scrip by buyers, the government also had numerous complaints and therefore was aware of the problem. No steps were taken to curb the activities of the speculators. Indeed, the government took the position that these practices were none of their concern and should be pursued through the courts.[160] In the case of the fraudulent location of scrip on land, there had to be either active collusion by land agents or gross dereliction of duty. It is inconceivable that any number of fraudulent locations could take place without the knowledge of the land agents. They knew the speculators and often knew the local native people. If they did not, they had a responsibility to determine their true identity, before allowing an alleged allottee to locate his/her scrip.

The government, in addition, facilitated the activities of scrip buyers in numerous way. These included:[161]

a) the issue of money scrip which was easily negotiable;
b) the maintenance of scrip buyers registers;
c) the advertising of scrip in land offices;
d) allowing scrip to be used for purposes other than intended;
e) making legal rulings for the convenience of speculators;
f) passing orders-in-council to legalize certain practices and to extend scrip use; and
g) changing rulings to make it easier for speculators to use and acquire scrip.

The connections between scrip speculators and the government are also of interest. Some speculators such as Adamson, A. O. Davis, Turriff, James mcKay and others, were politicians. Others such as Alloway and Champion; Osler, Hammond and Nanton; McDougall and Secord, Lougheed and McArthy, etc., had close connections with a specific political party. There were also a number of civil servants involved in scrip speculation. These included people like Lowe, Deputy Minister of Agriculture; D. H. McDonald, first Indian Agent in the Northwest; Sgt. Watson of the Mounted Police; Turriff, the Chief Commissioner of Dominion lands; and Issac Cowie, a Dominion Land Agent. In addition, we have already pointed out the connections between chartered banks and political figures.

The whole process of scrip distribution and scrip speculation was surrounded by obvious illegalities, conflict of interest, and serious moral and ethical questions.

I) How Scrip Helped Achieve Government Policies.

The government always rationalized its dealings with native people on legal grounds. However, in the process, the government always managed to somehow also achieve its own policy goals, even when these goals conflicted with the interests of native people. These goals were to open the country for settlement, establish law and order, develop the natural resources and to provide transportation and communications systems.[162]

To accomplish these goals, it was necessary to obtain unencumbered title to the land, have an effective military or police force in place, create a favorable investment climate, establish land policies designed to attract settlers, and have control over all the land to promote the building of railways.[163]

The land policies pursued and which were enunciated by Archibald in 1870,[164] were successful in getting both the Indians and the Metis out of the way of settlement and settlers. The policies of extinguishment also obtained for the government clear title to the land. This enabled a policy of extensive land grants for the building of railways. It also enabled the government to establish the highly attractive homestead policies. The isolation of the Indians on reserves and the Metis in the north or in isolated rural areas, also ensured minimal friction between settlers and the natives. With the exception of the costs of the Northwest Rebellion, military costs were almost non-existent, and policing costs were minimal. The government was also spared the expense of putting local government structures and public services in place for native people. This task was left to the new settlers to do for themselves and at their own expense.[165]

The speculation in scrip also opened up land to land companies who became active in recruiting settlers. It, in addition, gave certain capital and political interests access to natural resource leases for a minimal cost. This promoted the development of resources which would otherwise have been uneconomical to develop. Half-breed lands passed quickly from the half-breeds to the commercial market. This left the Metis as a poor and captive labour force to work on the railways, at seasonal and casual labor, or to do jobs no one else wanted to do. Finally, the creation of a cheap money supply with scrip created a favorable investment climate by making low-risk money available to the financial institutions.[166] This greatly aided the process of development in the Northwest.

J) Was Scrip Legal Extinguishment of Indian Title?

