

Distribution of Metis Lands Under Sec. 31 and 32 of the Manitoba Act (From Library and Archives Canada)

Overview

Métis land claims in the Province of Manitoba were dealt with by the Department of the Interior under sections 31 and 32 of the *Manitoba Act* (33 Victoria, chapter 3). Since each section involved slightly different administrative procedures for the Department - a difference which is reflected to some extent in the archival record, especially the registers and indexes - they will be discussed separately.

Claims Under Section 31

Section 31 primarily focused on Métis claims arising out of the extinguishment of their Indian title:

"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 ... 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" (33 Vic., c. 3, s. 31, 1870).

The 1.4 million-acre reserve was thought to be a reasonable appropriation. It was based on a crude census of the province in which the Métis population of Manitoba, at the time of the transfer, was thought not to exceed 10,000. The census was undertaken by Lieutenant Governor Archibald, and was recorded in his dispatch to the Secretary of State on 26 May, 1870 (see O.C. 15 April 1872). Using the census as a base, it was estimated that each participant in the Métis grants would be awarded an allotment of approximately 140 acres. The land grant, as originally proposed, was an odd size and the reason why the Department was willing to settle for 140 acre grants, remains obscure. At the time, the Department was still debating the size of the cadastral surveys. Some factions in the federal government wanted to follow the American example and cadaster Manitoba and the North-West Territories into a six-mile square township subdivided into 36 sections of one-square mile each, with each homestead grant amounting to a quarter section of 160 acres. Others felt that larger homesteads than what the Americans were offering would be more appealing to immigrants, particularly those from the United States, and argued for quarter-section homestead grants of 200 acres, with each township amounting to 64 sections of 800 acres each. Needless to say, proponents of the former system won the argument. Nevertheless, the proposed Métis grants of 140 acres each were considerably smaller than the quarter-section homesteads proposed under either system of cadastral survey. If the government had followed through on these grants, Métis children would have been awarded homesteads amounting to fractional grants (for further information on the western cadastral surveys, see: Don W. Thompson, "Men and Meridians: The History of Surveying and Mapping in Canada", Volume 2, Ottawa, 1972, pp. 26-59).

Order-in-Council P.C. 874, 25 April, 1871, established a set of regulations for the administration of public lands in Manitoba, and specifically the method by which the 1,400,000-acre allotment would be distributed. The regulations declared that "every

half-breed resident in the Province of Manitoba at the time of the transfer thereof to Canada ... shall be entitled to participate in the 1,400,000 acres ... [and that] the most liberal construction shall be put on the word resident" (P.C. 874, 25 April, 1871, pp. 1-2). This definition conflicted with the provisions set forth in section 31 of the *Manitoba Act*. The Order-in-Council had unilaterally expanded the list of participants from "the children of half-breed heads of families" to include "every half-breed resident".

Two years later, the Department of the Interior recognized its error, and attempted to enact a series of regulations which would bring the allotment distributions back in-line with the provisions originally set out in the *Manitoba Act*. On the 3rd of April, 1873 it introduced an Order-in-Council amending P.C. 874 by re-confirming that only children of Métis heads of families were entitled to participate in the special land allotments. Because the number of participants in the special grant had been inexplicably reduced from the number originally proposed in the 1870 census of the province by the Lieutenant-Governor, the reserve allotments to each child were accordingly increased to 190 acres.

However, Métis heads of families still presented the Department with problems. Although section 32 of the *Manitoba Act* guaranteed that Métis heads would be entitled to acquire legal rights to any land in which they were in peaceable possession at the time of the transfer of Rupert's Land to Canada, the allotment, in effect, did not extinguish their Indian title (see the discussion under Section 32). Section 32 only provided Métis heads with the legal means of "quieting of title" - that is, the means by which to transfer what was already recognized as personal property under one form of civil administration to one which would be administered by the laws of the Dominion of Canada. Consequently, 37 Victoria, chapter 20, authorized the federal government to award Métis heads of family a land grant of 160 acres (the equivalent of a quarter section) or an issue of scrip amounting to \$160. This grant was to serve the purpose of extinguishing any Indian title that Métis heads may have acquire by virtue of their native ancestry.

