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Métis Scrip: A Claims Against the Crown

For: Métis Land: Rights & Scrip Conference
February 9 – Edmonton, AB

By: Zachary Davis
Pape Salter Teillet LLP

Manitoba Métis Federation v Canada



Louis Riel and his councillors, circa 1869.



Provinces of Canada
 July 15, 1870 to July 20, 1871

A Promise: Land

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

Manitoba Act, 1870

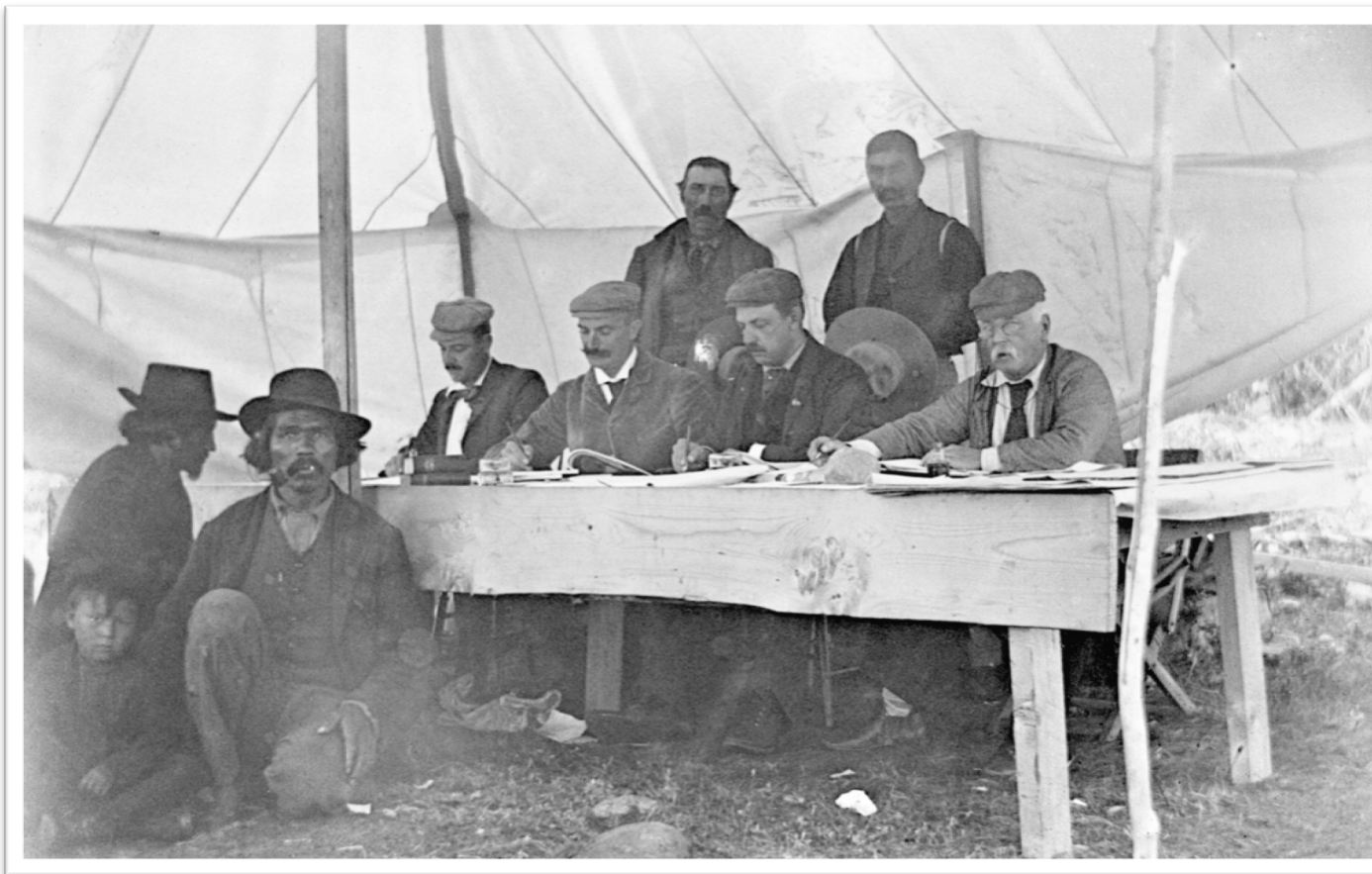
A Promise: Broken

These promises were directed at enabling the Métis people and their descendants to obtain a lasting place in the new province. **Sadly, the expectations of the Métis were not fulfilled, and they scattered in the face of the settlement that marked the ensuing decades.**

...the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.

MMF v. Canada, 2013 SCC 14

Métis Scrip



Scrip Commission meeting at Lesser Slave Lake, 1899. L-R: J. P. Prudhomme Major Walker, J. A. Coté and Charles Mair. Gnebow Archives NA-949-18.

Alberta Métis Scrip Claim

- A. Constitutional Obligation: Equitable Settlement
- B. Legislative Grant: Land
- C. A Promise Defeated
- D. Métis Response
- E. Fallout: A People Dispossessed
- F. Remedy

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Constitutional Obligation: Equitable Settlement

Constitutional Obligation: Duty of Diligence

...when the issue is the implementation of a **constitutional obligation** to an Aboriginal people, the honour of the Crown requires that the Crown: (1) takes a broad purposive approach to the interpretation of the promise; and (2) **acts diligently to fulfill it.**

MMF SCC, paras. 75

Constitutional Promise: An Equitable Settlement

... that, upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and **settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.**

The 1870 Order



Constitutional Obligation: An Equitable Settlement

In my view, the ordinary meaning of the relevant provision, particularly keeping in mind the purpose and scheme of the legislation in which it is found, is capable of creating a **constitutional obligation that Canada enter into treaty negotiations with any Indian tribes in Rupert's Land and the North-Western Territory** which had claims for compensation for lands required for the purposes of settlement. The ordinary meaning would also suggest that this constitutional obligation continues today.

Ross River Dena Council v. Canada 2017 YKSC 58 at para. 167

Equitable Principles: Recognition

“English law, which ultimately came to govern aboriginal rights, accepted that the **aboriginal peoples possessed pre-existing laws and interests, and recognized their continuance** in the absence of extinguishment, by cession, conquest, or legislation.”

Mitchell v. M.N.R. SCC, para. 9

Equitable Principle: Land

“An Aboriginal claim to land is clearly a “foundational right”. Indeed, the “most central interest” of Canada’s Aboriginal peoples is their interest in their lands.”