It is the position of the Association that the scrip issues did not constitute an extinguishment of the aboriginal title of the Metis,

even if one accepts the idea of extinguishment as being valid. The reasons for this position are as follows:

1. there was no consent by the Metis to give up their lands;
2. there were no negotiations for or agreements on the terms of a settlement;
3. the scrip issues did not constitute an equitable settlement;
4. the people signed no documents relinquishing their claims;
5. the scrip policy was designed to achieve government goals and not to benefit the Metis;
6. there were numerous and widespread illegalities in the process of scrip speculation and in the location of scrip on land;
7. scrip was used for purposes other than for which it was intended; and
8. the manner in which scrip was issued and the government's complicity in fraud, misuse of scrip and other irregularities surrounding the scrip issues, constituted a gross breach of the government's trust relationship with and obligations to the Metis people.

K) <u>The Effect of the Northwest Rebellion and the Scrip Allocations on the Metis</u>.

With few exceptions, the Metis people did not derive any meaningful benefit from the scrip allocations. The effects were as follows:

1. It appeased the Metis people temporarily and brought to an end the continuous flow of petitions from the Metis and the pressures from other quarters to deal with the Metis people;
2. it effectively undermined support and sympathy for the Metis grievances and left them very much on their own and without any effective means of pursuing their legitimate goals;

3. it demoralized the people and broke up their institutional forms of organizing themselves for their own defense and for the pursuit of their legitimate interest
4. it removed from legal consideration, the question of any legal claims against the land to which the Metis might have laid claim. In the process of focusing on the land question, attention was effectively diverted from other human and national rights possessed by the Metis and these were never dealt with by the government.
5. it left the Metis without a land base which they could use to maintain their communal and parish lifestyle;
6. it very shortly left the Metis people in a situation of desperate poverty, having to live off of the depleted resources of the land and from whatever casual employment that they could obtain;
7. it tended to isolate the Metis in remote areas, in isolated rural communities and on the fringes of developing towns and cities;
8. the method of scrip allocation made most Metis easy victims for the schemes of land speculators, whose goal it was to get the land allotted to individual Metis people;
9. it generated widespread racism, prejudice and social sanctions against the Metis which prevented them from participating in any effective way in the social and economic development of the west; and
10. the prejudice and isolation resulted in an attack on the Metis culture which lead to social and cultural disintegration and the development of many classical social problems which are characteristic of such disintegration.

X SUMMARY:

In summary, the Assocation is of the view that its research has definitively established a valid basis for an aboriginal claim by the Metis people which has not yet been satisfactorily dealt with by the

Government of Canada. The basis for that claim is as follows:

a) The question of Metis rights is a question of the violation of those human and national rights which pertain to all indigenous people. That principle was established in early International Law and these rights were part of the recognized rights acknowledged in practice and legal conventions among European peoples.

b) The indigenous people had human and national rights every bit as good as those of the Europeans. These questions were effectively argued and answered in the affirmation by leading church and judicial authorities in the 13th and 14th centuries.

c) As a basic tenet of International Law, the indigenous people had a right to expect that those rights would be extended by the European colonizers to native people in new lands and further that those rights would be honored by the colonizers.

d) The Association rejects the concept of colonial nations having the right to lay sovereign claim to the lands of indigenous peoples in North America because they had different languages, religion, social and government forms and different lifestyles. The application of the practice of laying sovereign claim to new territories occupied by indigenous peoples was disputed by leading church and judicial authorities of the day. It amounted to nothing less than a gigantic theft of native lands and a wanton destruction of native heritage.

e) The development of the concept of aboriginal title (usufructuary title) was nothing less than an invention designed to give legal sanction to the process of confiscating native lands by colonizers.

f) This concept gave no recognition to rights possessed by the indigenous people, other than land rights. Except in the case of the Manitoba Metis, these important national and individual rights of all the other native peoples were ignored and never granted. It is a clear principle of International Law that such rights cannot be extinguished and therefore the native people of Canada still have a valid grievance and a valid basis for requesting that these rights be incorporated into the constitution and a bill of rights.

g) The practice of extinguishment was a form of land expropriation which deprived the native people of due process of law and resulted in compensation which was not fair and equitable in terms of the market value of the land at the time. This was the denial of a legal right which were available to people under British legal traditions.

