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CHAPTER V: IMPLEMENTATION OF "HALF-BREED" LAND GRANTS UNDER THE MANITOBA ACT.

I. Introduction:

The recognition of the Rights of the Aboriginal people by colonial nations have almost always been shaped or distorted by the policy goals of the concerned governments. This was also true of the actions taken by the Government of Canada to implement the land provisions of the Manitoba Act.

The policy of the British and Canadian governments towards Aboriginal peoples is traced in some detail in a paper prepared by the Association of Metis and Non-Status Indians of Saskatchewan entitled "Government Policy Respecting Native People".¹ The basic premise of the Paper is that the purpose of the law and policy, as it applied to Aboriginal peoples and Aboriginal lands, was to promote their economic and commercial exploitation. The protection of the rights of Aboriginal peoples was used as the rationale to justify these policies. During an earlier period, when the policy was to develop the fur trade, it was necessary to encourage Aboriginal peoples to move freely within their natural environment and with some modifications to their lifestyle, to encourage them to concentrate on the hunting aspects of that lifestyle. Once the fur trade was no longer profitable, it was decided that other resources such as land, timber and minerals must be developed to further economic and commercial goals of the government.² This required the development of new policies and new laws if these goals were to be achieved. These policies rarely took into consideration the socio-economic needs or goals of Aboriginal peoples. Canada's goal in wanting to have the territory of Rupertsland and the Northwest Territories transferred to it was to get access to the land and the resources. To develop these areas it was necessary that:

- a) a transportation system be developed;
- b) a communication system be developed;
- c) Canada obtain control and administration of land, a sovereign claim without any encumbrances;

The policy adopted included the following:

- a) extinguishing the Indian land rights;
- b) encouraging large-scale settlement with an attractive land policy;

- c) getting the Indians out of the way of the settlers by establishing reserves;
- d) using the large land base to make free land grants to developers of transportation and communication systems;
- e) using the land base to satisfy aboriginal claims at no cost to the taxpayer.

Notwithstanding the aims and objectives of the Metis People, the agreement negotiated in Ottawa with the Red River delegates was designed from the point of view of the Canadian government to achieve these policies. Although the Manitoba Act, 1870 was created so as to recognize a certain land right of the Metis People, and to confer a benefit on them, it was done for the purpose of expediency. That fact is clear from the wording of Section 31 of the Act.³ This was also confirmed some years later by The Honorable Clifford Sifton, when responding to a question in Parliament regarding the Scrip allocations to the Metis, he stated:

"It must be remembered that the financial benefit to the Halfbreeds is not the primary object the government had in view in making this arrangement...but the main reason is to pacify the Northwest Territories, to settle a claim which must be settled... ."4

However, the government had found it necessary to follow accepted British legal precedent in forming its laws. Nevertheless, what it could not accomplish in law it would accomplish in practice through its implementation policies and procedures. The fact that the Canadian Government under Macdonald was never serious about recognizing the rights of the settlers of the Red River and ensuring that they would reap the benefits from their lands, is evident from the government's attitude toward the Northwest and toward the Hudson's Bay Company's claim to the territory.

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Prior to 1857, Canada had shown only limited interest in acquiring the area. In 1857, Canada presented a detailed position to the Select Committee on the Hudson's Bay Company, which was considering the renewal of the Company's Charter. The Canadian position was presented by The Honorable Joseph Cauchon, Commissioner of Crown Lands, and was outlined in a memorandum dated 1857, which was presented to the Select Committee. The conclusions of the memorandum are that the Hudson's Bay Company had no special claim to Rupertsland. The argument was that France had laid claim to the western territory and that this claim was recognized until 1763 when, by the Treaty of Paris, the area was transferred to Great Britain, not to the Hudson's Bay Company.

He further argued that since the territory had been recognized by Europeans as part of New France, the rights of all colonists and French subjects in the area were protected by a clause in the Articles of Capitulation, which guaranteed the future rights of Canadians to the territory. He cited a number of other arguments to support the Canadian claim that the territory was rightfully Canadian territory, including the fact that Canadian Courts had jurisdiction over the area. In his closing remarks, he stated as follows:

"It will be seen by the question of boundary already treated, that the Country about the Red River and Lake Winnipeg, etc., which they claim under their Charter, absolutely belongs to Canada,..."⁵

It is obvious from this memo that Canada, and in particular Upper Canada, believed it had a legitimate right to the territory and as such should be able to have Britain transfer the territory to Canada without any rights of the Hudson's Bay Company recognized, other than their right to continue their trade and commercial activities.

In 1869, during the negotiations for the transfer of the territory, the attitude of the Canadian government was further set out in a letter signed by Cartier and Joseph Howe, wherein they angrily disputed the right of the Hudson's Bay Company to have any say over whether Canada could build a road to the Red River or could carry on surveys in the Red River area. In this letter dated January 16, 1869, they stated the Canadian position as follows:

"The Government of Canada, therefore, does not admit, but on the contrary, denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed."⁶

In the negotiations with Britain for the transfer, Canada steadfastly held to the position that since the Hudson's Bay Company claim to the territory had no legal basis, Canada refused to make payments to the Company for the territory part of the transfer agreement. Canada also refused to accept a direct transfer of the territory from the Company. Consequently, the territory was relinquished by the Company to Great Britain and the territory was transferred to Canada at the request of the Canadian Parliament by the British Crown. The payment of 300,000 pounds to the Company was included in the agreement as compensation for the commercial losses which the Company would experience and to cover their legal costs involved in the negotiations and transfer.⁷