However, "... in view of the great dissatisfaction which has been caused in Manitoba by the locking up of large and valuable tracts of land for distribution among the Half-Breeds, thus seriously retarding the settlement of the country ...", the Minister of the Interior felt that he could not, "... recommend the setting apart of further tracts of land for such purposes..." (P.C. 128 1/2, 23 March, 1876). Therefore, Order-in-Council, P.C. 128 1/2, 23 March, 1876, recommended that only scrip in the amount of \$160, receivable in payment for the purpose of Dominion Lands, should be issued to Métis heads of families. The Order-in-Council also established the rules under which the scrip would be issued. Since the *Dominion Lands Act* had arbitrarily set the value of public lands at \$1.00 per acre, the scrip awarded to Métis heads, in effect, was the equivalent to a quarter-section homestead grant. This change in policy gave Métis claimants the option of selecting a quarter-section homestead any where lands were open for entry rather than from tracts reserved specifically for Métis purposes. As far as non-Métis residents were concerned, the new policy had the added benefit of making the Métis population less concentrated to specific areas and breaking up their communities.

In an effort to ensure a proper distribution of the 1,400,000 acres set aside for Métis children, Order-in-Council of the 13th of January, 1872 called for yet another census of the Métis population of Manitoba. The census was to be carried out by Gilbert McMicken, an officer of the Secretary of State for the Provinces (the predecessor of

the Department of the Interior) at Winnipeg, on a plan to be approved by the Lieutenant-Governor of Manitoba. A few months later, on 15 April, 1872, the federal government passed another Order-in-Council, which recognized that the surveys in Manitoba were now sufficiently advanced for the Lieutenant Governor to begin selecting lands which would be set aside to make up the 1,400,000-acre reserve. The Order-in-Council recommended that the lands should be selected on a township-by-township basis, reserving sections 11 and 29 for school purposes, and sections 8 and 26 for the Hudson's Bay Company. As well, the Canadian Pacific Railway was to have unimpeded passage across such lands.

Despite the government's initial intent, the land selection process was besieged by a series of delays. The Department blamed these delays on conflicting claims to lands within the reserve area, alleging that these conflicts were "of such a character as to prevent a division of the lands until such claims had been disposed of" (Canada. Department of the Interior, "Annual Report of the Department of the Interior for the Year 1874", Ottawa, 1875, p. 8). However, it was not until the spring of 1875 that the federal government had even decided upon the process it would use when identifying those individuals who would be eligible for a claim under section 31 of the *Manitoba Act* (P.C. 406, 26 April, 1875). Arguing that the investigation of several thousand claims "... in addition to the regular business of the office, would be quite out of the power of the agent in charge [of the Dominion Lands Office in Winnipeg]..." (P.C. 406, 26 April, 1875), John M. Machar, barrister in the City of Kingston, Ontario, and Matthew Ryan, barrister in the City of Montreal, Quebec, were appointed as Commissioners to administer the allotment of lands in the 1,400,000-acre reserve to Métis children and the distribution of scrip to Métis heads of families authorized by 37 Victoria, chapter 20, 1874 (P.C. 449, 5 May, 1875).

Machar and Ryan completed their task the following year. Their report outlining the methods used, and their recommendations for the issue of Letters Patents for lands allotted to Métis children, and the distribution of scrip to Métis heads of families was formerly adopted and approved as Order-in-Council, P.C. 128 1/2, 23 March, 1876. Machar and Ryan named 5,088 persons who were entitled to participate in the distribution of the 1,400,000-acre reserve.