Sambaa K'e Dene, 2012 FC 204 at para. 126

“that the interests which aboriginal peoples had in using the land and adjacent waters for their sustenance were to be removed only by solemn treaty with due compensation to the people and its descendants. This right to use the land and adjacent waters as the people had traditionally done for its sustenance may be seen as a fundamental aboriginal right.”

Van der Peet SCC, para. 275

Equitable Principle: The Absence of Fraud

“And whereas **great Frauds and Abuses** have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests. and to the great Dissatisfaction of the said Indians”

Royal Proclamation 1763



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Legislative Grant: Lands

Legislative Grants: Purposive Implementation

The honour of the Crown requires the Crown to **act in a way that accomplishes the intended purposes** of treaty and **statutory grants** to Aboriginal peoples.

MMF SCC, paras. 73(4)

Dominion Lands Act: A Promise of Land

125. The following powers are hereby delegated to the Governor in Council:

- e. To satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by half-breeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, 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.

Dominion Lands Act, 1879, s. 125(e)

Dominion Lands Act: A Promise of Land



62-63 VICTORIA.

CHAP. 16.

An Act further to amend the Dominion Lands Act.

[Assented to 11th August, 1899.]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

90. The Governor in Council may—

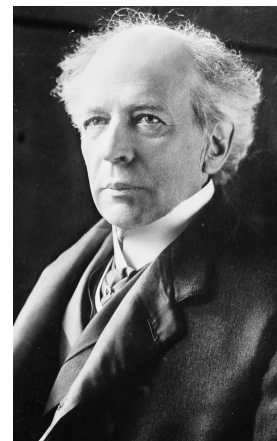
(f) **grant lands** in satisfaction of claims of half-breeds arising out of the extinguishment of Indian title

Dominion Lands Act, 1899,
s. 90(f)

Dominion Lands Act: Purpose of the Promise

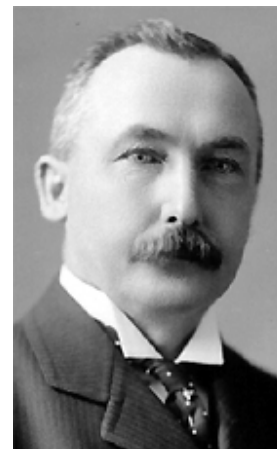
“We determined at the outset, when we acquired the territory of the Hudson Bay Company, that we would treat the half-breeds as we would the Indians – that is, as **first occupants of the soil**. It has been the policy of the British Government from time immemorial not to take a possession of any lands without having in some way settled with the first occupants and giving them compensation...”

Prime Minister Wilfred Laurier



“... the Government of the Dominion, in taking possession of the territory, was **bound to recognize [the Métis] petition and extinguish his title ...**”

Clifford Sifton, Minister of the Interior



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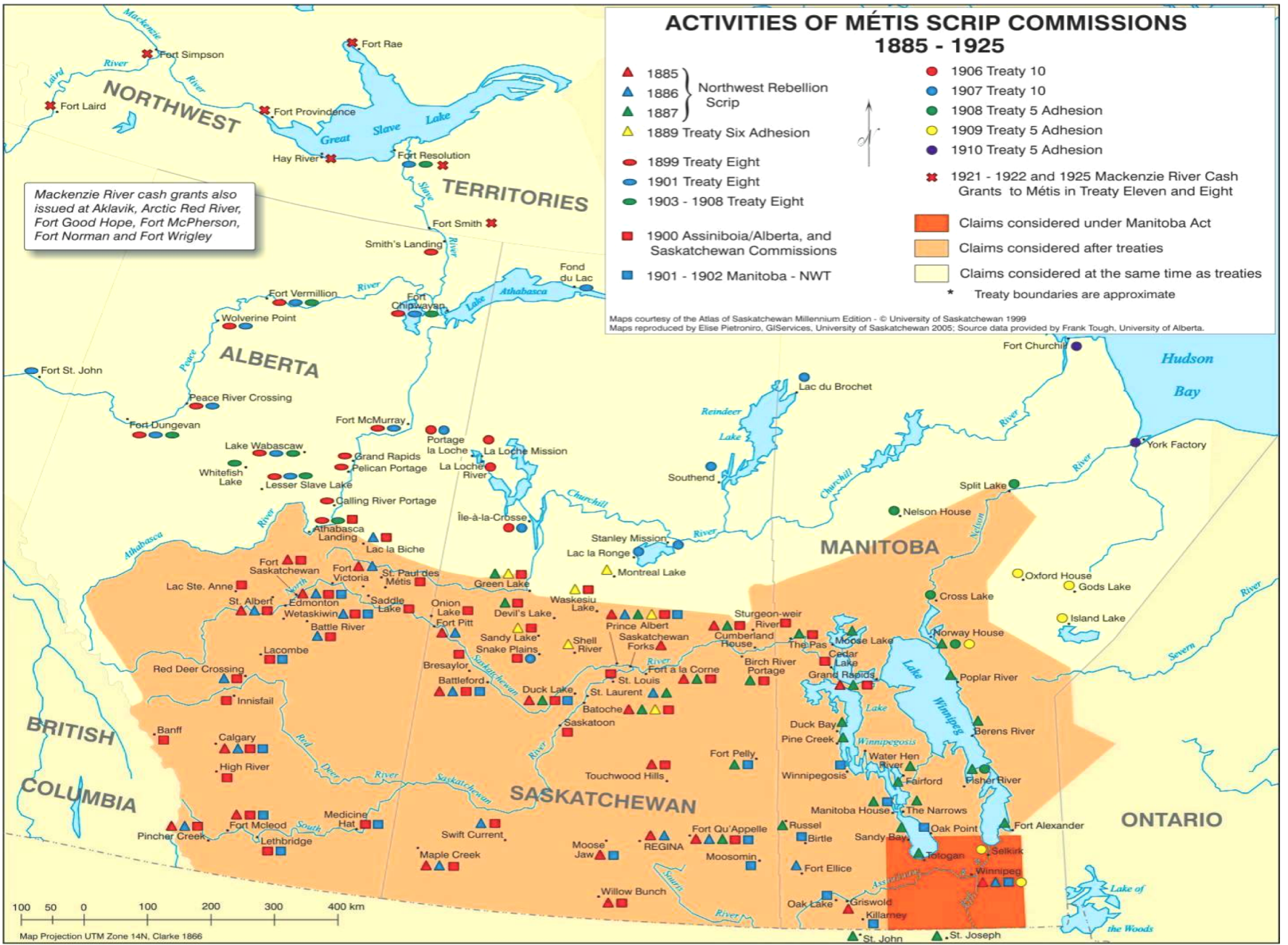
Implementing the Promise: Métis Scrip

