

**TREATY RESEARCH REPORT
TREATY ONE AND TREATY TWO
(1871)**

**by
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HISTORICAL BACKGROUND

On July 1, 1867, the Dominion Canada came into existence. Under section 146 of the *British North America Act*, the constitution of the newly confederated nation, provision was made for the admission of Rupert's Land and the adjacent North West Territory to the Canadian Union. The acquisition of this territory was imperative if Canada was to become the transcontinental nation envisaged by the Fathers of Confederation.

The vast North West Territory was the domain of the great mercantile Hudson's Bay Company, which had been granted a charter in 1670 by King Charles II giving it exclusive trading rights, in the watershed of the rivers draining into Hudson Bay. By the middle of the nineteenth century, however, the Company's hold over its domain began to erode before the advance of North American settlement. The expanding American frontier to the south brought with it the doctrine of Manifest Destiny. The nascent threat that the Americans might annex Rupert's Land and the adjacent North West Territory served to renew Canadian interest and concern. The Chief Justice of Upper Canada voiced fears that unless something was done the territory would cease to be British.¹ In addition to the political concern were the commercial aspirations of Ontario, particularly Toronto, which wished to acquire the territory to expand its own hinterland.² These factors led to an increasingly vociferous demand within Canada for the annexation of the Hudson's Bay Company territory.

In 1857, a Select Committee of the British Parliament was formed to examine the status of the Hudson's Bay Company monopoly. After much deliberation, the Committee issued a final report recommending that the Red River and Saskatchewan district be ceded to Canada.³ Shortly thereafter, three-way negotiations between Britain, Upper Canada and the Company began.

The negotiations lasted from 1860 to 1869, with an interlude during the middle of the decade when Canadian politicians were occupied with the process of Confederation. The direction and attitude of the British government, however, was exemplified, not only

by section 146 of the *British North America Act*, but also by the *Rupert's Land Act*, enacted in 1868, which was an act "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 Bay "and for admitting the same into the Dominion of Canada."⁴ The following year, in July 1869, the Hudson's Bay Company sold its rights, privileges and lands to Canada for a cash indemnity of \$1,500,000 and retention of one-twentieth of the land.⁵

In anticipation of the acquisition, Canada enacted "An Act for the temporary government of Rupert's Land and the North-Western Territory when united with Canada". The legislation provided for the appointment of a Lieutenant Governor and Council to administer the affairs of the two territories, restyled North West Territories by the Act.⁶ The Minister of Public Works, the Honourable William McDougall, long an advocate of annexation, was commissioned as Lieutenant-Governor and was dispatched with a number of his administrative officers to Red River in September 1869.

While the Canadian government had provided itself with the legal authority to assume control over the North West Territories, it had done nothing to prepare or consult the inhabitants of the country about the forthcoming change in administration. Yet twelve years previously the explorer Stephen Hind had cautioned:

There is a strong and growing feeling among the few who have turned their attention to such matters, that in the event of an organic change occurring in the Government of the country, the 'native' or half-breed population should not be neglected or thrust on one side.⁷

The most contentious issued was the land question, and the Métis in particular were not assured by the actions of Canadian survey parties.⁸

Fearful that they were about to be dispossessed, the Métis organized a provisional government under the leadership of Louis Riel. When McDougall and his cohorts arrived at the border of the Red River colony, after journeying overland from St. Paul,

Minnesota, an armed party of Métis refused them entry. McDougall spent the month of December 1869 attempting to establish his authority, but he was finally forced to abandon the effort.

The government responded to the situation by organizing a military expedition to Red River to establish Canadian sovereignty – and to buy time to find a political solution. To ensure the unhindered passage of the expedition through north-western Ontario, an agent, Robert Pither, was sent to Fort Francis to obtain the neutrality of the local Saulteaux Indians. Pither had instructions “to establish and keep up such intercourse with the Indians who resort to that place as will ensure a continuance of friendly relations between them and the government.”⁹ In March 1870, Pither was notified that a special commissioner would be sent to treat with the Celts.¹⁰

The special commissioner, Wemyss M. Simpson, Member of Parliament for Algoma, arrived in June to conduct negotiations. Although Simpson was not successful in concluding a treaty, he did manage to get the Saulteaux to agree, in exchange for a few presents, to allow the troops to pass unmolested. The troops arrived in Red River on August 24, 1870, by which time the rebellion had collapsed and the rebels had dispersed.

In the meantime, the Canadian Parliament had passed the Manitoba Act, by which the Red River colony was constituted as the Province of Manitoba. The area remaining outside the boundaries of the province was given the status of a territory.¹¹ Adams G. Archibald was appointed Lieutenant Governor of Manitoba and the Northwest Territories.