Sir John A. Macdonald's personal papers give further clues to the attitude toward the territory and the claims of the inhabitants. In a letter dated September 29, 1869, to W. W. Carroll, he discussed in detail his plans for the development of the territory. These included the building of a transcontinental road, the survey of lands, plans for the railway, the proposed union with British Columbia, plus other matters.⁸

Prior to the Fall of 1869, it was clear that Macdonald considered the "Halfbreeds" as part of the "savage Indian" population and gave no consideration to their claims. He may have looked upon the settlers as squatters, since, if the Company were merely squatters, how could they give land grants to settlers. Since Cauchon had also dismissed the Selkirk claim to land in Assiniboia, likewise the Scots settlers would be squatters.⁹ When Macdonald was faced with the resistance of the inhabitants in November, 1869, he made plans to send various emissaries. They included de'Saleberry, Reverend Thibeault; and later he sent Donald Smith. As well he enlisted the aid of Bishop Tache. At this time he also began to make plans to build boats so that troops could be taken into the Red River via the Great Lakes. He made no firm commitments to the recognition of the rights of the inhabitants and did not give any of the persons he sent to the Red River to appease the people anything but vague promises of dealing justly with the people's claims. In his correspondence with various people during November, 1869, he variously blamed the Metis resistance on the Hudson's Bay Company, McTavish, Richott, the Catholic clergy, the French Metis and Riel. He schemed with Smith to organize the "English Halfbreeds" and whites against Riel and suggested that attempts be made to buy off Halfbreed leaders. Some of the more significant quotes from his letters, which reflected both his attitude toward Canada's claim to the territory and his attitude toward the Metis are cited below:

November 27, 1869, Macdonald to McDougall,
the Lieutenant Governor, elect;

"We have certainly no intention of giving up the country and we shall make full preparations for operations in the Spring, via Fort William, by building boats and otherwise; we cannot send an armed force through the United States, the government would not consent to it..."¹⁰

December 12, 1869, Macdonald to McDougall;

"...the cost of sending a military force will be so enormous that, setting aside other considerations, it would be a pecuniary gain to spend a considerable amount of money in averting the necessity by buying off the insurgents..."¹¹

December 12, 1869, Macdonald to Smith, one of Macdonald's emissaries to the Red River;

"...except that I think you should talk over with McDougall the best way of buying off the insurgents or some of them"¹²

February 23, 1870; Macdonald to John Rose, Member of Parliament who had been sent to London to oversee negotiations on the transfer of Rupertsland and the Northwest Territories with the British government;

"Everything looks well for a delegation coming to Ottawa, including the redoubtable Riel. If we once get him here, as you must know pretty well by this time, he is a gone coon. There is no place in the Ministry for him to sit next to Howe, but perhaps we can make him a senator for the Territory."

(Same letter)

"These impulsive Halfbreeds have got spoilt by that emeute and must be kept down with a strong hand until they are swamped by the influx of settlers."¹³

In spite of all this scheming, Macdonald recognized as early as 1869 that the Red River settlers had not only settlers' rights but could claim national rights.

In a letter to McDougall dated November 27, 1869, he stated that either McDougall or the Governor of the Hudson's Bay Company, Governor McTavish must continue to exert their authority, for;

"...anarchy must follow. In such case, no matter how the anarchy is produced, it is quite open to the law of nations for the inhabitants to form a government ex-necessitate for the protection of life and property, and such government has certain rights by the jus gentium, which might be very convenient for the United States but exceedingly inconvenient to you."¹⁴

When the British offered to set up a Commission and send out a Commissioner to mediate and settle the grievances of the settlers of the Red River, Macdonald refused to accept the offer. In a letter to Rose dated February 23, 1870, Macdonald stated the following:

"He (Tache') is strongly opposed to the idea of an imperial commission, believing as indeed we all do, that to send out an overwashed Englishman, utterly ignorant of the country and full of crotchets as all Englishmen are, would be a mistake. He would be certain to make propositions and consent to arrangements which Canada could not possibly accept."¹⁵

Obviously the goal was to get control of the territory with as few encumbrances as possible in order to implement the government's development policy. The means of racial slurs, armed intervention, bribery and manipulation were deemed by Macdonald to justify the end, that being to join the Northwest to Canada and primarily to Ontario as part of a grand design of commercial exploitation and empire building.

Therefore, it is important to examine the processes used to implement the Manitoba Act, to analyze these processes,

and to examine the results.

II. Implementation of the Provisions of the Manitoba Act

a) ~~A.~~ The Process Followed in Implementing Land Provisions

Although the Manitoba Act granted a number of rights, the land provisions of the Act were the most important. Metis access to and control over the land would determine if they could maintain their population base in the Red River and if they could develop an economic and commercial order in the area over which they had control. The delegates, as indicated previously in this report, had understood that the local Legislature would have a major role in the implementation of the land provisions of the Manitoba Act. The local people, and in particular the Metis, wanted exclusive land reserves around the existing parishes and they wanted the land to be made inalienable for three generations. In other words, the recipients of the land would not be able to sell it until the third generation. According to articles published in the paper, Les Metis, legislation was introduced into the local Legislature after its establishment to this effect.¹⁶ However, this legislation was never passed because the federal government made it clear under the provisions of the Manitoba Act the federal Cabinet would decide on the terms for selection of and allocation of the lands.¹⁷ The government had meanwhile appointed a Lieutenant Governor, A.G. Archibald, to replace McDougall, whose appointment had been rescinded. As the federal representative in Manitoba Archibald was to have a major influence over government policy and a major role in its implementation.