ACTIVITIES OF MÉTIS SCRIP COMMISSIONS 1885 - 1925

- ▲ 1885 } Northwest Rebellion Scrip
- ▲ 1886 } Northwest Rebellion Scrip
- ▲ 1887 } Northwest Rebellion Scrip
- ▲ 1889 Treaty Six Adhesion
- 1899 Treaty Eight
- 1901 Treaty Eight
- 1903 - 1908 Treaty Eight
- 1900 Assiniboia/Alberta, and Saskatchewan Commissions
- 1901 - 1902 Manitoba - NWT
- 1906 Treaty 10
- 1907 Treaty 10
- 1908 Treaty 5 Adhesion
- 1909 Treaty 5 Adhesion
- 1910 Treaty 5 Adhesion
- ✱ 1921 - 1922 and 1925 Mackenzie River Cash Grants to Métis in Treaty Eleven and Eight
- Claims considered under Manitoba Act
- Claims considered after treaties
- Claims considered at the same time as treaties
- * Treaty boundaries are approximate

Mackenzie River cash grants also issued at Aklavik, Arctic Red River, Fort Good Hope, Fort McPherson, Fort Norman and Fort Wrigley

Maps courtesy of the Atlas of Saskatchewan Millennium Edition - © University of Saskatchewan 1999
 Maps reproduced by Elise Pietroniro, GIServices, University of Saskatchewan 2005; Source data provided by Frank Tough, University of Alberta.



100 50 0 100 200 300 400 km
 Map Projection UTM Zone 14N, Clarke 1866

LAND SCRIP - THE GENERAL MODEL, ca. 1906

PHASE 1: ESTABLISHMENT (OTTAWA)



PHASE 2: APPLICATION (IN COUNTRY)



PHASE 3: PAPER ENTITLEMENT (OTTAWA/IN COUNTRY)



PHASE 4: LOCATION (DOMINION LANDS OFFICE)



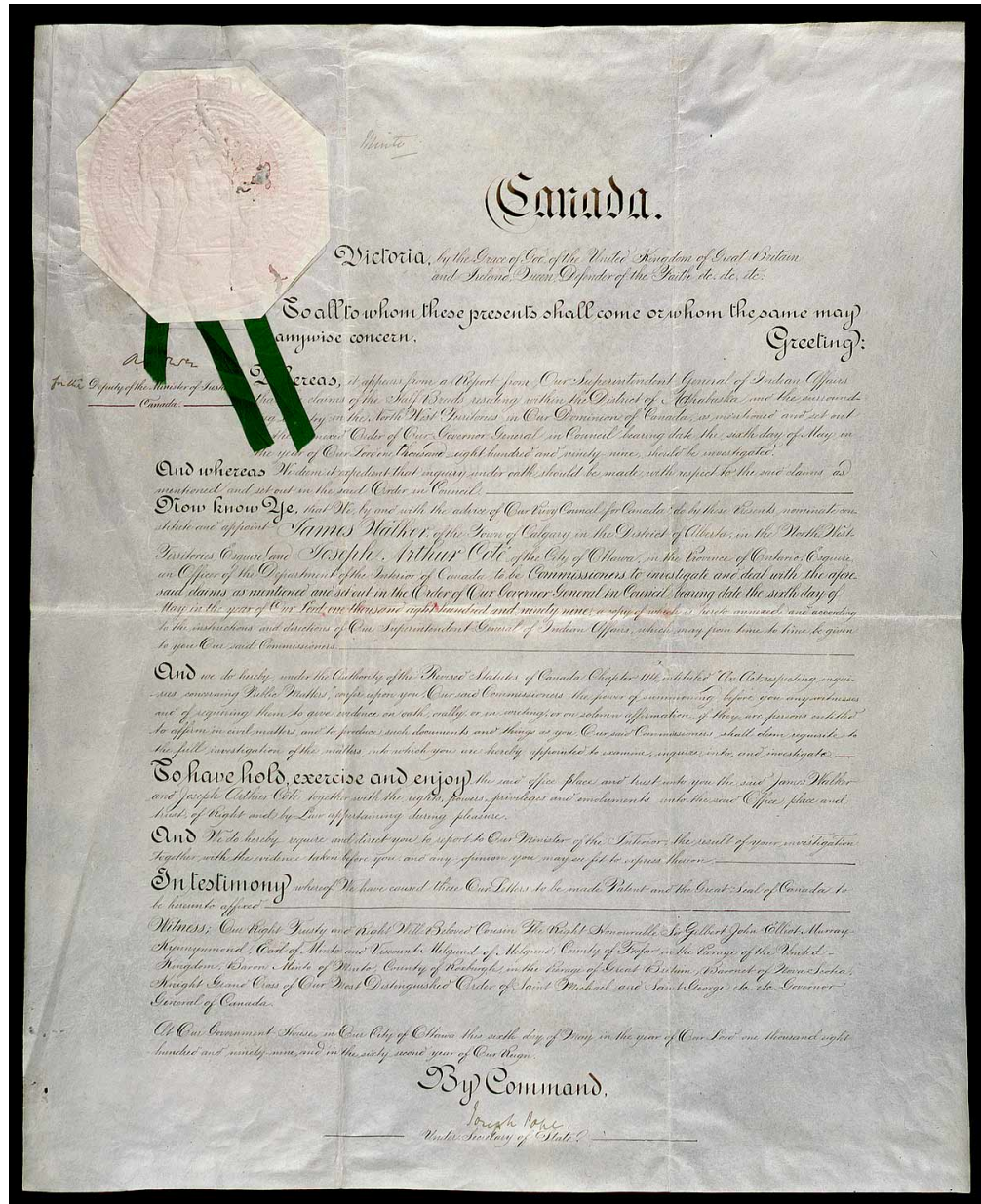
PHASE 5: PATENT



Land Scrip – The General Model, ca. 1906 Source: Frank Tough and Erin McGregor, *Metis Scrip: Treaty Ten Scrip Commission Commemorative Analysis*, 3rd edition. Edmonton: Metis Aboriginal Title Research Initiative – X, 2008: 4.

