Appendix 5B: Special Sources of Métis Nation Rights*

Appendix 5A described several general sources for the rights of all Métis: Aboriginal and treaty rights (confirmed by section 35 of the Constitution Act, 1982); the Crown's fiduciary obligation to Aboriginal peoples; the Charter and Bill of Rights and so on. The people of the Métis Nation are fully entitled to rely on all those sources. This appendix outlines three additional sources of Métis rights that are applicable exclusively to the Métis Nation.

The omission of Hudson's Bay Company (HBC) lands from the Royal Proclamation of 1763 was offset by an imperial order in council dated 23 June 1870 that transferred those lands to Canada in accordance with section 146 of the Constitution Act, 1867. The order in council was known as the Rupert's Land and North-Western Territory Order, 1870. When HBC surrendered the territory to the British Crown, the Crown agreed to the terms by which Canada proposed to govern it and conveyed it to Canada subject to certain conditions. One condition of the conveyance stated in the order in council was 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.[1]

Section 146 gives this obligation constitutional authority by stating that such conditions have the same effect as if enacted by the British Parliament. While much of the discussion concerning Métis Nation rights hinges on the interpretation and implementation of the provisions of the Manitoba Act, 1870 and the Dominion Lands Act, it is also important to understand the legal underpinnings of those acts, and particularly the order in council that brought the territory of the Métis Nation into Confederation.

1. The Rupert's Land and North-Western Territory Order, 1870

It was pointed out in Appendix 5A that the Royal Proclamation of 1763, which contained one of the earliest formal acknowledgements of Aboriginal

rights, probably did not apply directly to the Métis Nation homeland. That conclusion is not of great legal significance, however, because the common law also embodied such an acknowledgement, and an order in council issued by imperial authorities in 1870 concerning Rupert's Land was to similar effect. We examine that order in council in this section.

Section 146 of the Constitution Act, 1867 provided for the admission of other colonies into the union:

It shall be lawful…to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada, to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act…as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

The first piece of legislation enacted in the process of admitting Rupert's Land was An Act for enabling Her Majesty to accept a Surrender upon Terms of the Lands, Privileges and Rights of The Governor and Company of Adventurers of England Trading Into Hudson's Bay, and for Admitting the same into the Dominion of Canada of 31 July 1868, known by its short title as Rupert's Land Act, 1868.[2] By this act, the "whole of the Lands and Territories held or claimed to be held by the said Governor and Company" could be declared part of Canada by order in council as provided in section 146 of the Constitution Act, 1867.

The second piece of legislation, assented to on 22 June 1869, was An Act for the temporary Government of Rupert's Land Act, 1869.[3] This act provided for admitting Rupert's Land and the North-Western Territory into the Dominion of Canada and stated that when united and admitted they would be known as the North-West Territories. This act was expected to remain in force until the end of the next session of Parliament.

The third piece of legislation was the Manitoba Act, 1870 assented to 12 May 1870. This act provided for the creation of the province of Manitoba upon the admission of Rupert's Land and the North-Western Territory into the Dominion of Canada as provided for by section 146. By section 30, all ungranted or waste lands in the province would be vested in the Crown and

administered by the Government of Canada, subject to “the conditions and stipulations contained in the agreement for the surrender of Rupert’s Land by the Hudson’s Bay Company to Her Majesty”. Section 31 of the act is the subject of detailed analysis later. Sections 35 and 36 are also relevant:

35. And with respect to such portion of Rupert’s Land and the North-Western Territory, as is not included in the Province of Manitoba, it is hereby enacted, that the Lieutenant-Governor of the said Province shall be appointed, by the Commission under the Great Seal of Canada, to be the Lieutenant-Governor of the same, under the name of the North-West Territories, and subject to the provisions of the Act in the next section mentioned.

36. Except as hereinbefore is enacted and provided, the Act of the Parliament of Canada, passed in the now last Session thereof, and entitled, “An Act for the Temporary Government of Rupert’s Land, and the North-Western Territory when united with Canada,” is hereby re-enacted, extended and continued in force until the first day of January, 1871, and until the end of the Session of Parliament then next succeeding.