The Manitoba Act provided for three kinds of land grants. These were as follows:

- a) the "Halfbreed" reserves for children;
- b) title for the "Halfbreeds" to river lots and other lands, of which they were in possession and on which they resided;
- c) the settlement of common land rights.

The Canadian Parliament enacted two statutes, one in 1873 and one in 1874, which allegedly amended the Manitoba Act as follows:

- a) the granting of title to lands in possession of Selkirk and old settlers;
- b) Scrip allocation to "Halfbreed" heads of families who were to be excluded from sharing in the reserves. (This latter amendment was made because of confusion as to who the children of the "Halfbreed" heads of families were, that were referred to in the Act. The original intention was it would cover all "Halfbreeds" who were children of a white father and Indian mother. This change limited the allocations of the 1.4 million acres to persons under 21 on July 15, 1870).¹⁸

On December 27, 1870, Archibald, in a letter to The Honorable Joseph Howe, raised a number of questions about the intent of the Manitoba Act and to whom it applied. He also spelled out a proposed western land policy. In regard to this issue Archibald raised some fundamental questions regarding "Indian title" and who could in fact claim such title. He said most of the "Halfbreeds" in the Red River did not descend from the tribes who traditionally occupied the area. Therefore, he questioned the intent of the Act and concluded by saying:

"But I presume the intention was not so much to create an extinguishment of any hereditary claims (as the language of the Act would seem to imply) as to confer a boon upon the mixed-race inhabiting this province, and generally known as the Halfbreeds. If so, any person with a mixture of Indian blood in his veins, no matter how derived, if resident in the province at the time of the transfer, would come within the class of persons for whom the boon was intended."

In the same letter, Archibald confirmed that it was the wish of Metis to have the land titles made inalienable:

"the French or their leaders wish the lands to be so tied up as to prevent them, at all events, for a generation from passing out of the family of the original grantee.... The land must descend to their children after them. It would not become alienable till the third generation."

Archibald then goes on to argue that the tendency of modern legislation is to make real estate like personal property with no restrictions on its sale. He then admitted that it was likely that some Metis, not knowing the value of their land, would sell it for a pittance and may not benefit:

"Suppose, therefore, the worst were to happen that can happen, suppose the men for whose benefit the land was intended should not know the value of the boon conferred, still the land would find its way into the hands of other settlers. It would be cultivated and improved."¹⁹

To prepare for allocating the land grants in the reserves the first action taken was the taking of a census.²⁰ This census was taken in 1871. Archibald had lists of the persons eligible for land grants in each parish made up. These lists were posted in the parishes and quickly became public documents in great demand by land speculators. At the same time, Archibald was under great pressure from the Metis to select and set aside the Metis land reserves. Settlers were flooding into the area from Ontario. They were settling wherever they chose and where no one else was settled. (In some cases they even squatted on occupied lands while the residents were off on the buffalo hunt).²¹ Archibald wanted to prevent disputes over claims to specific parcels of land and to placate the Metis. He believed the Manitoba Act gave him the necessary authority to proceed to select reserve lands. The reaction of the federal government was to severely reprimand Archibald for his efforts.

The following, from a letter dated November 4, 1871, from Joseph Howe, Minister of the Department of Secretary of State, for the Provinces, to Lieutenant Governor Archibald, is typical of the Federal Government's reaction:

"...I regretted very much seeing your pg. 735 letter giving countenance to the wholesale appropriation of large tracts of country by the Halfbreeds. As I understand the matter, all lands not in actual occupation are open to everybody; Halfbreeds, volunteers and immigrants. Either of these classes can establish rights in 160 acres by actual occupation, but none of them have authority to set off and appropriate large tracts of country until these have been surveyed and formally assigned by the land department with the sanction of the Dominion Government. Your answer to everybody is, "I have nothing to do in the matter." This is the view I take and I would, if I were you, leave the land department and the Dominion Government to carry out policy without volunteering any interference"²²

The implementation of the "Halfbreed" and other land provisions of the Manitoba Act was therefore brought directly under the control of the federal government and the officials in the Dominion Lands Branch of the Department of the Interior. Key officials in the policy implementation were Colonel Dennis, who was Superintendent of Surveys, an enemy of Riel and the Metis ²³ and Gilbert McMicken. McMicken had been the Superintendent of Police for Ontario at the time the delegates, Richott and Scott, were on their way to Ottawa to meet with the federal Ministers. He was responsible for their arrest and internment. He appeared to have been a close and trusted friend of Macdonald, and was put in charge of the Dominion Lands Office in Winnipeg. He supervised the implementation of the government's land policy in Manitoba. He reported directly to Macdonald on events in the Red River and seemed to take direct orders from

Macdonald, although he was answerable to Joseph Howe.²⁴ Letters exchanged between Macdonald and McMicken indicate that Macdonald used McMicken to undermine Archibald's efforts to develop his friendship with the Metis and to ensure that their land claims were dealt with fairly and justly.²⁵

The Manitoba Metis Federation has launched court action identifying a series of legislative acts of the Manitoba government and the federal government, which altered the land implementation provisions of the Manitoba Act, and which they argue are unconstitutional.²⁶ The Manitoba Metis Federation, in addition, have identified a number of fraudulent and illegal practices followed by the Dominion Lands Office in implementing the "Halfbreed" land provisions of the Act.²⁷

b) B. Implementation of "Halfbreed" Land Provisions
Of the Act:

The steps taken to implement the provisions of the "Halfbreed" land provisions for children include the following:

- a census was taken and parish lists were established;
- the total number of potential claims was calculated and an allotment of 190 acres per allottee was set;
- land was selected around some of the parishes after it had been surveyed and a list of land with legal descriptions was prepared;
- names of allottees were placed in a box and drawn. As names were drawn they were placed opposite the land descriptions on the land lists in descending order.