The Scrip System: Order-in-Council

The commission appointing James Walker, a retired North-West Mounted Police officer, and Joseph Arthur Coté, a senior official with the Department of the Interior, as Commissioners to investigate Métis claims in the Athabasca district

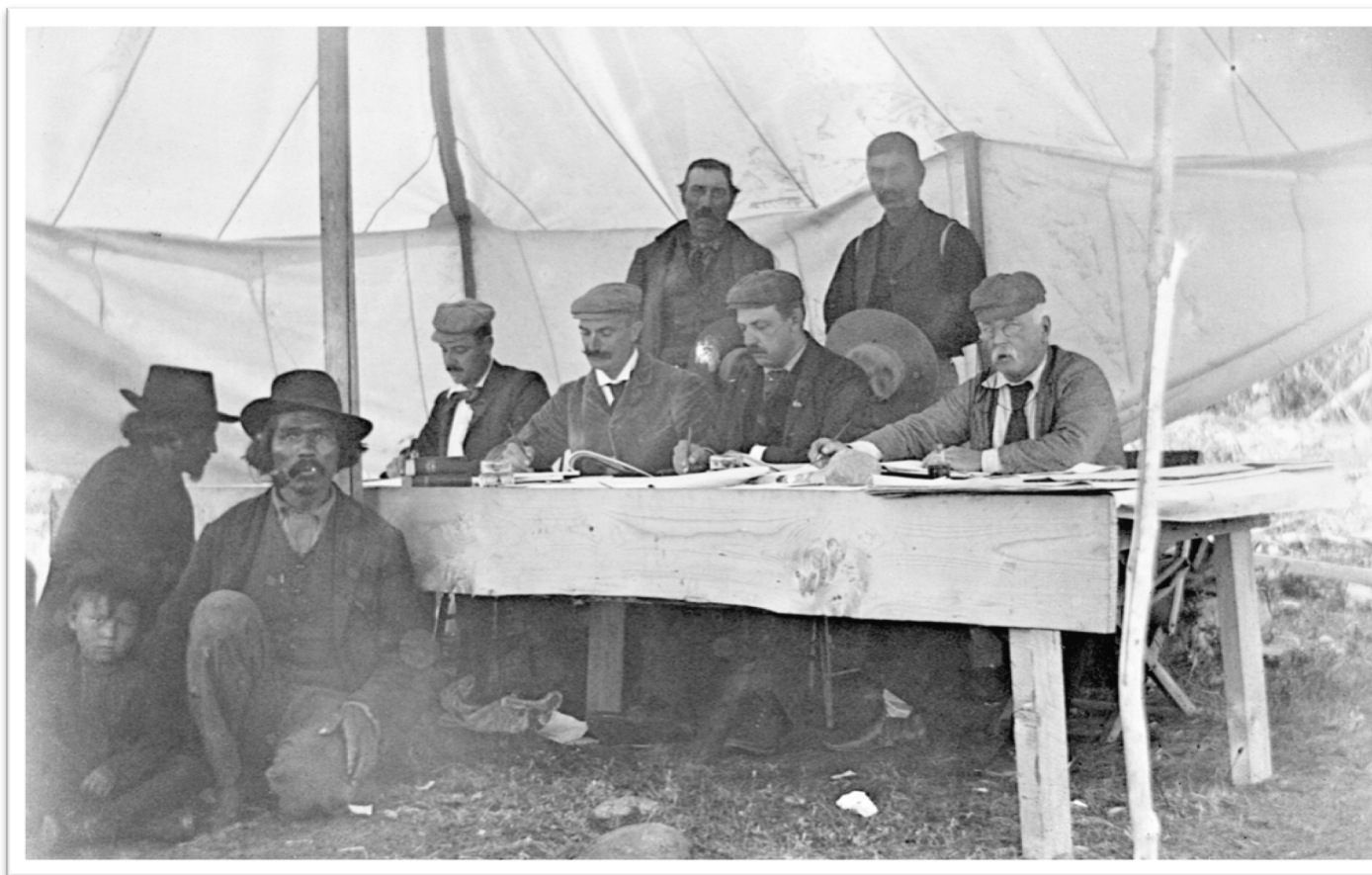


The Scrip System: Public Notice

Public Notice to the residents of the Provisional District of Athabasca indicating dates and locations of the Scrip Commission (June 1898)



The Scrip System: Commissions



Scrip Commission meeting at Lesser Slave Lake, 1899. L-R: J. P. Prudhomme Major Walker, J. A. Coté and Charles Mair. Gnebow Archives NA-949-18.

The Scrip System: Application

Application for Land
Scrip by Napoleon
Laurion

Treaty 8 Scrip
Commission

210

I, Napoleon Laurion within named,
make oath (or declare) and say that the within answers given by me are true in every particular. So help
me God.

Sworn (or declared) before me, at Dumvegan
this 1st day of June A. D., 1900
having been first read over and explained in the
Cree language to the deponent, who
seemed perfectly to understand the same, and in my
presence

St. Muscaie
Commissioner

I, Alexander Harold of Dumvegan
make oath (or declare) and say that I know Napoleon Laurion, who has
made oath to the correctness of the within answers, and so far as his answers to questions numbered
1 are concerned, I know them
to be correct, and so far as the remainder are concerned, I believe them to be true and correct in every
particular. So help me God

Sworn (or declared) before me, at Dumvegan
this 1st day of June A. D., 1900
having been first read over and explained in the
Cree language to the deponent, who
seemed perfectly to understand the same, and in my
presence

St. Muscaie
Commissioner

I, Francois Callihoo of Dumvegan
make oath (or declare) and say that I know Napoleon Laurion, who has
made oath to the correctness of the within answers, and so far as his answers to questions numbered
1 are concerned, I know them
to be correct, and so far as the remainder are concerned, I believe them to be true and correct in every
particular. So help me God

Sworn (or declared) before me, at Dumvegan
this 1st day of June A. D., 1900
having been first read over and explained in the
Cree language to the deponent, who
seemed perfectly to understand the same, and in my
presence

St. Muscaie
Commissioner

Witness
Garthur Ball

Napoleon Laurion
his
mark

Alexander Harold
his
mark

Francois Callihoo
his
mark


The Scrip System: Receipt

Scrip Certificate
Issued to Eli Roy
Treaty 10 Scrip
Commissions

1463735
Form H, No. 137

NOT TRANSFERABLE.

Department of the Interior, Canada.



HALF-BREED CLAIMS COMMISSION.

Eli Roy
Subscribed to Scrip 21st Sept 1906

Under the powers vested in me by an Order of the Governor General in Council dated 20th July, 1906,
I HEREBY CERTIFY that it has been proved to my satisfaction that *Eli Roy*
son of Francis Roy
born *1851* 1851, a Half-Breed, is entitled under the terms of the said Order
to Scrip, to the amount of TWO HUNDRED AND FORTY (240) ACRES, each Scrip to be redeemable
by the above named person in Dominion Lands open for ordinary Homestead entry.

Scrip No. 2770..	Acres 160
Scrip No. 2857..	80
Issued..	21 st Sept. 1906.