Archibald arrived at his new post in September of 1870 with the following instructions from the Dominion government:

1. You will, with as little delay as possible, open communication with the Indian Bands occupying the country lying between Lake Superior and the Province of Manitoba, with a view to the establishment of such friendly relations as may

make the route from Thunder Bay to Fort Garry secure at all seasons of the year, and facilitate the settlement of such portion of the country as it may be practicable to improve.

2. You will also turn your attention promptly to the condition of the country outside the Province of Manitoba, on the North and West; and while assuring the Indians of your desire to establish friendly relations with them, you will ascertain and report to His Excellency the course you may think most advisable to pursue, whether by treaty or otherwise, for the removal of any obstructions that may be presented to the flow of the population into the fertile lands that lie between Manitoba and the Rocky Mountains.
3. You will also make a full report upon the state of the Indian Tribes now in the Territories, their numbers, wants and claims [and] the system heretofore pursued by the Hudson's Bay Company in dealing with them, accompanied by any suggestions you may desire to offer with reference to their protection, and the improvement of their condition.¹²

It was imperative, of course, for the Canadian government to treat with the Indians to ensure peaceful conditions for the eventual settlement of the prairies.

The Indians, like the Métis, were fearful of being dispossessed of their lands, to which they still held title; the Hudson's Bay Company Charter had never extinguished it. The only exception was in connection with Lord Selkirk's grant. Selkirk, the founder and proprietor of the Red River colony, signed a treaty with Chippewas and Crees in 1817, extinguishing their title to the lands within the colony.¹³

This treaty was, however, in dispute. Shortly after his arrival, Archibald met with a large delegation, headed by Chief Henry Prince, of Indians from the Indian mission at the mouth of the Red River. The Indians indicated that they wanted to sign a treaty and stated that they had never been paid for the lands supposedly surrendered to Lord Selkirk.¹⁴

The newly arrived Lieutenant Governor, not wishing to make commitments at this time, thanked the Indians for their loyalty during the recent rebellion but stated that because his government was not yet fully established he could not make treaty until the following spring.¹⁵ Archibald explained his reluctance in a letter to Secretary of State Joseph

Howe:

till the truth could be ascertained, it would be useless to enter on negotiations with any one tribe to obtain a cession of its claims when it might turn out that the same lands were claimed by a different tribe. The negotiations would then either prove abortive or entail upon us the payment of a double tribute for the extinguishment of claims for the same land Besides[,] a treaty with savages, to whom time is of no value, can only be made after much talk and great delay.¹⁶

The following spring the Indians began to press for a treaty. To back their demands, they posted a notice on the church door at Portage La Prairie warning settlers to stay off their lands until such time as a treaty was signed.¹⁷ The government, however, had already taken steps to initiate negotiations. Lieutenant-Governor Archibald was informed by Secretary of State Howe that Wemyss Simpson had been appointed as Indian Commissioner to treat with the Indians between Thunder Bay and Fort Garry.¹⁸

In his instructions, Howe gave Simpson a large degree of discretionary power:

The powers entrusted to you are large, and they should be used with constant reference to the responsibility which the Government owes to Parliament and to the Country for the judicious and economical expenditure of the funds and supplies entrusted to your charge. It should, therefore, be your endeavour to secure the cession of the lands upon terms as favourable as possible to the Government, not going as far as the maximum sum hereafter named unless it be found impossible to obtain the object for a less amount.¹⁹

Simpson was authorized to offer a maximum of twelve dollars per year for a family of five. He could also add small increments for larger families.²⁰ Howe cautioned Simpson, however, that "in fixing this amount, you must not lose sight of the fact that it cannot fail to have an important bearing on the arrangements to be made subsequently with the tribes further West."²¹ Howe noted further that in Ontario and Québec the highest price paid for land was four dollars per year for a family of five, the implication being that Simpson was to keep the cost as low as possible.²²

Simpson, accompanied by Dawson, arrived at Fort Garry on July 16, 1871, after an

unsuccessful bid to sign a treaty with the Indians at Lake-of-the-Woods. He and Dawson met immediately with Lieutenant-Governor Archibald and James McKay, a member of the Executive Council of Manitoba and a Half-breed with extensive experience among the Indians, to plot a course of action. The four men concluded that it would be best to extinguish Indian title to the lands within the Province, to much of the timber ground to the east and north, as well as to a large tract of agricultural land west of the Portage.²³ It was also decided to sign two separate treaties to avoid delays in gathering all the Indians in one place as well as to limit the cost of feeding them.²⁴ Furthermore, the Indians had promised that they would be treated with in their own localities and Archibald felt that it was important “to keep a promise even in matter where a deviation would imply no breach of faith.”²⁵ The Commission recognized the importance of the treaty and the precedent it would set, for Archibald reported to Howe:

I look upon the proceedings, we are now initiating, as important in their bearing upon our relation to the Indians of the whole continent. In fact the terms we now agree upon will probably shape the arrangements we shall have to make with all the Indians between the Red River and the Rocky Mountains. It will therefore be well to neglect nothing that is within our power to enable us to start fairly with the negotiations.²⁶

On July 18, 1871, Simpson issued a proclamation inviting the Indians to meet with him at Fort Garry on the 25th. Lieutenant Governor Archibald issued his own proclamation forbidding the sale or supply of liquor to the Indians.²⁷ To add circumstance to the negotiations, Archibald asked Major Irvine of the garrison to provide some soldiers, commenting that “Military display has always a great effect on savages, and the presence, even of a few troops, will have a good tendency.”²⁸ A large supply of food was also provided. Thus, the logistics completed, Commissioner Simpson and Lieutenant-Governor Archibald prepared to negotiate the first Indian treaty of the Dominion of Canada.

Simpson and Archibald arrived for the meeting at Fort Garry on July 24, but the negotiations did not commence until July 27, when all the Indians had arrived. In his opening remarks, Archibald told the assembly that the Queen wanted to deal fairly and

justly with her Indian subjects. Commenting favourably on the agricultural developments in a nearby Indian village, Archibald expressed the Queen's desire that the Indians adopt farming as a way of life, though he stated they would not be coerced into doing so.²⁹ He then attempted to explain the concept of reserves, stating:

Your Great Mother, therefore, will lay aside for you 'lots' of land to be used by you and your children forever. She will not allow the white man to intrude upon these lots. She will make rules to keep them for you, so that as long as the sun shall shine, there shall be no Indian who has not a place that he can call his home, where he can go and pitch his camp, or if he chooses, build his house and till his land.³⁰

After stating that the Queen could do not more for them than she had done for the Indians in the east, Archibald went on to explain the position with regard to the traditional Indian occupation of hunting:

When you have made your treaty you will still be free to hunt over much of the land included in the treaty. Much of it is rocky and unfit for cultivation, much of it that is wooded is beyond the places where the white man will require to go at all even for some time to come. Till these lands are needed for use you will be free to hunt over them, and make all the use of them which you have made in the past. But when lands are needed to be tilled or occupied, you must not go on them any more. There will still be plenty of land that is neither tilled nor occupied where you can go and roam and hunt as you have always done, and if you wish to farm you will go to your own reserve where you will find a place ready for you to live on and cultivate.³¹

Archibald then introduced Commissioner Simpson and asked the Indians to select chiefs to represent them. He took this step to prevent the Indians from denying the validity of the treaty on the basis that the chiefs had no authority to sign, as had occurred with the Selkirk Treaty. Simpson also supported this measure because he doubted whether some of the chiefs had the confidence of their bands.³²

The Indians retired and after two days of deliberation returned with the chiefs they had selected to represent them. The Indians stated that there was a 'dark cloud' that had to be removed before they could begin negotiations. Upon inquiry Archibald discovered

the 'dark cloud' referred to four Swampy Crees who were in jail, having been convicted of breaching a contract with the Hudson's Bay Company. As a gesture of good will, which he represented as a favour not to be repeated, he ordered their release.³³ The gesture apparently had a good effect on the Indians.

The following day the Indians returned to present their demands. It is clear that the Indians did not comprehend the concept of reserves and what the government was prepared to give in terms of land. According to Simpson, the demands were exorbitant and amounted to reserves in proportion to three townships per Indian.³⁴ This was completely unacceptable to the Commissioners and went far beyond what they had envisaged. As Archibald reported to Howe:

In defining the limits of their reserves, so far as we could see, they wished to have about two-thirds of the Province. We heard them out, and then told them it was quite clear that they had entirely misunderstood the meaning and intention of reserves. We explained the object of these in something like the language of the memorandum enclosed, and then told them it was of no use for them to entertain any such ideas, which were entirely out of the question. We told them that whether they wished it or not, immigrants would come in and fill up the country, that every year from this one twice as many in number as their whole people there assembled would pour into the Province, and in a little while would spread all over it, and that now was the time for them to come to an arrangement that would secure homes and annuities for themselves and their children.

We told them that what we proposed to allow them was an extent of one hundred and sixty acres for each family of five, or in that proportion; that they might have their land where they chose, not interfering with existing occupants; that we should allow an annuity of twelve dollars for every family of five, or in that proportion per head. We requested them to think over these propositions till Monday morning.