The next step was to have been the issuing of the patents to the land to the allottees, when they become of age. Where they were underage, the land was to be held in trust by parents or by the province in the case of orphans.

This process had just nicely begun in 1874 when, as a result of a federal election, the government of Macdonald was defeated and the Whigs of William Lyon McKenzie were elected. This government halted the land distribution process and ordered a new census because of complaints that the original census was inaccurate. The whole process began again. Based on the new census the land allotment was set at 240 acres for each child. The land allotments again proceeded, and by 1878 most of the allotments in the English parishes (Halfbreed) had been completed and some allotments had been made in some French parishes (Metis). In 1878, as a result of another federal election, the Macdonald government came back to power. The process of land distribution again came to a halt.

In the interim, much of the land around the parishes had been claimed by new settlers from Ontario. It was now difficult to set aside land reserves and, therefore, the government of Macdonald decided to select the remaining land wherever land was available in the Province. The remaining allotments were made using a Scrip issue. Money scrip was issued in \$20 denominations which were redeemable by the bearer for any open Dominion lands in Manitoba.²⁸

(C) River Lot Distribution:

Meanwhile, the process of granting title to the river lots also began. To qualify persons had to have:

- resided in Manitoba at the time of the Rupertsland Transfer (July 15, 1870);
- have been in possession of and resided on their river lot on that date; or
- have staked a claim to a river lot prior to the transfer date, with the clear intention of taking up residence on that land.

The river lot provisions of the Manitoba Act applied to all residents in possession of land and not just the Metis. Before the river lot patents could be issued, it was necessary to survey the land.

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The federal government had agreed to use the existing surveys for the river lots. The purpose of this was to protect the existing land boundaries of the occupants. However, in spite of this promise, the surveyors were soon cutting survey lines through existing properties with the claim that the existing surveys were irregular and did not conform with any regular survey system. Many of the Metis farmers lost parts of their lots or had their lands cut up and re-allocated to neighbours and neighbours lands to them in rather arbitrary fashion.²⁹

d) E. Common Lands

The other major problem which developed was over common lands, which provided settlers with hay, pasture and wood. Under the Ordinances of the Council of Assiniboia, occupants had haying, grazing and woodlot rights to an additional 2-mile lot in back of their river lots.³⁰ If the occupants did not use this right or did not use it fully, others in the settlement could use the land and hay on a "first-come first-served" basis. A long dispute developed over these lands, and the federal government refused to grant patents to the occupants of river lots for these lands. The government finally set up a Commission to study and report on the claims. The Commission validated the claims and recommended that they be settled by an issue of \$160 of Scrip to the occupants of the adjacent river lots.³¹

e) E. Provisions for Heads of Families

Scrip was also the method used to settle the claim of the Halfbreed heads of families resident in Manitoba in 1870, who had been dealt out of the reserve lands by an Amendment to the Manitoba Act in 1873.

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F. An Analysis of the Implementation Process

The B.N.A. Act of 1867 provided for new provinces to join Canada. They had to be colonies which already had their own Constitution. Macdonald believed there was no provision that allowed Canada to create provinces out of territories and to make their constitutions for them. Therefore, he believed that the Manitoba Act of 1870 was ultra vires of the B.N.A. Act 1867. Macdonald asked the British government to legitimize the Act by passing another Constitution Act which would provide for Canada to create new provinces and make their constitutions. He did not want any restrictions imposed on Canada's ability to amend such provincial constitutions. The British, however, did not accept this last clause of the proposed Act because it violated established British policy relating to its colonies.³² Britain also realized it would leave the new provinces at the mercy of the federal government. Thus, Britain unilaterally amended Section 6 of the B.N.A. Act 1871, as proposed by Macdonald, by inserting the following into this clause:

"It shall not be competent for the Parliament of Canada to alter the [Manitoba Act]... or any other Act hereafter establishing new provinces in the Dominion..."³³

This should have safeguarded the provisions in the Manitoba Act and ensured their implementation as had been promised the delegates. Macdonald, however, had no intention of keeping these promises. His plan had always been to get control of the land and to force the Metis to move from the Red River. This approach was based on an earlier report on the potential of the prairies, prepared by Henry Youle Hind, a geographer from Ontario. He concluded that the "savage half-breed" could never make good farmers and, therefore, would have to be displaced from the Red River lands by proper settlers.³⁴

The new Lieutenant-Governor of Manitoba, Archibald, had been a member of the House of Commons in 1870 when the Manitoba Act was debated in Parliament. He participated in the

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debate and took the promises and the legislative provisions seriously. He had a plan for selecting the reserves on land immediately back of the river lots. He also interpreted the Manitoba Act as giving to the Lieutenant-Governor the right to select and allocate these lands. Although the Act placed all ungranted or wasted lands under the jurisdiction of federal government, he interpreted the river lots as being occupied and the commons lands so being granted by provisions of the Council of Assiniboia. In Archibald's view neither came under federal jurisdiction under the provisions of the Manitoba Act. Such an approach would have confirmed the titles of the occupants and would have provided the reserve lands for children in solid blocks around existing parishes in accordance with "the usage of the country". It in fact would have provided for the implementation of the provisions of the Manitoba Act in a fair way. It would have consolidated the Metis and "Halfbreed" parishes and provided for their development.³⁵