Further enquiries by the Department brought in an additional 226 claims under section 31 and suggested that another 500 claims might be expected in future from people who were out of the province for one reason or another. Since the Department could find no satisfactory explanation for the difference in the number of children obtained from the 1870 census, and the actual number of claimants, it again decided to increase the quantity of land allotted to each child. This time the increase was from 190 acres to 240 acres, or one and a half quarter sections (P.C. 142, 7 September, 1876).

The Commissioners' returns, noting those Métis children who had proved their rights to participate in the distribution of the 1,400,000-acre grant, are retained in RG 15, series D II 80, volumes 1574 to 1593. The returns are organized on a parish by parish basis and each is signed by one of the Commissioners. The claimants of each parish are generally subdivided into several different listings: Métis children who had reached 18 years of age; those who were under 18 years; the heirs of each age group who were deceased. At the same time, Commissioners Machar and Ryan also enumerated claimants who were entitled to scrip as a Métis head of family under 37 Victoria, chapter 20. These names are generally noted in separate sections of the parish returns. A second copy of the parish returns, retained in RG 15, series D II

8n, volumes 1556 to 1573, notes the legal description of the lands awards to each Métis claimant under section 31 of the *Manitoba Act*. The second copies are signed by a representative of the Lieutenant-Governor of Manitoba and were apparently used in the lottery system devised by the Department to allot lands in the Métis reserve on a random basis. The process by which the land grants were allotted and the methods used to record the results were fully outlined in Order-in-Council, P.C. 874, 25 April, 1871. Claimants who were awarded land grants as children of a Métis head of family are also listed by grant number in RG 15, volumes 1476 and 1477, and by name in RG 15 volumes 1478, 1515, and 1526. Claimants who were awarded scrip as a Métis head of family under 37 Victoria, chapter 20, are listed in RG 15, volume 1525 (see the section entitled "[Registers /Indexes](#)" for a more complete description of these records).

Section 32

In the interest of "quieting of titles" and assuring settlers in the Province who were in peaceful possession of their land at the time of the transfer of Rupert's Land and the North-West Territories to Canada on the 15th July, 1870, section 32 of the *Manitoba Act* allowed:

"All titles by occupancy with the sanction and under the license and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the Province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the Province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by the Governor in Council."

Generally, persons who were entitled to free grants of land were classified as: those who had purchased the land from the Hudson's Bay Company prior to 15th July, 1870; those who had their land surveyed prior to the transfer of Rupert's Land by an official surveyor of the Council of Assiniboia; and those who were in actual occupation of their land on the 15th July, 1870.

The above claims usually consisted of a river lot measuring about twelve chains wide and two miles deep (or 192 acres), and a second, "outer" lot also measuring about two miles deep. "Where there were no outer two mile lots appurtenant to the river lots, or the land was within the Hudson's Bay Company's survey (no outer two miles were included in the Company's survey), as compensation for the loss of such outer two miles, scrip was issued, redeemable in the purchase of Dominion Lands, where the land was situate within the limits of the Hudson's Bay Company's survey, at the rate of one dollar and fifty cents, and elsewhere, at the rate of one dollar, for each acre covered by the river lot" (N. O. Coté, "Claims to Land Under the *Manitoba Act* 1870-1886", in "Grants of Land Under the *Manitoba Act*, North-West Territories Land Grants Comprising Saskatchewan and Alberta, Military Bounty Land Grants, and Grants of Land for Sites of Churches, Schools and Burial Grounds", [1931], pp. 2-3, unpublished ms. in RG 15, vol. 227).

The procedures taken by the Department of the Interior when issuing land patents under section 32 of the *Manitoba Act* were outlined in an internal memorandum from J.S. Dennis, the Surveyor General, to the Hon. David Laird, Minister of the Interior,

on the 4th of March, 1876. The memo was prepared as background information for the Minister of Justice, and was approved by the Minister of Interior (the memo can be found in RG 15, vol. 164, file MA 7390).

