METIS NATION OF SASKATCHEWAN

OVERVIEW OF METIS LAND CLAIM

INTRODUCTION

The major concepts of Aboriginal Title developed in the context of colonialism, as European countries began exploring the "New World" in search of territories which would yield resources and wealth. Contrary to popular belief, the idea of denying sovereignty to Aboriginal peoples, (refusing to recognize their rights) is a relatively recent phenomenon. The earlier legal practice was that people on unoccupied territory had the right to develop their own system of government, as well as their own religion, nationality, customs, laws, etc. In fact, the Europeans recognized that people had the right to personal property and to occupy their lands which could not be arbitrarily taken away from them. Thus, the concept of Aboriginal rights.

The court cases in the 1800's helped clarify the nature of Aboriginal rights, but were also instrumental in placing important limitations on the nature of Aboriginal title. Johnson v. M'Intosh in 1823 and Worcester v. Georgia in 1832 heard in the U.S.A. were two such cases.

The issue of Aboriginal rights began to resurface in the mid-1960's as Aboriginal political organizations began to press for recognition of their rights. However, the federal government in 1969 presented what is now known as the "White Paper" whereby Aboriginal rights were clearly rejected. However, Aboriginal people did not accept this assertion and began to rally whereby the federal government backed down from the "White Paper"

proposals.

Numerous reports were prepared by Aboriginal organizations in regard to their rights. Finally, the government began to recognize the existence of "Aboriginal Title". Aboriginal rights were finally given official recognition as a result of constitutional reform. Section 35(1) of The Constitution Act of Canada states:

> "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed."

The Metis fought particularly hard at ensuring their inclusion in the definition section of The Constitution Act of Canada. The Metis were successful in this fight and Section 35(2) of The Constitution Act states:

> "In this Act, "Aboriginal People of Canada" includes the Indian, Inuit, and Metis peoples of Canada."

While many Aboriginal organizations are pleased that the Constitution of Canada recognizes "Aboriginal Title", it is important to remember that "Aboriginal Title" defined by courts is not originally an Aboriginal concept. The Metis concept of Aboriginal title, for example, is much different than the court definitions. Indeed, it is often different from other Aboriginal groups.

The Metis concept of Aboriginal title and the history of the dealings with the government has, generally speaking, has been

freer from the dependancy that characterised the relationships that the Indians historically had with Canada. The Metis were not interested in living on reserves, or under the authority of some government department.

LAND

a) HISTORICAL OVERVIEW

One of the most important aspects of Metis history and traditions is scrip, and the role it has played on the Nation. The term "scrip" was once used to refer to a certificate indicating the right of the holder to receive payment later in the form of cash, goods or land. Less than seventy-five years ago, the term was in current use all over Western Canada and it meant one thing - Land.

Scrip was the way the Government of Canada distributed land to some Metis it wished to reward or mollify. However, scrip was also issued to non-Metis and it soon became a tool for land speculators who used it to gain title to large blocks of land, or who sold it to third parties for a quick profit.

The regulations which defined scrip and determined the rules for its distribution did not develop at once, but was a result of a long and involved process.

The Manitoba Act of 1870 was the first legislative act to specifically recognize the Aboriginal rights of the Metis but made no mention of scrip. It merely stated the amount of land to be awarded was 1.4 Million acres for the benefit of "children and Half-breed heads of families". However, later amendments to the Act specifically stated that compensation was to be in the form of 160 acres of land, OR scrip valued at $160.00. The provisions for scrip rather than land was a significant change in policy.

In 1879 the grants were extended throughout the North West Territories (now known as Saskatchewan and Alberta). Again, no mention was made of scrip in connection with the lands grants to be made in the North West Territories.

The legislative acts such as the Manitoba Acts or the Dominion Lands Act do not in themselves describe the scrip program. Rather, various Orders-in-Council were the actual legal mechanism used for issuing scrip. Orders-in-Council, which have the force of law, were passed by the Privy Council (the Cabinet) on recommendations of senior officials. Between 1871 and 1925 over 120 separate Orders-in-Council were issued regarding land claims and scrip issues to "Half-breeds" of Manitoba, Saskatchewan, Alberta and North West Territories. Other recommendations included specific legislation to be passed, or amendments of previous Orders-in-Council.

"Half-breed" Commissions were established to investigate the

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Metis claims, however, the Commissions were under the authority Order-in-Council, as was the appointment of the Secretary and other officials of the Commissions. Rules regarding the allotment of scrip in cases where the recipient died intestate, laws regarding the delivery of scrip to minors, and rulings on individual scrip claims were all authorized by Orders-in-Council. Other matters settled by Orders-in-Council were the authorization of replacement scrip to individuals whose original scrip had been delivered to persons who had forged their names; the extension of scrip programs to the original white settlers of Red River; authorization of particular issues of scrip to "Half-breed" residents of the United States, authorization of the "Half-breed" Commissioners accepting Powers of Attorney in cases where "Half-breeds" were unable to appear before them to take delivery of scrip; authorization of the opening and later shutting down of a "Half-breed" Colony; the rescinding of the recognition of claims of "Half-breeds" residents in the United States, and many others.