As indicated previously in this Chapter, Archibald was rudely informed by Joseph Howe that the land distribution and administration was completely a federal responsibility and was none of the Lieutenant-Governor's business.³⁶

There was, in practice, to be no local control over the distribution of lands. All lands were Dominion lands, and government policy defining the terms of distribution were altered on eleven different occasions between 1873 and 1884. Section 6 of the B.N.A. Act, 1871 did not prevent the Dominion Government from carrying out its policy, since the government ignored this provision of the Act.³⁷ No one at the time seemed to be inclined to challenge the federal action with an appeal to the Privy Council.³⁸

However, it is clear that the government did not have the authority under the Act to pass such Amendments.³⁹ An initial reading of the Manitoba Act would seem to suggest that the land reserves were only for children. However, a further reading indicates that the land was set aside for the children

of the "Halfbreed" heads of families. Archibald interpreted this to mean not children literally, but for those persons who were offspring of a white man and an Indian woman. Since most of the occupants of the Red River fell into this category, they were all eligible even though they were adults. This is confirmed by Macdonald's statement in Parliament that the Metis had a claim on two bases: As the first settlers who occupied their lands and as descendents of the Indians who were entitled to reserve lands. The federal government apparently agreed with Archibald's interpretation since they passed a specific Amendment to the Manitoba Act in 1873, to exclude the heads of families from the reserve allocations, and then passed a second Amendment to the Act in 1874 providing Scrip for the partly-Indian heads of families.⁴⁰

As mentioned previously, the federal government did not have the constitutional authority to amend the Manitoba Act. However, it proceeded to deliver money scrip to the heads of families. Money scrip was personal, not real property, and wide-scale speculation in Scrip resulted. The Money Scrip, being personal property, was not covered by real estate laws which provide certain safeguards in regard to the assignment and registration of land.

An active trade in Scrip quickly developed, with the speculators collecting assignments to large quantities of Scrip. Therefore, it is impossible to determine whether the heads of families ever received their Scrip, whether they used it to acquire land or whether the majority of this Scrip fell into the hands of speculators, who were buying it for approximately 1/3 of its face value.

The Provincial Legislature passed a law to discourage Scrip speculation by making assignments invalid. Although the federal government considered disallowing the Act, it finally gave Royal Assent on the understanding that the Act would be amended. The Province then amended the Act to make such assignments legal if the allottee did not return the money to the buyer within a period of three months from the issue of the patent. If the money was returned the buyer had to be re-imbursed for his out-of-pocket expenses plus interest on the money. This law was first disallowed, but the federal government then approved the law in 1877 when the Provincial

Legislature re-enacted it.⁴¹

In the next ten years, a dozen more Acts were passed dealing with "Halfbreed" lands, which encouraged speculations and which resulted in "halfbreed" children's land not being protected by the same laws which protected the land rights of white children.⁴² Although all of the 1.4 million acres had been allocated by 1886, only 90 per cent of the lands had been patented by that date. The remaining lands had not been patented for a variety of reasons. Of the lands patented only 20 per cent remained in the ownership of the allottees.⁴³

Section 32 of the Manitoba Act provided for title to the river lots to be confirmed in the name of occupants. The administration of this matter should have been straight forward. There had been an agreement that the existing survey of the river lots would not be changed. Section 32 had five subsections with 1 to 3 covering persons who occupied lands they had either purchased, leased or on which they had settled with the sanction of the Hudson's Bay Company. These were all lots in the area covered by the Selkirk Treaty and to which the Indian title had, at least in theory, been extinguished. Subsection 4 covered all occupants of lots in Indian territory (title not extinguished). The occupants had pre-emption rights to their lots; and with the signing of Treaties 1 and 2, any legal impediment to the issue of patents was removed. Subsection 5 covered the hay or common lands in back of the river lots. The Lieutenant-Governor was authorized under the Act to adjust these claims on "fair and equitable terms."⁴⁴

With the survey of the river lots completed in 1873, it should have been possible for the government to issue the patents immediately to all who could prove occupation of a river lot. It is known from Sessional Papers that more than 2,000 applications were received. Also, other applications were turned away pending a ruling by the Justice Department on claims by occupants covered under Subsection 4 of Section 32. In many cases, the Metis had a winter home and a garden on these lots with no other improvements. If the occupants were absent at the time

of the survey, their lots were classed as vacant.⁴⁵

An involved process was adopted to verify claims under subsections 1 and 2, of Section 32 of the Act. It took until 1878 before all of the patents were issued. In the meantime the legislature declared the cart trails and footpaths between the lots as grand highways and reserved a 132-foot strip for the Province. When patents were issued these strips were excluded. Most owners found their property cut into two irregular parcels. In addition, in 1871 the federal government ruled that haylands covered under subsection 5 were vacant lands open to any incoming settlers and, although the Lieutenant-Governor and officials of the Dominion Lands Branch recommended that these lots be withdrawn from settlement lands, the federal government declined to change the ruling.⁴⁶

Also as indicated earlier in this Chapter, eventually a Commission was set up to investigate and report on the hayland claims. It recommended a grant of Scrip of \$160 to the claimants in lieu of haylands. In regard to the subsection 4 claims, the department decided to defer applications, pending a ruling on what constituted occupancy. The federal government amended the Manitoba Act in 1874 to eliminate the distinction between subsections 3 and 4 claims. It was estimated that some 1500 families (known as winterers) fell into the subsection 4 category. They would have to prove continuous occupancy and undisturbed possession. Most of these persons were hunters, freighters, guides or fishermen, who lived in a log house on their property part of the year. During the summer season most pursued their livelihood elsewhere.