Apparently, all parties claiming title to land under section 32 of the *Manitoba Act* were allowed to make an application for Letters Patent by sending a sworn statement to the Surveyor-General, J.S. Dennis, at the Dominion Lands Office in Winnipeg. The claim was to describe: the full name, residence, and occupation of the applicant; the parish in which the land lies; the names of the occupants of adjoining lots; the dimensions of the lot, the length of occupation, and any improvements made; and how the lot is claimed, i.e. under what sub-section of the *Manitoba Act*. This information was to be accompanied by certified copies of any deeds, assignments, or other papers under which the title was claimed.

Once the statement was received in Winnipeg, the Department would review the application along with the report of the surveyor who surveyed the Parish, the Hudson's Bay Company Land Register, and the return of registers as certified by the County Registrar. A copy of the Hudson's Bay Company land register from Fort Garry, known as the "B" book, can be found in RG 15, series D II 11c, Aperture Card Book 185. It covers the settlement belt of both the Red and Assiniboine Rivers for the period 1835 to 1858. As well, RG 15, volume 1551 (described further in the section "[Indexes/Registers](#)") is a general register, compiled by the department, of the land owners along the Red and Assiniboine Rivers prior to the transfer of Rupert's Land to the Dominion of Canada. If all these documents were in agreement as to the occupant of the lot, and providing there was no opposition to the claim, and no reason to doubt the word of applicant, the papers would then be forwarded to Ottawa, along with the recommendation of the Dominion Lands Agent, and a patent issued in due course. In cases where the title was questionable, section 9 of the *Manitoba Act* required such claims to be displayed in a public place. Only disputed claims were to be reviewed further by Commissioners appointed for such purposes.

Accompanying each recommendation for letters patent were: a facsimile transcript of the Hudson's Bay Company Land Register as it relates to the lot or lots claimed ("even to the entries being in ink, black or red, or in pencil, as the case may be"); and a transcript of the surveyor's report. The Hudson's Bay Company land register only applied to parishes in the Red River Settlement in which surveys were made by the Company, i.e. St. Boniface, east and west, St. Vital, St. Norbert, St. Agathe up to Salt Springs, St. Johns, and Winnipeg, Kildonan, St. Paul, St. Andrew, St. James, St. Charles, Headingly, and St. Francois Xavier, east and west. Even then many of the lots in these Parishes had no entries whatever against them in the Company's registers. Only a survey by a Dominion Land Surveyor, and only the Dominion Land Surveyor who had been employed by the Department to survey the land specifically for the purpose of granting Letters Patent would be accepted. The report was to describe each lot occupied, noting the names of the people occupying the lot (whether as owner or tenant), and any adverse claims to the lot. These surveys were begun in 1871 and were completed in 1874.

"...the rights of parties to any certain lands claimed as being occupied at time of the Transfer, were so well known and understood among the people of the parish at the time of the survey being made, that the Surveyor's return of claimants and occupants in itself is very reliable evidence in the case of a claim made for patent to a given lot, and where the evidence accompanying a specific application for such lot is borne out by such return and no counter claim has been filed ... the case is

assumed to be one in which a prima facie right to a patent is made out, and the papers are in due course submitted for the final decision as to title, of the Department of Justice" (J.S. Dennis, Surveyor General, to the Hon. D. Laird, Minister of the Interior, 4 March 1876, RG 15, vol. 164, file MA 7390).

Under 47 Victoria, chapter 26, 1884, any claims under section 32 that had not been received by the Department by the 1st of May, 1886, would be barred from further action. By the end of the fiscal year, the department reported that "the period within which claims to land under the *Manitoba Act* - that is to say, claims by virtue of actual peaceable, and undisturbed possession at the time of the transfer, the 15th July, 1870 - might be filed in the Department of the Interior, expired on the 1st May, 1886, and this branch of the business may now be said to be closed" (Canada. Department of the Interior, "Annual Report of the Department of the Interior for Year 1886", Ottawa, 1887, pg. xiv).