In the following month, on 23 June 1870, the Rupert’s Land and North-Western Territory Order was issued. By this order, the Northwest Territories was admitted and became part of the Dominion of Canada as of 15 July 1870. As provided in the Manitoba Act, the province of Manitoba was carved from the area on the same date.

As can be seen from section 146, quoted earlier, the order has constitutional status. It is now part of the constitution as a schedule to the Constitution Act, 1982 entitled Rupert’s Land and North-Western Territory Order. The order contains a reference to three schedules, the first being an address from the Senate and House of Commons to the Queen.[4] The second schedule contains resolutions, memos and a second address from the House of Commons and Senate to the Queen. The third schedule contains the deed of surrender from the Hudson’s Bay Company to the Queen.

The first schedule provides the terms and conditions for the admission of the North-Western Territory:

And furthermore, 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.

With respect to the admission of Rupert's Land, the following reference appears in the main body of the order, although the exact wording is contained in the third schedule, the surrender:

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

The second address, which provides for the admission of Rupert's Land, was adopted by the House of Commons on 29 May 1869 and the Senate on 31 May 1869. The following is an excerpt from a memorandum in that address:

Upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer, and we authorize and empower the Governor in Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement.

Because of the different provisions for admitting Rupert's Land and the North-Western Territory, it may be necessary to ascertain the exact borders of the respective territories. In any event, the order covered a vast expanse of territory and had direct application to substantially the whole of the Métis Nation territory.

The 1870 condition was somewhat less sweeping than the provisions concerning Aboriginal peoples in the Royal Proclamation of 1763, in that it did not directly acknowledge Aboriginal title to ungranted and unpurchased lands and stipulated only that compensation be considered and settled for lands required for purposes of settlement.[5] The condition was not insignificant, however, for it provided the impetus for the subsequent series

of western treaty negotiation and made clear that the obligation it created to deal with compensation claims was a pressing one, taking effect upon the transference of the territories. Its acknowledgement that “equitable principles” govern the Crown’s relations with “aborigines” was also important, as will be seen when the fiduciary duty of the Crown is discussed.

It is not absolutely clear whether the 1870 condition was intended to apply to Métis people, but it probably was. They were likely considered to be included in the term ‘Indian tribes’ by the British authorities who imposed the condition. Those same authorities simultaneously approved the draft Manitoba Act, which stated that the grant of 1.4 million acres for the benefit of the families of the half-breed residents was to be made toward the extinguishment of the Indian title. ‘Half-breed’ was rendered as ‘Métis’ in the French version of the act. That leaves little doubt that Métis people were considered to have a claim to Indian title. While the language of the condition in the order in council dates from 1867, when the original Canadian address to the Crown concerning western lands was made, the Manitoba Act had been drafted by the time the order in council was finally issued. Probably, therefore, Métis people were considered ‘Indians’ in both documents. This would mean that section 31 and the ‘Indian tribes’ condition in the order in council were considered to constitute two distinct parts of a package deal relating to Aboriginal rights. To put it another way, section 31 was likely regarded as only partial fulfilment of the more general obligation recognized by the order in council, leaving the Métis not covered by section 31 (those who lived outside the small area designated as Manitoba) to be dealt with in some other way (eventually by the Dominion Lands Act).[6]

The importance of these exclusions from and uncertainties about the Royal Proclamation and order in council is not very great, because the Supreme Court of Canada has confirmed the legal status of Aboriginal rights and has stated that they do not depend upon the royal ordinances. They derive primarily, as Chief Justice Dickson put it in Guerin, “from the Indians’ historic occupation and possession of their tribal lands”.[7] What is probably more important than the role of these ordinances in establishing the existence of Aboriginal rights is the fact that the 1763 proclamation and the 1870 order in council both confirm the obligation of the Crown to deal (as the order in council put it) uniformly with ‘aborigines’ (a term that was surely

intended in an empire-wide context to apply to a wider group than Indians) “in conformity with equitable principles”. The significance of this acknowledgement relates to the Crown’s fiduciary duty to Aboriginal peoples.