h) If the British and Canadian government had followed the terms of their own legal conventions, such as the Royal Proclamation and B.N.A. Act, native people could have been dealt with fairly and could have had their rights protected. The fact that this did not happen confirms the view that the British goals were commercial and imperial and not to ensure that native rights and interests were safeguarded.

i) The agreement of the Canadian government to deal with the claims of the Indians on an equitable basis, included in the address to the British Crown from the Canadian Parliament, in 1870, was a monumental fraud designed to ensure that the Canadian government would get access to native land to pursue its commercial and settlement goals.

j) This statement is based on the fact that:

1) the native people were given no choice but to cede their land and therefore, even in concluding treaties it cannot be claimed that the native people freely consented to giving up their land;
2) except in the case of the Manitoba Metis, the government dealt unilaterally with all the other Metis people and did not have their consent in return for giving up their claim to the land;
3) there were no negotiations and agreements between the government of Canada and the Metis either for the ceding of their land or as to what would constitute fair and equitable compensation for their claim;
4) the question of other individual and national rights were never negotiated or dealt with outside Manitoba;
5) the government steadfastly refused to recognize that the Metis had any rights until forced to do so by events

6) the method chosen to allocate land to the Metis was designed more for the benefit of speculators than for the benefit of the Metis. The government knew what would happen if scrip was distributed yet it ignored all advice as to other ways of settling the Metis claims;
7) the government aided the speculators by changing regulations in their favor, by advertising their scrip, by keeping scrip accounts for them and by ignoring the illegal and unethical dealings of the speculators;
8) the government in the meantime was careful to ensure that its own actions were seen to be legal according to its interpretation of the law;
9) the government made legal rulings designed to achieve the government policy of settlement and development and not to protect Metis interests; and
10) the government was grossly derelict in its responsibility as trustee of native rights and lands, and in ensuring that these lands were used for the maximum benefit of Metis people.

In conclusion, the above is not a complete or in-depth outline of evidence in support of the argument that Metis rights have never been dealt with or that the Metis still have legitimate unsettled human, individual and national rights. We, however, are satisfied that this presentation clearly establishes the basis of Metis grievances and justifies the next step in the research program. This step includes the in-depth analysis of all materials gathered, the preparation of submissions and evidence supporting Metis grievances, and the public presentation of that claim before a competent public body such as a Royal Commission.

FOOTNOTES

1. The proposal to the Government of Canada by the Association of Metis and Non-Status Indians for funds to carry out a program of Aboriginal Research, Claims Hearings, Claims Negotiations and Claims Settlement, January 10, 1977.

2. Human Rights and Fundamental Freedoms in Your Community, Stanley I. Stuber; page 124 - 128 - Universal Declaration of Human Rights.

3. Ibid.

4. Ibid., Chapter 1, pages 13 - 23.

5. Ibid., pages 125 - 128.

6. The Acquisition and Government of Backward Territory in International Law, Chapter V, International Law and Native Sovereignty; Lindley.

7. The History of the Backward Nations - State Practice, ;age 43 and page 44; Lindley.

8. Aboriginal Rights in Canada and the United States, Neil H. Mickenberg; Osgoode Hall Law Journal.

   - Marshal Ruling, pages 124 - 126.
   - 1787 Northwest Territories Ordinance, passed by U.S. Congress, page 130.
   - Mr. Justice Sisson's Ruling in Regina v. Koonungnak, page 143.
   - Justice Johnson's Ruling in Regina v. Sikyea, pages 144 and following.

9. Supra, International Law and Native Sovereignty, pages 45 - 47.

10. Ibid.

11. Supra, Laws of State Succession, pages 77 - 105.

12. Ibid., Chapter III, The doctrine of Acquired Rights, page 77.

13. Supra, Backward Territories, Chapter V, pages 45 and 46.

14. Ibid.

15. Supra, Backward Territories, page 44.

16. Canadian Indigenous Peoples in Relation to Early Concepts of International Law, A.M.N.S.I.S. Discussion Paper, prepared by Clem Chartier, B.A., L.L.B., December 20, 1978.