J. G. McNamee
Commissioner.

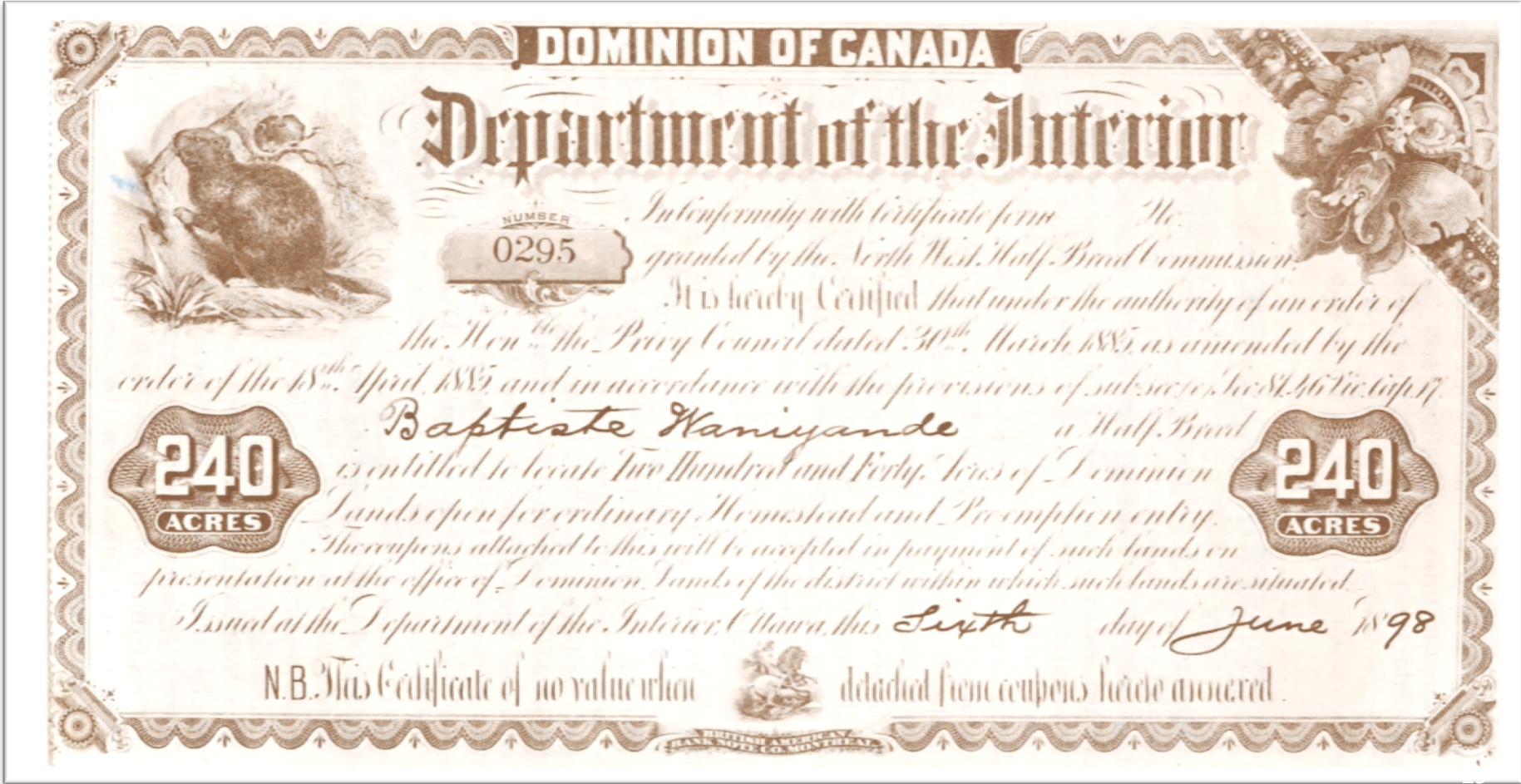
The Scrip System: The Mail



Glenbow Archives NA-5639-5

Transporting mail by dog sled over the Peace River, Alberta. [ca. early 1900s]

The Scrip System: Coupon



The Scrip System: Dominion Lands Office



Opening of Dominion Lands Office, Grande Prairie, Alberta (1911).

The Scrip System: The Mail



Mail leaving by dog sled for Fort Vermilion, Alberta. (1908)

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Inequities

Inequities: Delay

Contrary to the expectations of the parties, it took over 10 years to make the allotments of land to Métis children promised by s. 31. Indeed, the final settlement, in the form not of land but of scrip, did not occur until 1885. This delay substantially defeated a purpose of s. 31.

...

The delay in completing the s. 31 distribution was inconsistent with the behaviour demanded by the honour of the Crown.

MMF, SCC, paras. 101 & 110

Inequities: Delay

1870: The *Rupert's land and North-Western Territory Order*

1876: Treaty 6

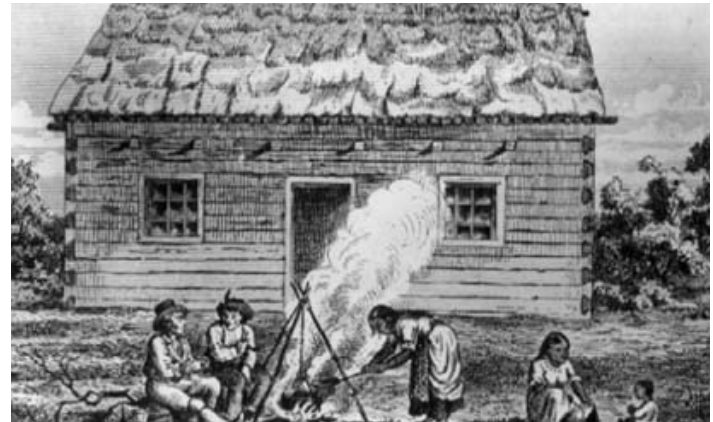
1877: Treaty 7

1877: Métis at Blackfoot Crossing petition for assistance to settle the land.

1878: Métis in Cypress Hills petition for land in the form of a reserve.

1879: The *Dominion Lands Act, 1879* is adopted, empowering the Governor-in-Council to grant lands to Métis.

1880: Métis in St. Albert petition the government to survey their lands.



Metis house, seen on North-West Mounted Police trek west. (1874)

Inequities: Delay

SPECIAL NOTICE.

Land for Sale in the North-West, BATTLE RIVER.

Noticing during August that the vines of the "Squash" in my kitchen garden were progressing monstrously, I took the trouble one evening of putting a mark at one end of a vine, and found that at the end of twenty-four hours it had grown eight inches. This I find is superior to the growth of such vines in Winnipeg, Manitoba; and as that locality has offered to buy any land superior in produce in any other section, I put my garden of three-quarters of an acre in extent in this market. The said vine by actual measurement this morning is nineteen feet six inches in length.