2. The Manitoba Act, 1870

Manitoba’s constitution, the Manitoba Act, 1870 (enacted originally by the Parliament of Canada and later confirmed by the British Parliament in the Constitution Act, 1871), contains guarantees of Métis rights within the limited geographic area of the original ‘postage stamp province’ of Manitoba. Only section 31 deals explicitly with Métis (“half-breed” in the English version) people.[8]

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.

Section 32 also contains guarantees that were important to 1870 Métis residents of Manitoba and their descendants. It was designed to ensure that those who were already in possession of land before Manitoba became a province would continue to own that land, even if their rights had not been formally acknowledged by the rudimentary hit-or-miss landholding system maintained by the Hudson’s Bay Company prior to 1870.[9]

32. For the quieting of titles, and assuring to the settlers in the Province the peaceable possession of the lands now held by them, it is enacted as follows:-

(1) All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

(2) All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(3) 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.

(4) 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.

(5) The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor General in Council, to make all such provisions for ascertaining and adjusting, on fair and equitable terms, the rights of Common, and the rights of cutting Hay held and enjoyed by the settlers in the Province, and for the commutation of the same by grants of land from the Crown.

Although these section 32 guarantees applied to all old settlers, regardless of ancestry, they played a major role in the saga of Métis rights in Manitoba for several reasons. In the first place, the settled population of Manitoba in 1870 (approximately 12,000) was predominantly Métis (approximately 10,000). Second, the land referred to in section 32 was the most valuable in the province, consisting as it did chiefly of river lots, which were valued for their wooded areas, the richness of their soil, their easy access to water, fish and transportation, and their proximity to other settlers. Finally, in the years following 1870, there appeared to be discrimination favouring non-Métis over Métis claimants by government lands administrators, the Métis claims being less successful.

The explicit words of sections 31 and 32 did not embody the complete agreement about land rights reached between the Red River and Canadian negotiators. Thomas Flanagan's 1991 book, Metis Lands in Manitoba, which generally defends the government of Canada's actions and is sceptical of claims that the Manitoba Métis were badly treated, acknowledges that fact.[10] When the Red River negotiators, headed by Abbé Ritchot, protested the fact that the language of the legislation did not encompass all the agreements reached with the Canadian negotiators, John A. Macdonald and George-Étienne Cartier, they were verbally assured that "it will be the same thing".

Although the latter quotation comes, along with numerous references to further assurances, from Ritchot's diary, which may not be a wholly objective source, the subsequent conduct of the Canadian negotiators, Cartier especially, provides strong corroboration of Ritchot's version. Cartier and other federal authorities held many meetings with Ritchot in an obvious attempt to win his confidence, and important verbal promises were made in the course of those meetings. On 18 May 1870, Ritchot wrote to Cartier reminding him of an unfulfilled promise by Macdonald and himself to have an order in council passed to supplement the Manitoba Act with verbal agreements not embodied in the act. The verbal agreements expressly mentioned in the Ritchot letter included (1) allowing Manitoba authorities to select and divide the children's allotment; (2) appointing a committee for that purpose "composed of men whom we ourselves were to propose", including, perhaps, the Catholic and Anglican bishops; and (3) confirming, free of charge, the land titles of settlers outside the compass of the Selkirk Treaty.

The next day Cartier and the governor general met with Ritchot and promised a letter confirming the verbal agreements. After further prompting by Ritchot, Cartier produced a letter a few days later with two postscripts insisted on by Ritchot who was not content with Cartier's vague initial wording. The letter and postscripts included the following assurances:

• No payment would be required for confirmation of the land titles of settlers outside the compass of the Selkirk Treaty.

• The governor general confirmed that "the liberal policy which the Government proposed to follow in relation to the persons for whom you are

interesting yourself is correct, and is that which ought to be adopted".

• "You may at any time make use of this letter…in any explanation you may have to give connected with the object for which you were sent as delegates to the Canadian Government."