17. Ibid.

18. Classics of International Law, De Indis et De Jure Belli Reflectiones.

19. Ibid.

20. Ibid.

21. Ibid.

22. The Spanish Origins of Indian Rights in United States Law, Cohen.

23. Dominion Laws Policy, Chester Martin; Volume II, part II, Canadian Frontiers of Settlement.

24. Government Policy Respecting Native People: Its Development and Purpose; A.M.N.S.I.S. Discussion Paper, December 10, 1978.

25. The Wealth of Nation, Adam Smith.

26. Supra, Government Policy, a discussion paper.

27. Ibid.

28. Supra, The Spanish Tradition in North America, pages 109 - 112.

29. Jesuit and Savage in New France, J. H. Kennedy.

30. Ibid.

31. Native Rights in Canada, Peter A. Cumming and Neil H. Mickenberg, Chapter II, pages 75 - 93.

32. Ibid., Chapter II, page 85.

33. Supra, A.M.N.S.S.I.S. Discussion Paper on Colonial Policy, page 3 and following.

34. Ibid.

35. Chronicles of the First Planters Colony of Massachussetts Bay, 1623 - 1639.

36. Ibid.

37. Supra, The History of the Backward Nations, page 421.

38. Ibid.

39. Supra, Native Rights in Canada, Appendix II.

40. Canadian Indigenous People in Relation to International Law, A.M.N.S.I.S. Discussion Paper, December 20, 1978, pages 17 - 21.

41. *Supra*, Native Rights in Canada, Chapter 11 and 12.

42. The Royal Proclamation 1763, See Appendix II, Native Rights in Canada.

43. *Ibid*.

44. Articles of Capitulation, 1760, See Native Rights in Canada, page 65.

45. Proclamation issued in Nova Scotia, 1762 - Appendix I, Native Rights in Canada, page 287.

46. *Ibid*., Native Rights in Canada, Chapter 20, The Laws of Native Hunting and Fishing Rights.

47. The Birth of Western Canada, George F. Stanley, Chapter 2, The End of Company Rule.

48. *Ibid*.

49. Report on Proceedings of the Commission to Investigate the Affairs of Hudson's Bay Company 1849, Volume 12A, A.M.N.S.I.S. Library.

50. See Report of Select Committee on Hudson's Bay Company, Cauchon Memorandum, Volue 12B and 12C, A.M.N.S.I.S. Library.

51. Correspondence, Sir George Simpson to J. Savile Sumley, No. 1, 1856, M.G. 11 Co 42, pages 154752 - 7.

52. Correspondence, Watkins to Sir John A. Macdonald, February 18, 1865, M.G. 26A, pages 154752 - 7.

53. Colonial Office Correspondence, M.G. 11 Co 42 11618, page 245, June 13, 1859 - Sir Edward Head to Merival.

54. *Ibid*.

55. Correspondence from Sir Edward Blake and George Brown Papers, M.G. 27 1D2 - Public Archives of Canada, Volume 89, A.M.N.S.I.S. Library.

56. Sessional Papers, 1869, Report No. 25, Sir George Carter and McDougall to Sir F. Rodgers, February 8, 1869.

57. Macdonald Papers, M.G. 26A, 1874 Correspondence, Volume 48D, A.M.N.S.I.S. Library.

58. *Supra*, Sessional Papers, 1869.

59. *Supra*, Macdonald Papers, M.G. 26A.

60. 1851 Indian Act, 13 and 14 Victoria, c. 41 - 42.