If they thought it better to have no treaty at all, they might do without one, but they must make up their minds; if there was to be a treaty, it must be on a basis like that offered.³⁵

The response of Commissioner Simpson and Lieutenant-Governor Archibald was tantamount to an ultimatum; it left the Indians no choice but to accept the treaty on government terms or do without.³⁶ After a couple of days' deliberation, the Indians

accepted the government offer.

The Treaty was signed on August 3, 1871. Signing on behalf of the government were Lieutenant-Governor Archibald, Commissioner Simpson, Major Irvine and eight witnesses. The signatories for the Chippewas and Crees were Red Eagle (Mis-koo-ki-new or Henry Prince); Bird Forever (Ka-ke-ka-penais or William Pennefather); Flying Down Bird (Na-sha-ke-penais); Centre of Birds Tail (Na-na-wa-nanan); Flyingground (Ke-we-tay-ash); Whippoorwill (Wa-ko-wush); and Yellow Quill (Os-za-we-kwun). The Treaty was formally ratified by the Governor General in Council on September 12, 1871.

Upon the completion of Treaty One, Commissioner Simpson, accompanied by Lieutenant-Governor Archibald, the Honourable James McKay and Molyneux St. John, Clerk of the Legislative Assembly, journeyed to Manitoba Post to complete the treaty signings. This time the negotiations went quite smoothly. As Simpson reported:

....on my speaking to the leading men of the bands assembled, it was quite evident that the Indians on this part had no special demands to make, but having a knowledge of the former treaty, desired to be dealt with in the same manner and on the same terms as those adopted by the Indians of the Province of Manitoba. The negotiations with these bands therefore occupied little time, and on the 21st August 1871, a treaty was concluded by which a tract of country three times as large as the Province of Manitoba was surrendered by the Indians to the Crown.³⁷

Signing on behalf of the government were Lieutenant-Governor Archibald, Commissioner Simpson, James McKay, Molyneux St. John and seven witnesses. The signatories for the Chippewas were Mekis, Francois (Broken Fingers), Ma-sah-kee-yash and Richard Woodhouse and Sou-sonce. Treaty Two was ratified by the Governor General in Council on November 25, 1871.

Notes

¹ George F.G. Stanley, *The Birth of Western Canada: A History of the Riel Rebellions* (Toronto: University of Toronto Press, 1961), p. 24. He was testifying before the Select Committee of the British Parliament.

- ² W.L. Morton, *Manitoba: A History* (Toronto: University of Toronto Press, 1957), p. 94. See also Stanley, pp. 25-27.
- ³ Stanley, p. 22.
- ⁴ Maurice Ollivier, *British North America Acts and Selected Statutes* (Ottawa: Queen's Printer, 1961), p. 107.
- ⁵ William L. Langer, ed., *An Encyclopaedia of World History* (Cambridge, Massachusetts: Houghton Mifflin Company, 1952), p. 796.
- ⁶ Ollivier, p. 193.
- ⁷ Stanley, p. 57.
- ⁸ Stanley, p. 56.
- ⁹ Provincial Archives of Manitoba (PAM), MG12, AI, Adams George Archibald Correspondence and Papers, 1871-72, S.J. Dawson to Robert Pether [sic], 6 January 1870.
- ¹⁰ PAM, MG12, AI, No. 143, Secretary of State Howe to Robert Pether [sic], 11 March 1870.
- ¹¹ Ollivier, p. 195.
- ¹² Canada, *Sessional Papers* (1870), No. 20.
- ¹³ Morton, p.105.
- ¹⁴ PAM, MG12, AI, Notes of Interview between the Lieutenant-Governor of Manitoba and Henry Prince, Chief of the Sauteaux, 13 September 1870.
- ¹⁵ *Ibid.*
- ¹⁶ Canada, Public Archives, RG10, Vol. 448, Dispatch No. 39, Lieutenant-Governor Archibald to Secretary of State Howe, 12 November 1870.
- ¹⁷ Canada, Department of Indian Affairs, *Annual Report 1871*, Lieutenant-Governor Archibald to Secretary of State Howe, 19 July 1871, p. 10 (hereafter cited as DIA 1871).
- ¹⁸ DIA 1871, Secretary of State Howe to Lieutenant-Governor Archibald, 28 April 1871, p. 5.
- ¹⁹ DIA 1871, Secretary of State Howe to Commissioner Simpson, 6 May 1871, p. 6.
- ²⁰ *Ibid.*
- ²¹ *Ibid.*
- ²² *Ibid.*
- ²³ DIA 1871, Lieutenant-Governor Archibald to Secretary of State Howe, 19 July 1871, p. 11.
- ²⁴ *Ibid.*
- ²⁵ *Ibid.*