• "As to the [1.4 million] acres of land reserved…for the benefit of families of half-breed residents, the regulations to be established from time to time…respecting the reserve, will be of a nature to meet the wishes of the half-breed residents, and to guarantee, in the most effectual and equitable manner, the division of that extent of land amongst the children of heads of families of the half-breeds…".

It will be noted that of the three verbal assurances mentioned expressly in Ritchot's letter of 18 May, only the confirmation of land titles was stated explicitly. The acknowledgements that Ritchot was correct about the policy the Government proposed to follow, that the regulations would meet the wishes of the 'half-breed' residents, and that Ritchot could make use of the letter in any explanation he might have to give understandably led Ritchot to believe that all the verbal assurances would be honoured. As a result, he urged the legislative assembly of Assiniboia (the legislative arm of Riel's provisional government) to ratify the Manitoba Act, assuring members that "whenever there is a doubt as to the meaning of the Act…it is to be interpreted in our favour". Flanagan concludes:

Thus, from the very beginning, the land provisions of the Manitoba Act as understood by the Metis differed from the wording of the statute as passed by Parliament….Ritchot returned to Red River and became the oracle through whom the Manitoba Act was interpreted there. Thus, his belief that the agreement with Canada included not only the act but also Cartier's letter and verbal reassurances, almost as if they were supplementary protocols of a treaty, exercised a powerful influence.

Flanagan emphasizes that Ritchot was only one of three negotiators from Red River and that another of the three, Judge John Black, seemed to consider the text of the Manitoba Act sufficient. Black did not play a prominent role in the negotiations, however, especially in the late stages. His detachment was hardly surprising given that he had ceased to reside at Red River and was in Ottawa on his way home to retirement in Scotland. It

was Ritchot who constantly goaded Cartier for written confirmation of the verbal agreements, and it was Ritchot whom Cartier authorized to “make use of this letter…in any explanation you may have to give” to the people of Red River. Ritchot’s belief that the agreement included both the words of the statute and the supplementary assurances made and alluded to in Cartier’s letter was not a product of his imagination; it was a view the government of Canada had authorized him to transmit to the people of Red River.

The promises made to the Manitoba Métis in the Manitoba Act were never adequately fulfilled. The extent to which performance fell short of promise is examined in Appendix 5C.

Sections 31 and 32 of the Manitoba Act and the associated verbal promises were by no means the only concessions won from the government of Canada by the Red River negotiators in 1870. The entire act, granting full-fledged provincehood to an area on which federal authorities had initially wanted to bestow no more than territorial status for the foreseeable future, constituted a brilliant victory for the western emissaries. That general victory had relatively little special significance for Métis people as such, but they did value two guarantees very highly because of their importance to the preservation of the Métis culture: the right under section 22 to maintain denominational schools (most Manitoba Métis being Roman Catholics) and the right under section 23 to have the French language (which most Manitoba Métis spoke) used in the courts, the laws and the legislature. The subsequent erosion of these educational and linguistic rights was a far from minor component of what many consider to be the betrayal of Manitoba’s Métis people.[11] Sections 22 and 23 are not dealt with here, however, because, like the act as a whole, they were enacted for the benefit of all denominational school supporters and all francophones; and, unlike section 32, they do not appear to have been applied in a manner that was discriminatory to Métis people.

3. The Dominion Lands Act

The Dominion Lands Act, providing for the administration of public lands in Manitoba and non-provincial territories, was first enacted in 1872 and was amended from time to time after that. The 1879 amendments were particularly important because they contained acknowledgements of Indian

title and of claims to that title by ‘half-breeds’, as well as references to satisfying prior settlement claims. Although these references were couched more cautiously than the equivalent provisions in the Manitoba Act and never enjoyed the constitutional status bestowed on the Manitoba provisions by the Constitution Act, 1871, they were the basis for an important chapter in the story of Métis rights in western Canada.

The general recognition and protection of Aboriginal rights in the Dominion Lands Act was expressed in section 42:

None of the provisions of this Act respecting the settlement of Agricultural lands, or the lease of Timber lands, or the purchase and sale of Mineral lands, shall be held to apply to territory the Indian title to which shall not at the time have been extinguished.