61. An Act to Establish the Department of the Secretary of State, 1868, 31 Victoria, c. 42.

62. B.N.A. Act, 30 and 31 Victoria, c. 3, s. 92 and 146.

63. The Treaties of Canada with the Indians, The Honorable Alexander Morris, 1880, page 69.

64. House of Commons Debates, 1864, pages 174 - 185.

65. Supra, Treaties of Canada with the Indians, page 83.

66. Walker-McKenna Commission, R.G. 15, Vol. 771, File 518158, February 13, 1900; Public Archives of Canada.

67. Dewdney Papers, Volume 21A, Hayter Reed Memorandum on the Management of the Indians, July 20, 1885.

68. Report of Treaty 3, Negotiators - See Treaties of Canada with the Indians, Chapter V, Treaty No. 3.

69. Supra, Walker-McKenna Commission.

70. The History of the Metis, Chapter I, August Tremaudan, an English abridged translation, A.M.N.S.I.S. Library.

71. Ibid.

72. Ibid.

73. Supra, 1846 - 49, Free Trade Representation, Volume 12A, A.M.N.S.I.S Library.

74. Ibid., The Special Hearings on Hudson's Bay Company, 1847, and George F. Stanley, The Birth of Western Canada, Chapter 1.

75. Supra, History of the Metis, Tremaudan.

76. Supra, Treaties with the Indians, Morris, Chapters 1 - 6.

77. Supra, Special Hearings on Hudson's Bay Company, 1846 - 1849, Volume 12A, A.M.N.S.I.S. Library.

78. Supra, Tremaudan, Chapter II.

79. Supra, George F. Stanley, The Birth of Western Canada, Chapter 2.

80. The Laws of the Prairie, The Laws of St. Albert and the Laws of St. Laurent, Volume 19, A.M.N.S.I.S. Library.

81. Supra, Report of Commissioner on Affairs of Hudson's Bay Company, 1849, Volume 12A, A.M.N.S.I.S. Library.

82. Supra, The History of the Metis, Tremaudan, Chapter II.

83. *Ibid*.

84. Colonial Office Correspondence, Volume 60A, A.M.N.S.I.S. Library.

85. Report of MacDonald Commission, August 7, 1944. See page 203, Native Rights in Canada.

86. McKenna-Walker Commission Report. Treaty 10, see Sessional Papers, Volume 10, A.M.N.S.I.S. Library.

87. *Supra*, British North America Act.

88. *Supra*, Indian Act, 1851.

89. 1876 Indian Act, 39 Victoria, Cap. 18.

90. *Supra*, Tremaudan, C. 3.

91. Manitoba, The Birth of a Province, Chapter VI, Ritchot Diary.

92. *Supra*, Macdonald letters, Macdonald to Rose, November 27, 1869.

93. Manitoba Progress Report No. 3, 1979 - 80.

94. *Supra*, Manitoba, The Birth of a Province, Chapter VI, Ritchot's Diary.

95. *Ibid*. Also see Wickes Taylor Papers; memo of May 22, 1870, Taylor to Hamilton Fish.

96. *Ibid*.

97. House of Commons Debates, May 1870, Volume I, A.M.N.S.I.S. Library, May 21, 1870, pages 1287 - 1383.

98. Manitoba Act, 33 Victoria, Cap. 3.

99. The Natural Resources Question.

100. *Supra*, Manitoba Act, see also The Articles of Capitulation, 1760, The Royal Proclamation, 1763, and section 146, B.N.A. Act - Rupertsland Transfer Agreement.

101. *Supra*, Morris, Treaties with Canada's Indians, Chapter 1 - 6.

102. Correspondence from Macdonald to Morris, Volume 54B, March 21, 1873.

103. Macdonald Papers, Volumes 48B and 48C, A.M.N.S.I.S. Library.

104. Claim to Nationhood Outside Manitoba, A.M.N.S.I.S. Discussion Paper, July 15, 1979.

105. *Ibid*.

106. *Ibid*.

107. Supra, see Native Rights in Canada, page 201.

108. Supra, Claim to Nationhood, page 7.

109. Supra, House of Commons Debates, Volume 9B, A.M.N.S.I.S. Library, 1885, March 26.

110. Supra, Sessional Papers, Volume 1A, Paper No. 116.

111. Sessional Papers, Pearce Report, 1886; letter to White dated December 14, 1883.

112. Extract from Report of Privy Council, P.C. Order #688185.

113. Privy Council Order #918199.

114. Supra, George F. Stanley, The Birth of Western Canada, Chapter 11.

115. Supra, Claim to Nationhood, page 7 and following.

116. Sessional Papers, Volume 1B, Lacombe to Macdonald, Correspondence on Industrial Schools and Metis needs. Also see Tache Papers, Volume 55C, Lacombe Correspondence, A.M.N.S.I.S. Library.