- ²⁶. DIA 1871, p. 12.
- ²⁷. Alexander Morris, *The Treaties of Canada with the Indians* (Toronto: 1880; reprinted 1971, Coles Publishing Company), p. 26.
- ²⁸. DIA 1871, Lieutenant-Governor Archibald to Secretary of State Howe, 29 July, 1871, p. 14. See also Morris, Commissioner Simpson to Secretary of State Howe, 3 November 1871, p. 38.
- ²⁹. DIA 1871, Lieutenant-Governor Archibald to Secretary of State Howe, 29 July, 1871, p. 14. See also Morris, Commissioner Simpson to Secretary of State Howe, 3 November 1871, p. 38.
- ³⁰. Morris, pp. 28-29.
- ³¹. *Ibid.*
- ³². DIA 1871, Lieutenant-Governor Archibald to Secretary of State Howe, 29 July, 1871, p. 14. See also Morris, Commissioner Simpson to Secretary of State Howe, 3 November 1871, p. 38.
- ³³. DIA 1871, pp. 14-15.
- ³⁴. Morris, Commissioner Simpson to Secretary of State Howe. 3 November 1871, p. 38.
- ³⁵. DIA 1871, p. 15.
- ³⁶. John Leonard Taylor. "The Development of Indian Policy for the Canadian North-West, 1869-1879" (Ph. D. Thesis, Queen's University, 1975), p. 59.
- ³⁷. Morris, pp. 41-42.

TREATY TERMS AND CONDITIONS

Under the terms of the Treaties each band received a reserve large enough in area to provide 160 acres for each family of five (less for small families, more for large families). In Treaty One, the band of Yellow Quill received a further 25 square miles of land to be laid out around the reserve.

The government agreed to maintain a school on each reserve whenever the Indians wanted it, and also prohibited the introduction or sale of liquor on the reserves.

Each Indian man, woman and child was given a gratuity of three dollars and an annuity of three dollars, or a total of fifteen dollars per family. The annuity was to be paid in goods, but could also be paid in cash if it was deemed to be in the Indians' interest. The government further promised that an accurate census of all the Indians inhabiting the treaty areas would be undertaken as soon as possible.

It is interesting to note that there was no provision for hunting or fishing, although Lieutenant-Governor Archibald had made a verbal commitment to this effect in his opening address.

For their part, the Chippewas and Swampy Crees were required to cede, release, surrender and yield the lands as defined by the treaty, to agree to maintain the peace, and to agree not to molest any of Her Majesty's subjects.

TREATY IMPLICATIONS

The treaties had no sooner been signed than difficulties arose, first with regard to administration. In February 1872, James McKay wrote Lieutenant-Governor Archibald that the Indians were claiming that the terms of the treaty were not being fulfilled, particularly with regard to certain agricultural supplies. He pointed out that the Indians had been promised farm implements, stock and seed when they were ready to farm.¹

Archibald in turn wrote to Secretary of State Howe, conveying the gist of McKay's letter and complaining that the Indians were bringing their grievances to him even though he had no authority or responsibility for dealing with them. He laid the blame for this situation on Commissioner Simpson, warning that it would be impossible to maintain a friendly and trusting relationship with the Indians if the government were not scrupulous in fulfilling its obligations.² He further remarked:

It would be a mere mockery in reply to their request for explanations or aid, to say they may apply to a commissioner, distant a thousand miles from here. It seems to me that if Mr. Simpson continues to reside the greater part of the year where he is inaccessible, it will be proper that there should be some person duly authorized to represent him in the Province.

Mr. Simpson is under the impression that by being out of the way of being called upon, he saves a great deal of importunity and some expense to the Government. This may be true, but if the saving is made at the cost of friendly relations with the savages, we shall not be much the better for the treaty. The Government of Canada succeed to the position of the Hudson Bay Company with the Indians. And the usage of easy access to the representative of the governing power, which has continued for over a century, cannot be broken up at once without danger.³

Simpson replied to these charges later in the year, pointing out that he did not have control over the federal officers responsible for certain provisions in the treaties such as the census and the surveying of reserves. Insofar as the agricultural supplies were concerned, Simpson declared:

In a former letter Lieutenant-Governor Archibald referred to the delay in

furnishing the Indians with ploughs, harrows, etc. These things, however, were promised to be given to them only when they adopted the habits of white men and settled on their respective portions of their bands reserve. No Indian has yet applied to me for agricultural implements.⁴

This confusion over the administration of the treaties continued throughout 1872 with Commissioner Simpson either unable or unwilling to meet treaty commitments.