Assuming that Indian title included Métis title, as it did under the Manitoba Act as well as under a later provision of the Dominion Lands Act itself (section 125(e), added in 1879), this seems to have created a statutory obligation to postpone homesteading by newcomers to the west until Métis (and other Aboriginal) title was extinguished. That obligation was honoured more in the breach than in the observance.

As a method of extinguishing Métis title outside Manitoba, section 125(e) of the Dominion Lands Act established an approximation of section 31 of the Manitoba Act, but with major differences. Section 125(e) empowered (but did not directly obligate) the federal cabinet 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 the limits of Manitoba, on the fifteenth day of July [1870], by granting lands to such persons, to such extent and on such terms and conditions, as may be deemed expedient.

In addition to its lack of constitutional authority and obligatory language, this measure differed from section 31 in that no quantity of land was specified, and grants were not restricted to children as they were in section 31 but were available to any “half-breed” resident of the territory the cabinet found it “expedient” to favour.

The territorial equivalent of section 32 (confirming prior settlement rights)

was section 125(f) of the Dominion Lands Act, 1879, which empowered the federal cabinet to investigate and adjust claims preferred to Dominion land situated outside of the Province of Manitoba, alleged to have been taken up and settled on previous to the fifteenth day of July [1870], and to grant to persons satisfactorily establishing undisturbed occupation of any such lands, prior to, and being by themselves or their servants, tenants or agents, or those through whom they claim, in actual peaceable possession thereof at the said date, so much land in connection with and in satisfaction of such claims, as may be considered fair and reasonable.

Again, there were important contrasts between this provision and its Manitoba Act counterpart. Besides those previously noted, this measure required both occupation before 15 July 1870 and actual possession on that date. It also vested absolute discretion in the cabinet to determine how much land was fair and reasonable to satisfy each claim.

Implementation of these Métis-oriented provisions of the Dominion Lands Act and related legislation was, like the Manitoba Act guarantees, the subject of considerable controversy (see Appendix 5C).

4. The Constitution Act, 1930

When Manitoba, Saskatchewan and Alberta became provinces, ownership of their ungranted public lands was retained by the Crown in right of Canada. This differed from other provinces, where the provincial Crown owned such lands from the beginning. The Red River delegates who negotiated Manitoba's entry into Confederation with Macdonald and Cartier in 1870 had argued for provincial ownership but had been unsuccessful. This anomaly remained a point of bitter contention between federal authorities and the prairie provinces until 1930, when the government of Canada finally agreed to transfer what remained of prairie public lands to the provinces. This agreement was recorded in three natural resource transfer agreements, one for each province, which were constitutionalized by the Constitution Act, 1930.

Sections 10, 11 and 12 of the Saskatchewan and Alberta agreements (11, 12 and 13 for Manitoba) — which form a distinct part of the agreements, entitled Indian Reserves — include important undertakings by the provinces concerning the rights of Aboriginal persons in relation to the

public land surrendered to the provinces by the agreements.

The first of these commitments, set out in section 10 (section 11 for Manitoba), makes available from unoccupied Crown lands further areas as agreed by federal and provincial authorities to be “necessary to enable Canada to fulfil its obligations under the treaties with the Indians of the Province”. This provision does not affect Métis people except to the extent that there are prairie treaties expressly involving Métis people. If the agreements reached by representatives of the government of Canada and residents of the Red River settlement in relation to the Manitoba Act, 1870 are considered evidence of a treaty (a proposition discussed in Appendix 5A), there may be a basis for applying this section to Manitoba Métis to enable the federal government to meet unfulfilled obligations under the Manitoba Act. Otherwise, section 10 is not of relevance to the Métis Nation.

Of unquestionable significance to Métis rights, however, is section 12 (section 13 for Manitoba) of the agreements, which states:

In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Central to the impact on Métis rights of this assurance of the right to hunt, trap and fish for food is whether the word Indians was intended to include Métis persons. Regrettably, there is not yet any conclusive judicial answer to that question, and the few authorities available point in contradictory directions. There is strong reason to believe, however, that Métis people are included. Those authorities are examined more fully in Appendix 5C in the section on judicial decisions.