Hundreds of claims were denied. Those whose claims were approved were limited to a maximum of 80 acres. If buildings happened to fall on the "grand highway", these were lost. Often settlers were left with little more than a plot of land large enough for their buildings, a garden and a small pasture. The federal government also changed the legal provisions allowing claimants to take their case to a Claims Court so that con-

flicting claims to the same lot could not be heard by the Court.⁴⁷

In regard to other provisions of the Manitoba Act, the main ones which could be considered to have confirmed special rights included:

- provisions for an upper house;
- provisions for the legislative debates and all records of such to be in both French and English;
- provisions for court proceedings and all court documents to be in both French and English;
- special language and religious rights in the Education system.⁴⁸

As long as the majority of the members of the Manitoba Legislature were Metis, these provisions were implemented. However, the new Province soon ran into serious financial problems and had difficulty supporting the range of institutions provided for in the Manitoba Act. The reason for this was related to the fact that the Province, having given up its resources, had no access to the funds which could be secured from the sale of these lands and resources. In addition, with a small population and with no export outlets for agricultural products, the economy had a minimal circulation of cash. This meant opportunities to raise taxes were limited to duties on goods coming into and leaving the province. The Manitoba Legislature was soon petitioning Ottawa for an increase in the federal subsidy. Ottawa, at first, refused to increase the subsidy.

The then Premier, Norquay, a Scots "half-breed," eventually convinced Ottawa of the desperate financial need of the Province. The federal government, however, extracted an agreement from Manitoba that it would drop its upper house, "an unnecessary frill and cost" in Macdonald's view. The Manitoba Act was amended by the Legislature in 1876 to bring about this change.⁴⁹

The provision that required the use of both French and English in the legislature and courts was changed by an Act of the Manitoba Legislature in 1890. These changes were not at the time legally challenged. However, these provisions still remain in the Manitoba Act. Several years ago a French Manitoban from St. Boniface decided to try to exercise his rights in this regard by refusing to acknowledge a traffic ticket issued to him unless issued in French. He was taken to court and found guilty of the traffic violation. The case was taken all the way to the Supreme Court, which upheld the appeal indicating that the rights granted by the Manitoba Act were still in effect. The Province is now in the process of deciding how it will be able to comply in practice with all of the implications of this ruling.⁵⁰

In the late 1880s the issue of separate French schools in Manitoba became extremely controversial. There was a strong move to pass a new school Act in Manitoba to eliminate the special Education and Language rights granted under the Manitoba Act. Tache believed that he had Premier Greenway's support on this issue, but Greenway deceived Tache and threw his weight behind those demanding change.⁵¹ In 1890 the Manitoba School Act set up one public school system with English as the main language of instruction.⁵² This Act of Provincial Legislature was opposed by Tache. But when the federal government refused

to disallow this Act, even though it was in violation of Section 22 of the Manitoba Act, Taché withdrew his appeal since the French Catholics were not required to attend public schools. They were allowed to set up their own private school supported by fees and donations but they could not qualify for tax funds.

III. The Results and Consequences of the Implementation of the Manitoba Act.

When the first government was formed in Manitoba, the Metis representatives were in the majority. The first Premier of Manitoba was John Norquay, an English "half-breed." This was so in spite of continuous intimidation of the Metis population of the Red River by the volunteers from Wolsely's Army, who had been left behind. These persons, with the active urging of men like Dr. Schultz, Charles Mair, and others, caused a riot in Winnipeg on the night of the first election. A number of voters were assaulted, a polling booth in Winnipeg was burned, and Riel and Archibald were hanged in effigy and burned.

Prior to this the Orange volunteers had murdered several local Metis —one, Eliziar Goulet and another, James Tanner. Although the inquests that were held following these murders found that the two men had been victims of homicides and had named those responsible for their deaths, the guilty were never brought to trial.⁵³

What followed the Manitoba Act was a reign of terror and lawlessness in the settlement. Some of the inhabitants, who had no firm roots in the Red River and only resided there seasonally, began to migrate west to the Qu'Appelle Lakes,

the Saskatchewan River, the Cypress Hills and to other locations. The newly established provincial government experienced serious difficulties in carrying out its role because of the lack of resources, because of conflict and tension between residents and new settlers, and because of the fact that the local populace was dependent upon persons like Royal, Dubuc and Clarke for legal advice and direction. The two former, who were friends of Riel and proteges of Taché, played a major role in organizing the structure and legislative base for the new province. Clarke, who was anti-French and an enemy of Taché and Riel, was also influential in the government, holding the position as the first Attorney-General and later as Premier. He co-operated with those who wanted to capture and prosecute Riel. He approved the warrants for Riel's and Lepine's arrests, and he vigorously pushed for the prosecution of Lepine. Therefore, another result of the Manitoba Act was the manhunt for Riel and Lepine and the continued effort to turn the populace against the goals of the Metis leader.⁵⁴

The Legislature was largely ineffective in protecting the Metis land rights under the Manitoba Act, since the federal government retained complete control over the implementation of the land provisions. The decision by the federal government, to consider all lands other than the river lots open for settlement, resulted in large numbers of settlers from Ontario moving onto land around the parishes which the Metis had requested be set aside as reserves. The result was that Metis communities began to break up, since land allocated to Metis children was often too far removed from the settlements to allow for the maintenance of family and community ties. There was also the racist pressure and intrusions of the settlers from Ontario which made life in the Red River intolerable for many of the Metis settlers. These factors, plus the

long delay in land distribution, resulted in more people pulling up roots and moving west where there was land and where they could maintain their lifestyle uninterrupted, among friends and relatives.