117. Ibid. Also see Northwest Territories Council Correspondence and Reports, Volume 83, A.M.N.S.I.S. Library.

118. Dewdney Papers, Volume 21, Archibald to Macdonald, December 27, 1870, A.M.N.S.I.S. Library.

119. House of Commons Debates, May 1884.

120. Dominion Lands Policy, Archer Martin.

120a. Expropriation in Relation to Indian Title, Clem Chartier, A.M.N.S.I.S. Discussion Paper.

121. The Question of Half-Breed Scrip as An Extinguishment of Aboriginal Title, A.M.N.S.I.S. Discussion Paper, December 24, 1979.

122. Ibid.

123. Dewdney Papers, Volume 21A, A.M.N.S.I.S. Library, Ruttan to Smith, October 19, 1896.

124. Ibid.

125. Supra, Scrip as Extinguishment, A.M.N.S.I.S. Discussion Paper.

126. Supra, Departmental Rulings, Volume 67A.

127. Supra, Cote Compilation, Volume 17A, A.M.N.S.I.S. Library.

128. The Federal Indigenous Trust Relationship, Clem Chartier, March 19, 1980.

129. _Ibid_.

130. _Supra_, House of Commons Debates, May 1884.

131. _Supra_, Departmental Rulings, Volume 67A.

132. _Supra_, Sessional Papers, Volume 1E, Report of Judicial Inquiry into dealings of R. C. McDonald.

133. _Supra_, House of Commons Debates, 1920 Volume, A.M.N.S.I.S. Library.

134. _Supra_, Departmental Rulings, Volume 67 and 67A, A.M.N.S.I.S. Library

135. A.M.N.S.I.S. Third Progress Report on Land Claims Research, January 15, 1980.

136. _Ibid_.

137. _Ibid_.

138. _Ibid_.

139. Scrip Buyers Accounts, A.M.N.S.I.S. Library.

140. _Ibid_.

141. _Supra_, Departmental Rulings, Volume 67A; also see Cote Compillation, Volume 17.

142. All Western Dollars, Peter Lowe.

143. Newspaper Ads from Papers in Saskatchewan and Alberta, A.M.N.S.I.S. Library.

144. _Supra_, All Western Dollars.

145. _Supra_, Northwest Territories Council Papers, Volume 83.

146. House of Commons Debates on Bank Act, 1932, Volume 9G, A.M.N.S.I.S. Library.

147. _Supra_, Ruttan Letter to Smith, October 19, 1896, Dewdney Papers, Volume 21A.

148. _Ibid_., Ruttan; also Special Report of Commission on R. C. McDonald's Scrip Buying.

149. _Ibid_.

150. _Supra_, Sessional Papers, Volume 1A.

151. Record of Preliminary Evidence in the Queen v. McDougall and Secord.

152. Dealings in Half-breed Scrip, Fillmore.

153. Bank Acts and Regulations.

154. *Supra*, Departmental Rulings, Volume 67A.

155. *Supra*, Ruttan Correspondence

156. *Supra*, Cote Report.

157. *Supra*, Dealings in Half-breed Scrip, Fillmore.

158. Land Assignment and Scrip Registers, A.M.N.S.I.S. Library.

159. *Supra*, Newspaper Advertisements.

160. Departmental Rulings, Volume 67A.

161. A.M.N.S.I.S. Discussion Paper, December 14, 1979.

162. *Supra*, Third Progress Report and Appendix, January 1980.

163. *Ibid*.

164. *Supra*, Scrip as an Extinguishment, Discussion Paper, December 24, 1979.

165. *Ibid*.

166. *Ibid*.