It is possible, too, that sections 1 and 2 of the agreements have some significance for Métis rights. Section 1 transfers the lands in question from the federal Crown to the provincial Crown, “subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the

same”. Section 2 obliges the provinces to carry out the terms of every existing contract of purchase or lease of Crown land or mineral interests and “any other arrangement whereby any person has become entitled to any interest therein as against the Crown”. Moreover, the provinces agreed in section 2 “not to affect or alter any term of any such contract or other arrangement by legislation or otherwise”, except by consent or by laws of general application. Unextinguished Aboriginal rights in relation to Crown land might well be considered an interest in land, and the Crown’s fiduciary responsibilities might be considered a trust (even though the Supreme Court of Canada held in Guerin that they do not create a trust in the strict sense of the term). If so, the Constitution Act, 1930 imposed those responsibilities on the prairie provinces and gave them constitutional force long before section 35 came into existence.[12] Whether this relieved the government of Canada of its former responsibilities is not clear.

5. Conclusion

Métis entitlements do not end with legal rights. As observed earlier, politically negotiated solutions are generally preferable to judicially imposed ones, and it is clear that the Métis Nation is prepared organizationally to enter into immediate negotiations. Their moral entitlement to engage in that process stems from their inherent right of self-government as an autonomous Aboriginal people. Their entitlement to a fair settlement derives from both the multitude of sources already discussed and the fact that, as illustrated in Appendix 5C, grievous wrongs have been inflicted on the people of the Métis Nation since 1869, and satisfactory redress for those wrongs has never been provided.

Notes:

***** This appendix was prepared for the Commission by Dale Gibson, Belzberg Fellow of Constitutional Studies, University of Alberta, and Clem Chartier, consultant, of Saskatoon.

1 Rupert’s Land and North-Western Territory Order (1870), reprinted in R.S.C. 1985, Appendix II, No. 9.

2 S.C. 1868, c.105.

3 S.C. 1869, c.3.

4 Adopted by the House of Commons on 16 December 1867 and by the Senate on 17 December 1867.

5 But see the generous interpretation suggested in Re Paulette (1973), 42 D.L.R. (3d) 8 (N.W.T.S.C.).

6 For a discussion of who were considered residents of Manitoba in 1870, see Paul L.A.H. Chartrand, Manitoba's Métis Settlement Scheme of 1870 (Saskatoon: Native Law Centre, University of Saskatchewan, 1991), p. 40 and following.

7 Guerin v. The Queen, [1984] 2 S.C.R. 335 at 376.

8 See Chartrand, Manitoba's Métis Settlement Scheme (cited in note 6); "Aboriginal Rights: The Dispossession of the Métis" (1991) 29 Osgoode Hall L.J. 457; and "The Obligation to Set Aside and Secure Lands for the Half-Breed Population Pursuant to section 31 of the Manitoba Act, 1870", LL.M. thesis, University of Saskatchewan, 1988; D.N. Sprague, Canada and the Métis, 1869-1885 (Waterloo, Ontario: Wilfrid Laurier University Press, 1988); and Thomas Flanagan, Metis Lands in Manitoba (Calgary: University of Calgary Press, 1991). See also D.N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887" (1980) 10 Man. L.J. 415.

9 See Archer Martin, The Hudson's Bay Company's Land Tenures and the Occupation of Assiniboia by Lord Selkirk's Settlers, With a List of Grantees Under the Earl of the Company (London: William Clowes and Sons, 1898).

10 Flanagan (cited in note 8), p. 40 and following. The account in the next few paragraphs relies on Flanagan, pp. 40-47. For a fuller discussion of Flanagan's book, see Appendix 5C.

11 See Winnipeg, City of v. Barrett, [1892] 10 A.C. 445 (Man. Q.B.); Brophy

v. Manitoba (A.G.), [1895] 11 A.C. 202 (S.C.C.); Manitoba Language Reference, [1985] 1 S.C.R. 721 (S.C.C.).

12 See the discussion in Chartrand, Manitoba's Métis Settlement Scheme (cited in note 6), pp. 9-10.