The various government decisions on the land issue and the changes in land distribution policy all contributed to this exodus. The ruling that persons residing outside the Selkirk Treaty belt would not have their land holdings granted until occupancy was proved further contributed to the Westward movement of the Metis. The ruling that common haylands were open Dominion lands and the road allowance provisions made by the Manitoba Legislature, resulted in many of the farmsteads along the Red River becoming uneconomical farm units. Added to this were the defective original surveys and the inaccurate census, which convinced many more people to move west.⁵⁵ By the late 1870s and early 1880s the exodus westward was on. Even stalwart settlers of the Red River, who had served in the first Manitoba Government, such as Charles Nolan and Louis Schmidt, moved west.

The result of government policies and of government implementation practices was that most of the Metis people of the Red River were to a large extent, deprived of their rights to land which the Manitoba Act had specifically set aside for them. Speculators bought their land entitlement cheap. Fraud was used in obtaining Scrip in the name of persons who had long since left the Red River. Other irregularities in land distribution and registration took place. These actions all happened with the active co-operation of federal land agents.⁵⁶ It is estimated that more than two-thirds of the Manitoba Metis left for new homes in the West. Those who stayed were pushed to the fringes of new settlements or were assimilated into the non-aboriginal population.

Following is an example of how the Metis were forced out of their homes. At the junction of the Assiniboia and what is now known as the Boyne but which had been named "Rivière au Ilets du bois" by the Metis, a settlement of buffalo hunters had established themselves as early as 1835. This was well before the transfer of the Northwest to Canada.⁵⁷ This area, while in the Selkirk Grant, was outside the area in which the Indian title had been extinguished. The Metis, although squatters, had established their river lots in the usual manner and followed the accepted surveys of the day. They were among those who were covered under subsection 4 of Section 32 of the Manitoba Act. (It will be recalled that the Manitoba Act had been amended to exclude these claims).⁵⁸ In 1871 the Metis hunters and traders left in the Spring, after planting some crops and vegetables, to go to the prairie for the hunt. The elderly and the young children, as was the custom, were left behind to tend the farms. While the Metis were gone, settlers from Ontario arrived in the area and squatted on their lands.

When the Metis returned, the settlers were asked to leave but refused to do so. The Metis appealed to Lt. Governor Archibald, who, although sympathetic to their cause, found his hands tied by the interpretation of the federal government that all lands not legally occupied were open for settlement. He only was able to avoid open conflict between the settlers and Metis by promising the latter more generous land grants in the immediate area and persuading them to move.⁵⁹ As a result the settlement was moved two and one-half miles to the Northwest. A new community named St. Daniel was established. In 1910 over 90 percent of the residents of the community were Metis. After 1910 white settlers flooded into the area,

surrounding the Metis and exerting social pressures on them to sell their land. Those who were squatters on school lands and other Crown lands left the area as the land was sold. Other land owners, discouraged by these developments, began to sell their land and move west. By 1930 there were hardly any Metis left in this community.⁶⁰

The Metis indeed, had been "swamped by the influx of settlers" as Macdonald had originally planned, and had been dispossessed of their land and eventually of any means of earning a livelihood. Many had been dispersed to isolated agricultural settlements generally outside of the mainstream of social and economic development.

The final result of the manner in which the Manitoba Act was implemented was to drive the members of a thriving community from their homes and from their land. In the absence of a land base, the developing customs and lifestyle of their culture suffered a serious setback. As settlement soon engulfed their new homes further to the west, they were left poor, landless, without capital and without the employment skills needed to take advantage of the new economic development activities in the Northwest. They were isolated in rural areas or on the fringes of towns and cities, poverty stricken and victims of the policies of the federal government and of the racism which it promoted.⁶¹

The Manitoba Act and its "extinguishment" provisions were used as a ploy, part of the federal government policy to eliminate Metis influences and to gain control of the land. It, as well, got the Metis out of the way of the new settlers and new developments.⁶² The people would become a useful source of cheap labour when needed to do the casual and seasonal and backbreaking and dirty labour which no one else wanted to do. They picked buffalo bones, rocks and stumps, cut brush and engaged in other

seasonal and casual occupations.

IV. The Application of the Manitoba Act to Metis
People Living Outside Manitoba:

The Manitoba Metis Federation, in its final report of 1979-80, sets out a number of constitutional and legal bases on which it believes the validity of the implementation of the land provisions of the Manitoba Act can be challenged. Some of these are constitutional, resulting from a number of amendments to the Manitoba Act by the Parliament of Canada and the Manitoba Legislature, even though the Act expressly indicated that Canada was not competent to amend the Act.⁶³

A significant number of Metis people now residing in Saskatchewan are descendents of Manitoba Metis. The exact number residing in Saskatchewan is not known and might be difficult to determine. However, the Manitoba Metis Federation, using the Manitoba census of 1871 and 1874, did cross-computer comparisons with a printout of rejected and approved Scrip applicants outside Manitoba in the Northwest Territories and determined that approximately two-thirds of the residents of Manitoba left and migrated to the Northwest.⁶⁴ They made up approximately one-third of all Scrip applicants in the Northwest. Some of these people had received Scrip and/or a land allocation in Manitoba. The descendents of Manitoba Metis would still have the same rights as Manitoba Metis even though they may have received a Scrip allocation in the Northwest under the provisions of the Dominion Lands Act.