In December 1872, the newly appointed Lieutenant-Governor Alexander Morris wrote to Ottawa urging that the terms of the treaties be fulfilled. He recommended:

...that there should be a Resident Indian Commissioner here, who should be a good business man, competent to draw up Treaties, attend to matters of account, etc., etc., and that he should be aided by two Assistant-Commissioners, native [sic] of the country, familiar with the Indian dialects, and in whom they have confidence and taken from the ranks of the English and French halfbreeds.⁵

Morris' recommendations apparently had some effect, for in June 1873, Joseph Provencher was appointed resident Indian Commissioner in place of Simpson. Provencher was part of a three-member board that included the Lieutenant-Governor and Lindsay Russell of the Land Branch of the Department of Indian Affairs. The Board assumed the task of administering the treaties.⁶

A second difficulty concerned the issue of agricultural supplies, or "outside promises" as they came to be known because they were not listed in the published treaties. That promises were made there can be no doubt, for Simpson mentioned them in his report to Howe dated November 3, 1871.⁷ By failing to list them as part of the treaty provisions, Simpson neglected to inform the authorities in Ottawa of their importance.⁸ This fact, coupled with the poor administration, led to great discontent among the Indians.

To draw attention to their claims, several bands - Pembina, Portage la Prairie, St. Peter's - refused to accept their annuity payments. The Indians also enlisted the aid of John Schultz, a local Member of Parliament. Schultz wrote to the Secretary of State outlining the Indian's complaints with reference to the "outside promises". He noted

“that the treaty now in print is not as they understood it at the time when it was signed in August 1871”.⁹ He suggested further that a delegation of Indians come to Ottawa to discuss the issue with the government.¹⁰ This last notion was rejected by Commissioner Simpson who, acting on behalf of the government, told the Indians they could not go to Ottawa unless permission was granted through the proper channels.¹¹

Undaunted, Schultz wrote again to the Deputy Superintendent of Indian Affairs in January 1873. He expressed the view that the Indians’ complaints regarding the treaty were warranted. He also attached an affidavit signed by the leading men of the St. Peters Band attesting to what they understood had been promised at the time of the treaty. These included agricultural implements for the chiefs and headmen, wagons, horses, harness and suits of clothing; work oxen, bulls, cows, hogs, sheep, turkey and fowl; and on each reserve medical aid and a school and schoolmaster.¹²

The allegation that medical aid was one of the promises was quickly refuted by Molyneux St. John, who had been present at both signings. In a letter to Secretary of State Howe, he stated:

There is however, the question of medical aid, about which you specially ask, I do not remember any promise of this nature and I have never heard the subject mentioned until receipt of your letter.¹³

He proceeded to disparage this particular claim, hinting that the Indians had made the claim “to cement the alliance by obtaining his (Schultz) services as their medical adviser.”¹⁴ Schultz was also a doctor.

St. John also provided the Department with a lengthy memorandum of explanation regarding the “outside promises”:

When Treaty No. 1 was in process of negotiation the Spokesmen from the several Indians Bands enumerated the gifts and Benevolences which they required from Her Majesty’s Representatives in return for the surrender of the Indian Country. Some of these were accorded; some refused, but in the natural

desire to conclude the Treaty, His Excellency the then Lieutenant Governor and Mr. Commissioner Simpson assumed, as it afterward proved, too hastily, that their distinctions and decisions were understood and accepted by the Indians. Amongst the several speakers on the part of the Commissioner was a Clergyman who had been for many years in pastoral charge of the *St. Peters Reserve*, and this gentleman supplemented the articles enumerated by the Indians by mentioning others which the Lieutenant-Governor, he said, had authorized him to say they were to receive. Though immediately interrupted by Mr. Commissioner Simpson, the words had been spoken and at that juncture of affairs it would have been difficult and probably inexpedient to entirely disallow them. So the Treaty was signed, the Commissioner meaning one thing, the Indians meaning another. The proceedings were over but a short time before it became evident that there was some misunderstanding, and with the view of setting the matter at rest; at least as far as regarded one side; His Excellency the then Lieutenant Governor asked Mr. Commissioner Simpson, the Hon. James McKay and myself, as the persons knowing best the circumstances and details of the matter[,] to join with him in signing a list of articles, which we severally and collectively understood to be the things promised to the Indians, but not mentioned in the Treaty. Some little discussion took place about this but it was eventually signed and, I believe, forwarded to Ottawa, with the Treaty, in October 1871.

