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### Admission of half-breeds into Treaty : report

/ prepared by T&HRC.  
[S.l. : s.n.], 1976. 7 p.

This document illustrates some examples of how the Commissioners dealt with Métis claims. The paper shows the difficulty in distinguishing an Indian and a person of mixed blood. The Commissioners gave the aboriginal inhabitants the option of having their territorial rights extinguished by taking treaty as Indians or by taking scrip as persons of mixed blood.

Claims and Historical Research Centre : X.82

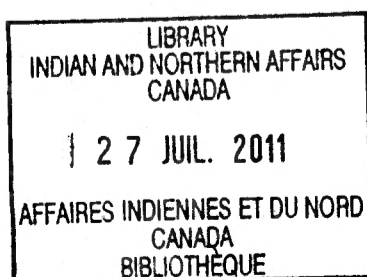
Admission of Half-breeds into Treaty

When the treaties were made with the Indians, it was difficult and often impossible to draw a clear line of demarcation between an Indian and a person of mixed blood, particularly in the northern areas where both groups lead a nomadic, hunting way of life. For this reason, the Commissioners had to give the aboriginal inhabitants the option of having their territorial rights extinguished by taking treaty and annuity as Indians (31 Vic., cap. 42, sec. 15b 1868) or by taking scrip as persons of mixed blood (33 Vic., cap. 3, sec. 31 1870 and 37 Vic., Cap. 20 1874). Generally, throughout the north and west, those mixed blood people who were entirely identified with Indians, following their way of life and speaking their language, chose to be taken into treaty under the band with whom they were affiliated.

Some examples of how the commissioners dealt with half-breed claims are as follows:

W.B. Robinson reported that during the negotiation of the Robinson Treaties two chiefs "insisted I should insert in the Treaty a condition securing to some sixty half-breeds a free grant of land of one hundred acres of land each". (W.B. Robinson, Indian Commissioner, to Col. Bruce, Superintendent General of Indian Affairs, 24 September 1850: In Morris, A. The Treaties of Canada with the Indians. 1880 Toronto: Bedfords, Clarke & Co. p. 18.) He was forced to reply that he had no power to give them free grants of land. Prior to 1870, when treaties were signed with the aboriginal inhabitants, the peoples of mixed blood were not recognized as having separate rights or claims to the land being ceded. However, in 1850, Robinson notes that some Half-breeds were included in the treaty with the Indians of Ontario (Robinson Huron, Robinson-Superior) (Morris, op cit., p. 16.)

When treaties in the prairie provinces were being negotiated, the federal government appeared to be more concerned with the status of the mixed blood people and felt that it was necessary to extinguish their title to the lands in the provinces. Alexander Morris, the Indian Commissioner for the western treaties classified the peoples of mixed blood in the western territories into three categories:



1st, those who, at St. Laurent, near Prince Albert the Qu'Appelle Lake and Edmonton, having their farms and homes; 2nd, those who are entirely identified with Indians, living with them and speaking their language; 3rd, those who do not farm, but live after the habits of the Indians, by the pursuit of the buffalo and the chase.

As to the first class, the question is an easy one. They will, of course, be recognized as possessors of the soil, and confirmed by the Government in their holdings, and will continue to make their living by farming and trading.

The second class have been recognized as Indians, and have passed into the bands among whom they reside.

The position of the third class is more difficult. The loss of the means of livelihood by the destruction of the buffalo, presses upon them, as upon our Indian tribes; and with regard to them I reported in 1876, and I have seen no reason to change my views as follows:

"There is another class of the population in the North-West whose position I desire to bring under the notice of the Privy Council. I refer to the wandering Half-breeds of the plains, who are chiefly of French descent and live the life of the Indians. There are a few who are Identified with the Indians, but there is a large class of Metis who live by the hunt of the buffalo, and have no settled homes. I think that a census of the numbers of these should be procured, and while I would not be disposed to recommend their being brought under the treaties, I would suggest that land should be assigned to them, and that on their settling down, if after an examination into their circumstances, it should be found necessary and expedient, some assistance should be given them to enable them to enter upon agricultural operations. (Morris, op. cit. p. 294-295)