Many of those persons who were refused Scrip on the basis that they had received Scrip in Manitoba, had left Manitoba prior to any land allocations being made. They had

not applied for Scrip or land there, and were not aware that a land settlement had been made in their name. It can only be concluded that these grants were made to speculators by fraudulent means. They too would still have an existing right to land.

Some former residents of Manitoba applied for and received Scrip in the Northwest, even though their names appeared on the Manitoba census of 1871 and 1874. It can only be assumed that they were somehow missed by the speculators and the government collaborators in the land office in Manitoba. Therefore, many of those persons not appearing on the lists of those who had previously received a land grant or Scrip in Manitoba were granted Scrip in the Northwest.

Therefore, the Saskatchewan Association, in arguing its case in support of the land rights of the Metis is doing so, on two bases: Firstly, on behalf of the current, descendents (living in Saskatchewan) of the Manitoba Metis under the terms of the Manitoba Act. Secondly, on behalf of the other Metis residents of Saskatchewan not covered by the Manitoba Act.

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FOOTNOTES:

- ¹Government Policy Respecting Native People: It's Development and Purpose. Unpublished, Association of Metis and Non-Status Indians of Saskatchewan, 1978, Dumont Institute Library.
- ²Letter from Governor Dallas of the Hudson's Bay Company to Watkins, August 7, 1863. Public Archives of Canada, M G 24 E 17 - Item 89.
- ³Manitoba Act, 1870, Supra.
- ⁴Quote from House of Commons Debates. From an article by D. J. Hall, "The Half-breed Claims Commission". Published in Alberta History, Volume 25, Number 22, Spring 1977.
- ⁵Cauchon Memo, Appendix B to the Report of the Select Committee on the Hudson's Bay Company, 1857, Supra. Public Archives of Canada.
- ⁶Cartier and Howe to Sir F. Rodgers, January 16, 1869, Sessional Paper No. 25, 1869.
- ⁷Letters and Memos Re: Negotiations for the transfer of Rupertsland and the Northwest Territories to Canada, Sessional Paper No. 58, 1869.
- ⁸From the Macdonald Papers, Macdonald to W. W. Carroll, M.P., September 29, 1869. Public Archives of Canada, Letterbook No. 13.
- ⁹Cauchon Memo, Supra.

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- 10 Macdonald Papers, Supra, Macdonald to McDougall, November 27, 1869.
- 11 Ibid. Macdonald to McDougall, December 12, 1869.
- 12 Ibid. Macdonald to Smith, December 12, 1869.
- 13 Ibid. Macdonald to Rose, February 23, 1870.
- 14 Ibid. Macdonald to McDougall, November 27, 1869.
- 15 Ibid. Macdonald to Rose, February 23, 1870.
- 16 Manitoba Legislative Journals, 1877, February 16, p. 64.
- 17 Joseph Howe to Archibald, November 4, 1871. Found in the Howe Papers, Public Archives of Canada, C - 1831, Vol. 4, p. 496.
- 18 Supra, Final Report, Manitoba Metis Federation, p. 39.
- 19 Archibald to Howe, December 27, 1870. Found in the Dewdney Papers, Collection in Glenbow Archives, Calgary.
- 20 Supra, Final Report, Manitoba Metis Federation, p. 34.
- 21 W. L. Morton, Manitoba, A History. University of Toronto Press, pp. 29-80 and 153-154.
- 22 Howe to Archibald, Supra, November 4, 1871.

23 See Sessional Papers, 1870, Paper No. 12. Public Archives of Canada.

24 Letters between McMicken and Macdonald, 1871 and 1872. Found in the Macdonald Papers, Public Archives of Canada, M G 26 A, Vol. 103.

25 Ibid.

26 Manitoba Metis Federation Inc. and Native Council of Canada Inc. v. Attorney General of Canada and Attorney General of Manitoba, 1010/81 of the Manitoba Court of Queen's Bench.

27 Final Report, Manitoba Metis Federation, Supra, pp. 38-43.

28 Sessional Papers of Canada, 1876, Paper No. 11.

29 Ibid.

30 From Manitoba Report, Supra, p. 55.

31 Sessional Papers, 1878, Paper No. 10, p. 41. Public Archives of Canada.

32 Final Report, Manitoba Metis Federation, Supra, p. 39 and following.

33 Ibid. pp. 30-32.

34 Ibid. pp. 10-12.

35 Ibid. pp. 34-37

36 Howe to Archibald, *Supra*, November 4, 1871.

37 Final Report, Manitoba Metis Federation, *Supra*, pp. 37-38.

38 Ibid. pp. 39-65.

39 Ibid. pp. 30-41.

40 Ibid.

41 Ibid. pp. 42-44.

42 Ibid. p. 44.

43 Ibid. p. 45.

44 Ibid. p. 47.

45 Ibid. p. 48.

46 Ibid. pp. 48-56.

47 Ibid. pp. 57-59.

48 Manitoba Act, 1870, Supra.

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30 N R 213, 2 Man. R. (2d) 109, 49 C C C (2d) 353,
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54 George F. Stanley, "Louis Riel", Chapter 10. Ryerson Press,
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⁵⁹W. L. Morton, Supra, pp. 153-154.

⁶⁰Fred Conrad, Supra.

⁶¹Final Report, Manitoba Metis Federation, Supra, pp. 39-41.

⁶²Ibid. pp. 43-44.

⁶³Ibid. pp. 38-67.

⁶⁴Ibid. Appendix II Tables