Further particulars, terms, etc., can be had by applying to the undersigned.

PETER C. PAMBRUN.

Battle River, Sept. 7, 1880.

51

Glenbow Archives NA-1829-2

1882: Homestead entries reach their 19th high of 7,383 in a single year. This boom is brought about by construction of CPR main line.

1883: 1,221 townships containing over 27 million acres are completely surveyed into sections and quarter sections (1059 of these were along the CPR line, and the other 162 were in the vicinity of principal settlements.

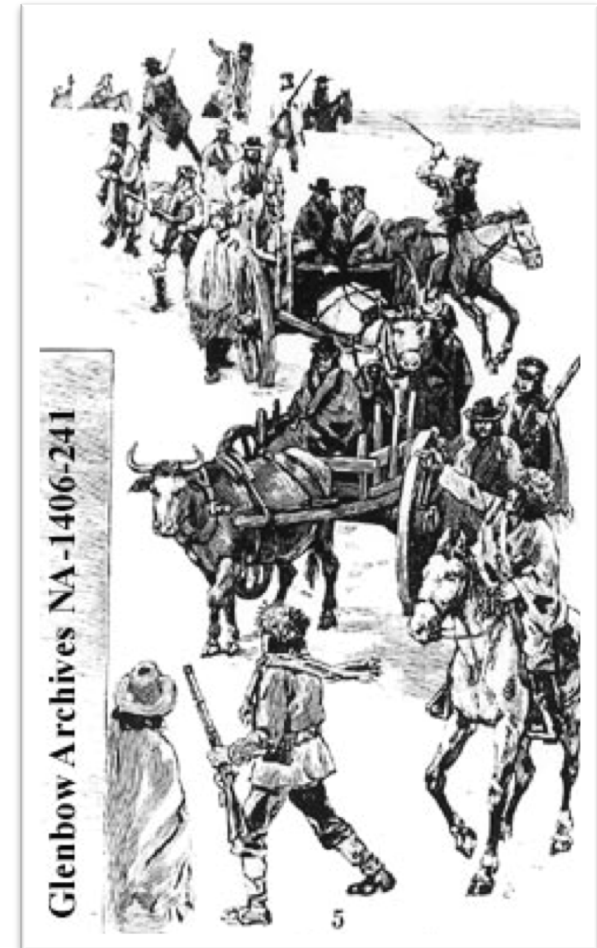
Inequities: Delay

1885/03-06: The North-West Resistance

1885/11/07: The Canadian Pacific Railway is completed, and the Dominion Lands surveyors had largely surveyed in the immediately accessible arable land west of the principal meridian in advance of settlement

1885/11/16: Canada hangs Louis Riel

1885-1887: First Dominion Lands Scrip Commission



Métis on the road to join Louis Riel.
(1885)

Inequities: Delay



James Brady, First Secretary-Treasurer of the Métis Association of Alberta

“The way in which the Government officials treated the just demands of the Métis was inexcusable and contributed to bring about the rebellion. Had they had votes like the white men or if, like the Indians, they had been numerous enough to command respect and overawe red tape, without doubt the machinery of the government would have functioned for them; but being only Half-breeds, they were put off with eternal promises, until patience ceased to be a virtue. It was callous and cruel neglect of this portion of the population that led to armed insurrection.”

Inequities: Delay

1891: The Canadian Pacific Railway constructed the Edmonton and Calgary Railway, leading to a “horde of homesteaders descend[ing] on the lush boreal parklands that lay east and west of the rail line through central Alberta” (Lamour, 75)

1892: A rush of settlers arrived in central Alberta, and as surveyors raced to subdivide townships, they find some already had 20 settlers (Lamour, 79)

1900: The Alberta and Assiniboia returns to the territory covered by the 1885-1887 Dominion Lands Scrip Commission. They hear claims by:

- Halfbreeds born in the organized districts of the North West Territories between the 15, July 1870, and the end 1885
- children aforesaid of Manitoba Halfbreeds... born in the territories between 1870 and 1885

Inequities: Availability of Land Officed

1899-1908: Treaty 8 Scrip Commission

1909: Dominion Lands Office opens in Grouard

1910: Lands in Peace River Country become open or homesteading

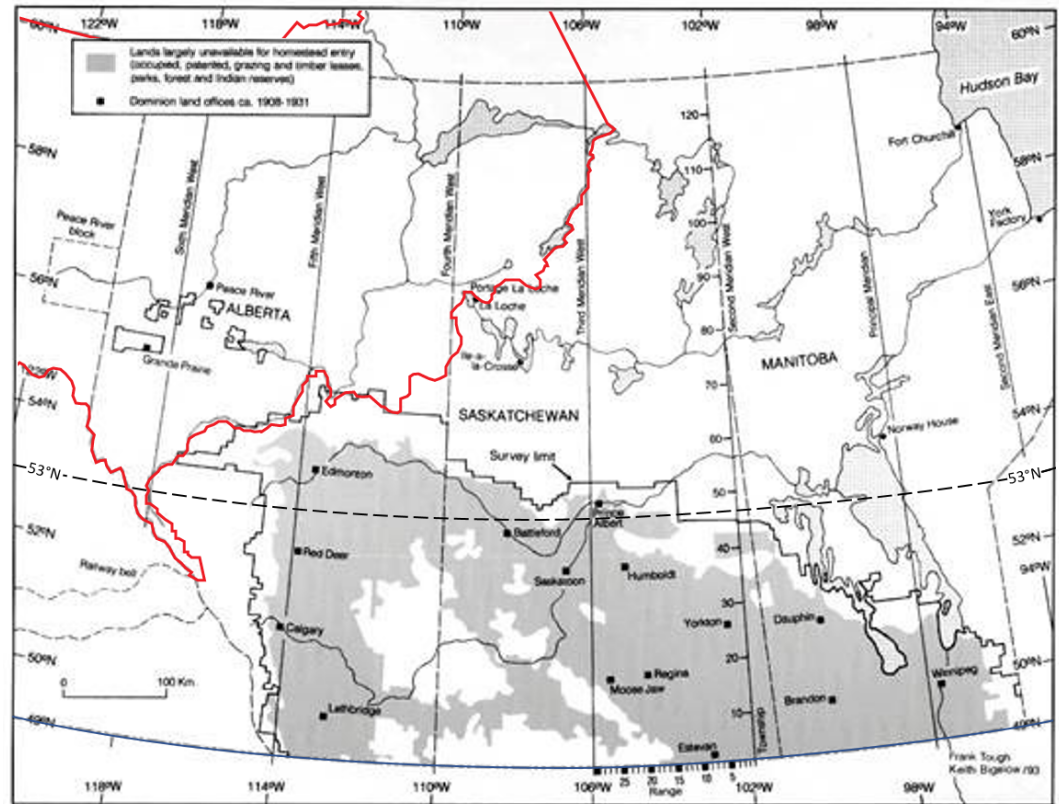
1911: Dominion Lands Office opens in Grande Prairie

There was a “major problem with scrip land in the North. Surveyors had not yet subdivided the townships nor were there land offices established where settlers could make an application for homestead or purchase”, meaning that scrip holders could not immediately convert them to land. (Larmour, 104)

Inequities: Unavailability of Land

Métis scrip could only be located on “lands of the class open for homestead entry.”