Most importantly, the Order-in-Council detailed the method used to determine who was eligible to participate in the grant of the 1.4 Million acres under the Manitoba Act and how the land was to be allotted. In addition, the scrip commissions were under the control of the Department of the Interior (Federal government). When problems or questions arose, the scrip commissioners turned to the Federal government for answers, often government officials with no knowledge or concern for legal

aspects or other considerations. In fact, many of the rulings were illegal and eventually became standard policy.

The Department of the Interior ruled that money scrip was the personal property of the allottee and that land scrip was to be treated as if it was real estate. Indeed, some Metis were given a choice between money or land scrip, however, in some cases only money scrip was offered. In addition, the Commissioners when dealing with deceased Metis, often ignored the prevailing law governing intestate estates. As well, the Federal government initially stated that Metis people could transfer the scrip claim to another person. However, in 1893, the Commissioners ruled that only a small number of scrip claims were outstanding and as a result, transfers were allowed unofficially.

An Order-in-Council in 1900 extended grants to children born in the Treaty 8 area from 1870 to 1885, and stated that transfers were not to be recognized. However, 11 days later, another Order-in-Council amended this whereby transfers or assignments would be accepted. Later, it was amended again to state that this applied only to money scrip.

Throughout this, the Commissioners did recognize someone holding a power of attorney or agent authority to deal with the Metis scrip. When the North West Territories scrip was issued, the Federal government ordered that power of attorney authorization would no longer be accepted. But, once again, other

Order-in-Council amendments changed this. The Federal government also unilaterally decided that Metis land scrip recipients must be at least eighteen years of age before permitted to locate and sell the scrip. However, there was no age limitation placed on money scrip.

One of the severest restrictions placed on Metis receiving land scrip was the requirement that they reside on the property for three continuous years, cultivating it and making various improvements, after which they were eligible to receive legal title to the land. Many Metis were still migratory people that hunted and followed animals, and as a result they could not fulfill the continuous residence provision and were removed from their land.

The Metis have always asserted that the various government scrip programs, rules, and regulations were designed to get the scrip out of Metis hands as fast as possible. The government had a priority of opening up the country for settlement as quickly and efficiently as possible. Indeed, many land speculators travelled with the Commissions and the scrip system became one of the government's most effective tool of achieving their goal.

Regulations attached to land scrip were supposed to be there for the protection of the Metis. However, the regulations made it impossible for the average Metis of limited means to travel the required trip to get to the land office in Calgary. In addition,

it was only those Metis who were comparatively well off that could begin to farm the land. Often, scrip was sold to meet the demands of creditors, or to stave off starvation. Even if the Metis did manage to locate and keep the land, they often did not have the capital to set themselves up as farmers. As well, many Metis were actively discouraged by the Hudson's Bay Company from becoming farmers.

Scrip could only be located on open Dominion Lands, which was often located faraway from the historic Metis communities. Often the Metis had to leave their community and move to an isolated homestead, surrounded by hostile strangers to claim their land. Other barriers, but not limited to, include land selection process, long drawn out procedure for issuing scrip, and unilaterial unconstitutional government legislation changes that placed severe limits on land ownership rights of the Metis. In short, it can be said that the whole scrip system was a "sham" introduced by the Federal government to extinguish Aboriginal title of the Metis to land, without there being a reasonable prospect that the Metis would actually benefit from the scrip.

b) PRESENT METIS LAND CLAIM IN SASKATCHEWAN

In August, 1993, a law firm (WOLOSHYN MATTISON) was retained to begin work with a Saskatoon Metis lawyer (CLEM CHARTIER) on the land claim. In March, 1994, a Statement of Claim was filed in the Court of Queen's Bench in Saskatchewan against the Federal

and Provincial government. By May, 1994, both levels of government had filed their Statement of Defence.

The land claim was launched as a result of the historical wrongs the Metis have and continue to endure from both levels of government. The Metis have been forced to resort to this legal action after years of petitioning both levels of government for redress. As a result, the Metis are asserting their inherent Aboriginal rights.

The Metis land claim encompasses the North West portion of the Province of Saskatchewan and it is claimed as part of their traditional homeland.

In May of 1995, a meeting with the Federal government, Minister of Justice, Allan Rock, and the Metis Nation of Saskatchewan occurred to discuss the options for resolution of the land claim. While Indians have a process to resolve outstanding land claims, the Metis do not have this option. As a result, our Lawyers have been working hard to get a process acceptable to our Nation. In December, 1995, Minister Allan Rock, proposed a "fact finding process" whereby archival, written research regarding the Metis would be undertaken.

In July, 1996 legal counsel for the Metis Nation and both levels of government met to resolve some of the process issues. At the meeting, legal counsel agreed that there should be a joint fact

finding process whereby each party will appoint a researcher to the team.

The lawyers will meet again at the end of August, 1996, to provide each other with the name of their appointed researcher and discuss approximate costs. Tentative plans include three researchers (The Metis Nation, Federal and Provincial government appointing one person each). The researchers will be directed by all the parties and examine the historical written records regarding the Metis. The information will be shared amongst the researchers as a group.

In addition, the project will be funded by the governments and it is hoped the research process will be completed within 6 months. However, it is possible that the project may require up to one year before it is completed.

CLOSING

As mentioned earlier, there clearly are a number of historical wrongs that must be addressed. We believe that the joint fact finding process is a positive step toward this goal. While the process itself may be time comsuming, it is a necessary step in ensuring that both levels of government begin to deal with our Nation in a fair manner.