This list expressed our understanding of the matter, but it by no means covered the understanding or expectations of the Indians, and from that time to the present we have not visited any band, parties to that Treaty; without the untrustworthy nature of the Commissioner's and Governor's promises being thrown in our teeth.¹⁵

St. John forwarded an unsigned list enumerating the outside promises which he said had been written by Lieutenant-Governor Archibald. He also felt that although the Indians' demands could not be met fully, there was a certain paradox in asking them to take up agricultural pursuits without providing them the means of doing so.¹⁶ St. John did not think all the promises had to be fulfilled at once, since many Indians were not yet prepared for the vocation of farming; but he did recommend that items could be dispensed in "a liberal yet careful manner."¹⁷ Most important, he felt the Indians should know exactly what they were to receive.

It was not until 1875, however, that the government resolved the question of the outside promises. On April 30, 1875, the Privy Council issued an Order in Council that stated in part:

That the written Memorandum attached to Treaty No. 1 be considered as part of that Treaty and of Treaty No. 2, and that the Indian Commissioner be instructed to carry out the promises therein contained insofar as they have not yet been carried out, and that the Commissioner be advised to inform the Indians that he has been authorized so to do.¹⁸

The Memorandum enumerated the following items:

Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd day of August A.D. 1871.

For each Chief that signed the treaty, a dress distinguishing him as Chief.

For braves and for councillors of each Chief, a dress; it being supposed that the braves and councillors will be two for each Chief.

For each Chief, except Yellow Quill, a buggy.

In lieu of a yoke of oxen for each reserve, a bull for each , and a cow for each Chief: a boar for each reserve, and a sow for each Chief, and a male and female of each kind of animal raised by farmer [sic]; these when the Indians are prepared to receive them.

A plow and a harrow for each settler cultivating the ground.

These animals and their issue to be Government property, but to be allowed for the use of the Indians, under the superintendence and control of the Indian Commissioner.

The buggies to be the property of the Indians to whom they are given.¹⁹

The government also stated that it could not admit to any claim outside of the treaty and memorandum, but did concede that there had been a misunderstanding. To make amends, and as a measure of its benevolence, the government raised the annuity from \$3 to \$5 per year. In addition, it raised the annuity of each Chief and Headman, the number of Headmen being limited to two for each band. In return, any Indians receiving the increased annuities had to relinquish any claim against the government with regard to the outside promises.²⁰

In August and September of 1875, Commissioner Provencher and Lieutenant-Governor

Morris visited the bands to obtain their concurrence. All the bands agreed, with the exception of the Portage Band. The Portage Band refused, not because of any dissatisfaction with the settlement offered for the outside promises but because of an internal dispute over their reserve.²¹ The band was nominally under the leadership of Yellow Quill, but portions of the membership refused to accept him as leader. One group wished to follow Short Bear, the grandson of the original chief. Another group, known as the White Mud River Indians, also refused to accept Yellow Quill's leadership.²² The Yellow Quill group wanted the reserve land allotted to them to be assigned to one location, which meant that the other two groups would have to join them.²³

Short Bear's adherents, on the other hand, said the place chosen by Yellow Quill was unsuitable for farming; they wanted the reserve to be located at Round Plain where they already had a settlement. The White Mud River group also wanted to remain where they were, on the shores of Lake Manitoba.²⁴

Wanting to diffuse the hostile situation between the factions in Yellow Quill's band, Lieutenant-Governor Morris postponed any decision regarding the reserve until the following year.²⁵ In the meantime, he wrote to the Minister of the Interior with the following recommendations:

1st. That you should write to Yellow Quill declining to entertain his demands for the large reserve, but offering to them a reserve including the "Eagle's Nest" on the north side of the river, and laid off in the terms of the treaty, with the land comprised in the one hundred and sixty acres for each family, surrounded by the belt mentioned in the treaty ... reserving the rights of navigation and access to the river. The land is of inferior quality to that already offered them.

2nd. I would propose that the young chief should be recognized as head of the section of the band adhering to him. He and his section are ready to accept the terms and the reserves as described in the treaty. They behaved very well and told Mr. McKay that they were glad I had not recognized him then, as it would have led to bloodshed, and they would be content if the recognition came when the reserves was settled.

3rd. I would propose that the White Mud Indians, who live there constantly,

should be recognized as a distinct band and should elect a chief.²⁶

Morris' recommendations were accepted, and a settlement was reached with the three factions with following year. Each faction became a separate band and took their share of the original entitlement to form new reserves while also accepting the settlement terms of the outside promises.

The settlement of the outside promises, however, did not end claims against treaty entitlement. Over the years as circumstances have changed, further issues have arisen.