Manitoba Supplementary Claims

After the lands set apart for Métis children had been exhausted, the Department of the Interior continued to receive applications from persons whose claims under section 31 of 33 Victoria, chapter 3 (the *Manitoba Act*) and 37 Victoria, chapter 20, had not been previously recognized. Accordingly, Order-in-Council, P.C. 810, 20 April, 1885 authorized the issuing of scrip, redeemable in the purchase of Dominion Lands. But all such claims had to be filed with the Department by the 1st of May, 1886 - the same date chosen under 47 Victoria, chapter 26, for discontinuing claims under section 32 of the *Manitoba Act*.

"... under the authority notices in the shape of posters and letters were sent to the bishops and clergy of all denominations, members of the Legislative Assembly, registrars, stipendiary magistrates, sheriffs, members of the North-West Council, newspapers, post offices and telegraph offices in Manitoba and the North-West Territories, to the effect that all persons claiming to be entitled to rank as children of Half-Breeds, residing within the Province of Manitoba at the date of the transfer, would have to file their claims, accompanied by the necessary proofs, with the Commissioner of Dominion Lands, on or before the 1st day of May, 1886, and that no applications in respect of such claims, that had not been filed with the said Commissioner on or before the date mentioned, and accompanied by the evidence necessary to prove the same, would be received or considered" (Canada. Department of the Interior, "Annual Report of the Department of the Interior for the Year 1885", Ottawa, 1886, p. xx-xxi).

Métis residents who had preferred claims under the Manitoba Supplementary Commission, authorized by P.C. 810, 20 April, 1885, are indexed alphabetically in volumes 1506 and 1527. Several specialty indexes also exist: heirs of deceased Métis claimants are indexed in volume 1483; children of Métis heads of family in volume 1505; and Métis heads of family in volume 1507.

Dates

June 1875 to March 1876

Authorities

Orders-in-Council: P.C. 874, 25 April, 1871; P.C. 14, 15 April, 1872; P.C. 36, 3 April, 1873; P.C. 406, 26 April, 1875; P.C. 449, 5 May, 1875; P.C. 128 1/2, 23 March, 1876; P.C. 85, 20 April, 1876; P.C. 142, 7 September, 1876; and P.C. 320, 25 February, 1881.

Statutes: 33 Vic., c. 3, 1871; 36 Vic., c. 38, 1873; 37 Vic., c. 20, 1874
Manitoba Supplementary Commission
Orders-in-Council: P.C. 810, 20 April, 1885; P.C. 1075, 21 May, 1887; P.C. 2905,
28 December, 1889; and P.C. 2408, 31 October, 1890.

Members

John M. Machar and Matthew Ryan (P.C. 449, 5 May, 1875); Amédée E. Forget and H.S. Goodhue, secretaries (P.C. 604, 14 June, 1875). Matthew Ryan was later appointed to take evidence of Métis claimants who had removed to the North-West Territories previous to the sittings of the Manitoba Commissions (O.C. 14 June, 1876).

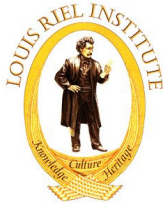
Reports

The final report was partially summarized in Order-in-Council, P.C. 128 1/2, 23 March, 1876; also see RG 15, Series D II 3, vol. 195, file HB 4484 "Copy of return showing number of cases reported by Commissioner M. Ryan, [January 1876]." This report summarizes the total number of cases investigated by the Commission in each Parish; there is no attached correspondence.

Awards

A total of 10,213 claims were investigated by the Commission (including supplementary claims under P.C. 810, 20 April, 1885); 1,448,160 acres in land scrip and \$748,060 in money scrip were awarded.

Source: <http://www.collectionscanada.gc.ca/metis-scrip/005005-3100-e.html>



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