When Treaty #1 was signed on 3 August 1871, the legal status of half-breed families had not been defined. Although the then Indian Commissioner, W.M. Simpson informed the Half-breeds of the land grants which their children were entitled to under the provisions of the Manitoba Act 1870(33 Vic. cap. 3), most of the Half-breeds still chose treaty thereby forfeiting their rights and those of their children to any further grant. Simpson notes:

During the payment of the several bands, it was found that in some, and most notably in the Indian settlement and Broken Head River Band - a number of those residing among the Indians and calling themselves Indians are in reality Half-breeds, and entitled to share in the land grant under the provisions of the Manitoba Act. I was most particular, therefore, in causing it to be explained, generally and to individuals, that any person now electing to be classed with Indians and receiving the Indian pay and gratuity would, I believed, thereby forfeit his or her right to another grant as a Half-breed, and in all cases where it was known that a man was a Half-breed, the matter, as it affected himself and his children, was explained to him, and the choice given him to characterize himself. A very few only decided upon taking their grant as Half-breeds.

The explanation of this apparent sacrifice is found in the fact that the mass of these persons have lived all their lives on the Indian Reserves, (so called), and would rather receive such benefits as may accrue to them under the Indian Treaty than wait the realization of any value in their Half-breed grant. (W.M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, 3 Nov. 1871: Report of the Indian Branch of the Secretary of State, 1872, p. 30.)

Under the provisions of the Act 31 Vic., cap. 42, sec. 2, sub. sec. 15 (1868) "all persons residing among those Indians of whom their parents from either side were descended from Indians, or reputed Indians, belonging to the Nation, Tribe or particular people of Indians interested in real estate, or their descendants" were considered Indians. This definition would include a majority of the Half-breeds. Consequently many half-breeds took treaty rather than taking a chance on the indefinite arrangement of receiving scrip at a later date.

When the treaties were signed, the Indian Commissioners experienced difficulty in deciding which half-breeds were legally eligible to take treaty. In a letter of 14 October 1873, concerning Treaty #3, Lieutenant-Governor Morris wrote:

They said there were some ten to twenty families of half-breeds who were recognized as Indians, and lived with them, and they wished them included. I said the treaty was not for whites, but I recommended that those families should be permitted the option of taking either status as Indians or whites, but they could not take both (Morris, op. cit., p.50.).

On 12 September 1875, the Half-breeds of Rainy River and Lake took adhesion to Treaty #3. This was the only instance in all the treaties signed in the western territories in which half-breeds, as a separate group were allowed to take treaty. When half-breeds in the other areas, especially Treaty #4, asked to be acknowledged as special bands (of Indians) their request was turned down by the Indian Commissioner. Indian Commissioner Provencher felt that if Half-breed special status as Indians was recognized, it would create a new class of inhabitants between the Whites and Indians, with political and legal claims which might be pressed at a later date. (J.A.N. Provencher, Indian Commissioner, to Superintendent General of Indian Affairs, 30 October 1875. Report of the Department of Indian Affairs, 1875, p. 34.)

When the Indian Act (1876) was passed, the definition of an "Indian" became more explicit. A distinction was made between the "Half-breed people" and the "Indian Half-breed who lived amongst the Indians". Each person was to be considered by the Commissioner on his own merits. During annuity payment in the Treaty #4 area in 1876, the Cree Indians at Ft. Walsh requested that the Half-breed be admitted to the treaty. Morris answered:

I told them I had full instructions what to do in the matter, and those instructions I intend to carry out, that a Half-breed could not be admitted into the treaty without instructions from the Honorable Superintendent of Indian Affairs, and I would show them clearly the reason why the Government had made provision for the Half-breeds by giving them a grant of land in the Province of Manitoba, and that Half-breed scrip was now in circulation, and that the Half-breeds among them might be in possession of this scrip, and hence be paid both ways, but if Half-breeds wished to relinquish their claim to lands and live among and be like Indians, the same laws governing both, if they would call and see me after the payment and give their names, I would send their request to the Honorable Superintendent General of Indian Affairs, for his consideration (Walsh to Minister of the Interior, 12 September 1876: Report of the Department of Indian Affairs, 1876, Special Appendix D, p. xxxvii - xxxviii.)