In 1901, approximately 75% of the Halfbreed population lived north of 53° N.



Inequities: Disenfranchisement

Canada denied the scrip claims of:

- Men who fought in the 1885 resistance
- Men who joined the 1885 resistance, even if they did not fight
- Widows and children claiming scrip as heirs of men who were killed in the conflict



Group photograph of Metis and First Peoples prisoners from the North West Rebellion by O.B. Buell. (L-R): Ignace Poitras, Pierre Parenteau, Baptiste Parenteau, Pierre Gariepy, Ignace Poitras Jr., Albert Monkman, Pierre Vandal, Baptiste Vandal, Joseph Arcand, Maxime Dubois, James Short, Pierre Henry, Baptiste Tourond, Emmanuel Champagne, Kit-a-wahow (Alex Cagen, ex-chief of the Muskeg Lake Indians).

Inequities: Dominion Lands Accounts

“...any deficiency shall be payable in cash, but should any payment by warrant or by amount in warrants be in excess of the amount of the purchase money any such excess shall not be returned by the Government...” (*Dominion Lands Act*, s. 21(3))

Speculators	Métis
<p>Persons “holding a reasonably large amounts of money scrip could, after 1900, set up a scrip account with the [Department of the Interior]” (Sanders, 207)</p> <p>“speculator could draw on such an account for precisely the amount required, in payment for Dominion Lands or for rent of hay, ranch, or coal lands without forfeiting the unused portion of any scrip”, where “a scrip account safeguarded the scrip themselves, from loss or theft, and simplified scrip transactions” (Sanders, 207/8)</p>	<p>Individual grantees could not benefit from the account system</p>

Inequities: Money Scrip & Delay

“We conclude that the delayed issuance of scrip redeemable for significantly less land than was provided to the other recipients further demonstrates the persistent pattern of inattention inconsistent with the honour of the Crown”

MMF, SCC, at para. 123

65% of all scrip issued in the Northwest Territories was money scrip. The remaining 35% of scrip issued in Northwest Territories therefore was for land scrip. (Tough & Dimmer, 227)

After 1900, “land was worth at least three dollars per acre.”
(Sanders, 209)

Between 1905 and 1930, the average price of homestead land was \$14.38 per acre (Tough, 138)

Inequities: Money Scrip & Delay

We conclude that the delayed issuance of scrip redeemable for significantly less land than was provided to the other recipients further demonstrates the persistent pattern of inattention inconsistent with the honour of the Crown that typified the s. 31 grants.

MMF, SCC, para. 123

Inequities: Fraud

It appears that the scrip was handed to the half-breeds by the agent of the Indian Department and it was then purchased, for small sums of course, by speculators. However, the half-breed himself was required by the Department of the Interior to appear in person at the office of the land agent and select his land and hand over the scrip. In order to get over this difficulty, the speculator would employ the half-breed to impersonate the breed entitled to the scrip. ***This practice appears to have been very widely indulged in at one time.***

The practice was winked at evidently at the time and the offences were very numerous...

Legal Memo, Department of Justice, 1921

Inequities: The Promise Defeated

“Based on one regional sample of 742 land scrip coupons, 725 were assigned to third parties and 3 were patented to the grantee. Some cases were unredeemed or missing.” (Tough & Dimmer, 229)

“90% of scrip passed in to the hands of speculators, including chartered banks, private dealers, etc., and only 10% was ever used by the Métis themselves” (Sawchuk, 24)

Inequities: The Promise Defeated

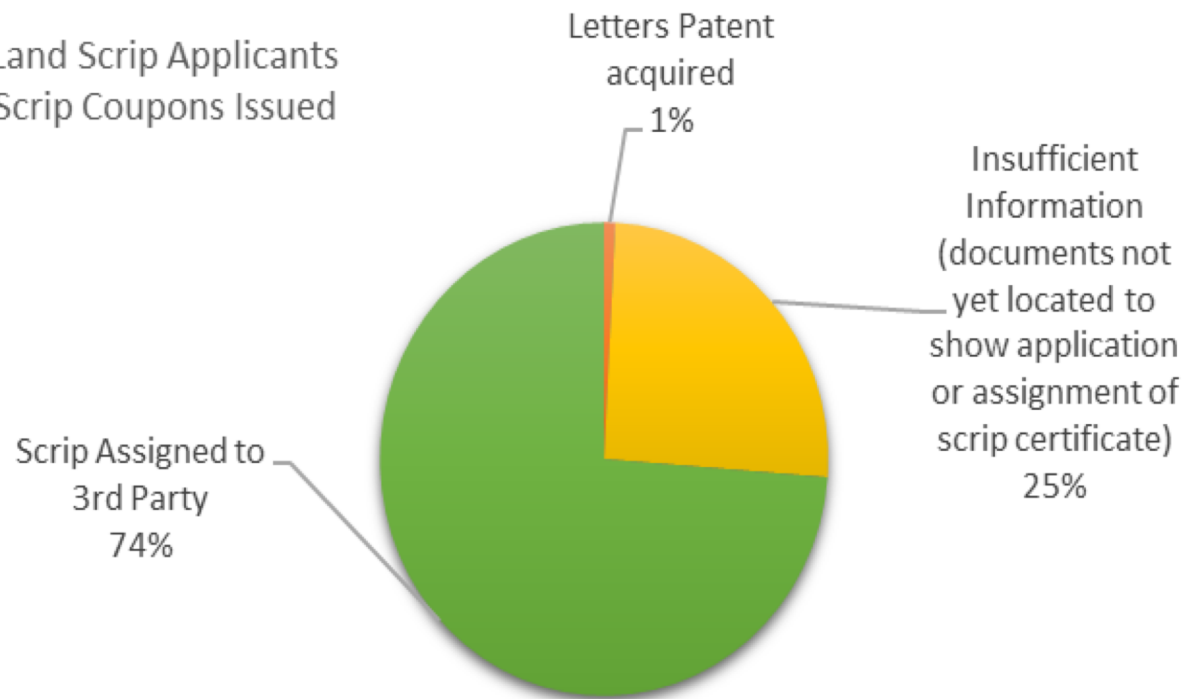
Out of 14,859 money scrip notes issued, 12,560 of them were procured by speculators, which equals 84.6%. Out of 138,320 acres of Métis land Scrip in NW Saskatchewan, only 1% of land scrip went to Métis claimants. (Dorion & Prefontaine, 8)