In 1885, a Commission under William Purvis, Roger Goulet and Amédée Forget was appointed to enumerate and investigate half-breed claims in the North West Territories, outside the limits of Manitoba. When scrip was first issued in 1885 by the Commission, many half-breeds who had chosen the Indian lifestyle, requested a discharge from treaty so they might share in the Half-breed grant. The indiscriminate and numerous withdrawals of half-breeds from Indian treaties became a problem for the Commissioners. The Indian Commissioner of the North West Territory reported (26 July 1886) on the action taken under instructions from the Superintendent General in respect to such discharges:

Superintendent General instructs me to say that Treaty Half-Breeds who clearly show that they are Half-Breeds and who do not lead the same mode of life as Indians should be allowed to withdraw from Treaty. Others should not be allowed. Every person accepting discharge should be informed at the time that he forfeits all Indian rights, that he must leave the Reserve and give up house and all other improvements without compensation and also cattle and implements given to him as belonging to the Band (H.Reed, Assistant Commissioner, to Superintendent of Indian Affairs, 26 July 1886: P.A.C. R.G. 10 (Black). file #24303-2A).

Some half-breeds, after squandering their scrip, requested to be readmitted to treaty. On the 13 June 1899, the Department of Justice was asked for a decision on what right the Department of Indian Affairs had to readmit and pay annuities to half-breeds who had been discharged from treaty and received scrip. In the opinion of the Deputy Minister of Justice, no half-breeds who had shared in the distribution of land in Manitoba would be entitled to treaty rights. The other half-breeds would be readmitted under special circumstances but they were not entitled to annuity payments (Opinion by E.L. Newcombe, Deputy Minister of Justice, 24 June 1899). However, the Indian Affairs Department did not follow any set policy concerning re-admission of half-breeds into treaty. If a half-breed was readmitted, it was understood that since the individual had voluntarily withdrawn from treaty, he joined the treaty for the second time on the government's own terms. Generally, these terms constituted a repayment, by the half-breed, of any scrip which he had received before he could resume annuity payments and relinquishment of any further claim to half-breed grants.

Treaty #11 was the last of the western treaties. In accordance with past practices, the rights of mixed blood people were to be extinguished concurrently with the treaty. H.A. Conroy was appointed commissioner to deal with half-breed claims in the territory (O/C PC 1172 12 April 1921).

The Order in Council of the 12 April 1921 states:

It is estimated that there are about fifteen families of Halfbreeds resident in that territory who will have to be treated with. The other Halfbreeds in this country, consisting approximately of seventy-five families mostly living the Indian mode of life, it is anticipated will, in their own interests, be taken into treaty (O/C PC 1172 12 April 1921).

In order to avoid the confusion created in the southern areas by half-breeds withdrawing from and being readmitted to treaties, all half-breeds who had taken Treaty #11 and were later discharged from treaty were not entitled to the cash grant. It was decided that their claims and those of their descendants to rights by virtue of their Indian blood were extinguished when they entered into the treaty.

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Generally:

Letter from J.A.N. Provencher, Indian Commissioner to Superintendent of Indian Affairs. Annual Report of Indian Affairs. 1875. p. 33.

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

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

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

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

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

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Letter from W.A. Macdonald, Commissioner, Supreme Court of Alberta to T.A. Crerar, Minister of Mines and Resources, 7 August 1944.

It would appear that whenever it became necessary or expedient to extinguish Indian rights in any specified territory, the fact that Halfbreeds also had rights by virtue of their Indian blood was invariably recognized. These rights co-existed with the rights of the Indians. It was considered advisable whenever possible to extinguish the rights of Halfbreeds and Indians by giving them compensation concurrently.

It is well known that among the aboriginal inhabitants there were many individuals of mixed blood who were not properly speaking Halfbreeds. Persons of mixed blood who became identified with the Indians, lived with them, spoke their language and followed the Indian way of life, were recognized as Indians. The fact that there was white blood in their veins was no bar to their admission into the Indian bands among whom they reside.

In negotiating the various Indian treaties from time to time the aboriginal inhabitants of mixed blood were given the right to elect whether to take treaty or scrip.

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January 1976.