“In the two years the MAA has been doing land claims research, our fieldworkers have also interviewed 120 families, and of these, not one has any land in its possession which was acquired through scrip” (Sawchuck, 24)

Inequities: The Promise Defeated

Land Scrip in Lac La Biche

118 Land Scrip Applicants
236 Scrip Coupons Issued



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Métis Response

Petitions for Justice

1911: Petition by Half-breeds of Lesser Slave Lake to the Minister of the Interior requesting a Royal Commission to investigate “the frauds, schemes, false representations, deceit, perjury and forgery in connection with the issue and application of Half-breed scrips in the Northern portion of Alberta...”

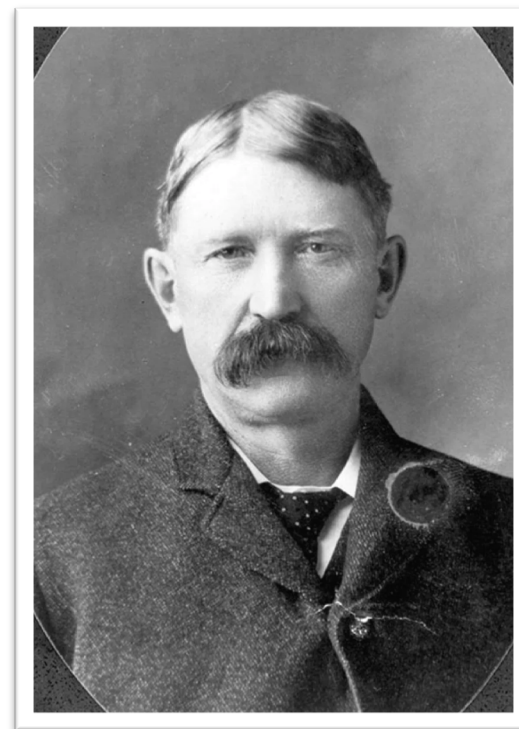
1920: Petition by Half-breed of Fort Resolution, Fort Smith, and Fort Chipewyan requesting a Royal Commission to investigate scrip fraud in the Athabasca district

Crown Response: Allegations of fraud would have to be pressed on a case-by-case basis

Criminal Prosecution

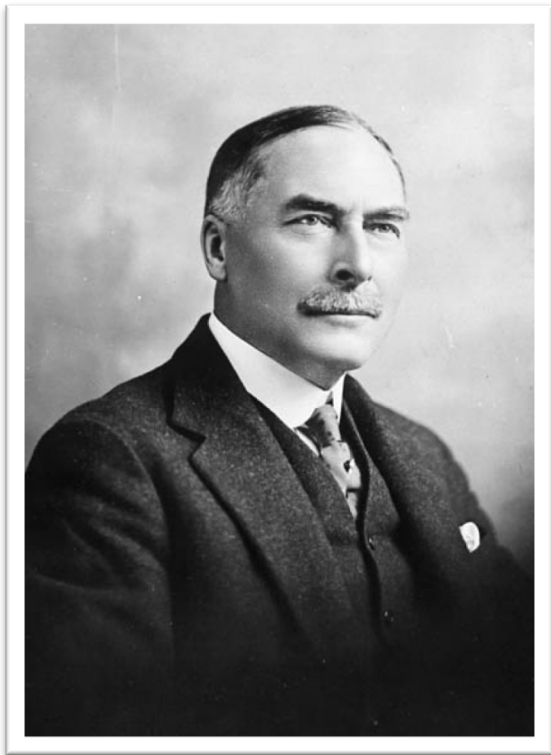
March 1921: John Graham (a Métis from Wabasca) brings a case against Richard Secord, a scrip speculator, for bribing “a Half-breed woman with \$10.00 and a gray shawl” to impersonate a grantee for the purpose of locating a scrip coupon.

April 1921: Case remanded for trial, Secord freed on \$5,000 bail.



Richard Secord

The Crown's Dishonour



Sen. James Lougheed

“The object of the clause is to provide a prescription of three years with respect to any offences relating to the location of land issued by half-breed scrip. **It is urged that there were a good many irregularities amounting to fraud and perjury in connection with the location of these lands, and parties are raking up these frauds for the purpose of blackmailing.** If this clause passes any such prosecution would be proscribed as the offences were committed a long time ago.”

Memo from Parliamentary Counsel Francis Gisborne
Read in the Senate by Sen. James Lougheed (June 21, 1921)

The Crown's Dishonour

June 1921: Criminal Code (s. 1140) amended:

...prosecution shall not be taken after three years from offence in connection with any offence relating to or arising out of the location of land which was paid for in whole or in part by scrip or was granted upon certificate issued to half-breeds in connection with extinguishment of the Indian title...

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Fallout:
The Road Allowance People

The Road Allowance People

“In the early twentieth century, the circumstances of the Alberta Métis were “especially grim in the central and north-central regions...Game was scarce, prohibitively expensive fishing licenses were required, and white settlement was spreading remorselessly. **The majority of the Métis were reduced to squatting on the fringes of Indian reserves and white settlements and on road allowances**”. The ‘independent ones,’ who had been diplomats and brokers of the entire northwest were now being referred to as the ‘road allowances people’.”

Report of the Royal Commission on Aboriginal Peoples

The Road Allowance People



Métis Children near Rife, Alberta, ca. 1910 (above);
Millie Hall, née McGillis and sister Louise, Athabasca,
Alberta, 1914 (right)



A Promise Defeated

...the history of scrip speculation and devaluation is a **sorry chapter in our nation's history...**

Blais, SCC, para. 34

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Remedy

Remedy: Declaratory Relief

...declaratory relief may be granted in the discretion of the court in aid of extra-judicial claims in an appropriate case.

Dumont, SCC, p. 280

Remedy: Declaratory Relief

We conclude that the appellants are entitled to the following declaration:

That the federal Crown failed to implement the land grant provision set out in s. 31 of the Manitoba Act, 1870 in accordance with the honour of the Crown.

MMF, SCC, para. 154

Thank you



Scrip Commission, Pelican Rapids, Athabasca River, Alberta. (1899)