Today [1983], all claims and disputes with regard to the interpretation and fulfilment of Treaties 1 and 2 are put forward by the Native peoples, and assessed by the Office of Native Claims, Indian and Northern Affairs Canada in accordance with the specific claims policy enunciated by the Minister in "Outstanding Business: A Native Claims Policy" published in 1982.

Notes

¹ Canada, *Sessional Paper* No. 23, James McKay to Lieutenant-Governor Archibald, 10 February 1872, pp. 2-3.

² Canada, *Sessional Paper* No. 23, Lieutenant-Governor Archibald to Secretary of State Howe, 12 February 1872, p. 5.

³ *Ibid.*

⁴ Canada, *Sessional Paper* No. 23, Lieutenant-Governor Morris to Secretary of State Howe, 13 December 1872, p. 10.

⁵ Canada, *Sessional Paper* No. 23, Commissioner Simpson to Deputy Superintendent Indian Affairs Spragge, 2 August 1872, p. 5.

⁶ Taylor, pp. 82-86.

⁷ Morris, p. 39.

⁸ Taylor, p. 61.

⁹ Canada, *Sessional Paper* No. 23, John Schultz to Secretary of State Howe, 23 September 1872, p. 7.

¹⁰ *Ibid.*

11. Canada, *Sessional Paper* No. 23, John Schultz to Secretary of State Howe, 23 September 1872, p. 7.
12. Canada, *Sessional Paper* No. 23, Commissioner Simpson to Deputy Superintendent Indian Affairs Spragge, 4 January 1873, pp. 8-9.
13. Canada, *Sessional Paper* No. 23, John Schultz to Deputy Superintendent Indian Affairs Spragge, 27 September 1872, pp.7-8.
14. *Ibid.*
15. Canada, *Sessional Paper* No. 23, Indian Agent St. John to Deputy Superintendent Indian Affairs Spragge, 24 February 1873, pp. 11-12.
16. Canada, *Sessional Paper* No. 23, p. 14.
17. Canada, *Sessional Paper* No. 23, p. 15.
18. PAM, MG12, B1, No. 427, Alexander Morris Lieutenant-Governor's Collection. Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 30th April 1875.
19. PAM, MG12, B1, No. 1299, Wemyss M. Simpson to Deputy Minister of the Interior Meredith, 2 August 1876.
20. PAM, MG12, B1, No. 427, Copy of a Report of a Committee of the Honourable the Privy Council, on the 30th April 1875.
21. Canada, Department of Indian Affairs, *Annual Report, 1876*, p. vii (hereafter cited as DIA 1876).
22. *Ibid.*
23. Morris, pp. 129-130.
24. *Ibid.*; see also DIA 1876, pp. xxv-xxvi.
25. DIA 1876, p. vii.
26. Morris, pp. 137-138.

SUMMARY

In retrospect, Treaties One and Two were the instruments of a post-Confederation government policy that was designed to protect the Indians while providing a basis for their peaceful assimilation into Canadian society. The Treaties provided for the cession of land by the Indians in return for reserved land and the right to hunt and fish the Indians in return for reserved land and the right to hunt and fish in ceded territory until such territory was sold by the Crown.¹ In the case of Treaties One and Two, the hunting and fishing provisions were never instituted.

The assimilative and protective aspects of the Treaties as well as the government's primary objective, the peaceful settlement of the west, was summarized by Alexander Morris. He felt that the establishment of reserves was most beneficial because it provided the Indians with "tracts of land, which cannot be interfered with, by the rush of immigration, and affords the means of inducing them to establish homes and learn the arts of agriculture."² In addition, Morris noted:

Moreover, the Canadian system of band reserves has a tendency to diminish the offensive strength of the Indian tribes, should they ever become restless, a remote contingency, if the treaties are carefully observed.³

Because they were precedents insofar as the west was concerned, the implementation of the Treaties resulted in a certain amount of confusion and misunderstanding. The principal reason for this situation was the government's initial failure to install a bureaucratic structure to administer the treaty provisions, a fault that was corrected with the appointment of a resident Indian Commissioner. In addition, as the difficulties surrounding the "outside promises" indicated, greater care was required in enunciating clearly the terms and conditions of treaties. According to Morris:

The experience derived from this misunderstanding, proved however, of benefit with regard to all the treaties, subsequent to Treaties One and Two, as the greatest care was thereafter taken to have all promises fully set out in the treaties, and to have the treaties thoroughly and fully explained to the Indians,

and understood by them to contain the whole agreement between them and the Crown.⁴

The signing and fulfilment of Treaties One and Two, though not without difficulties, provided the precedent and experience from which all the subsequent treaties were successfully completed.

Notes

¹ Morris, p. 287.

² Morris, p. 287.

³ Morris, p.288.

⁴ Morris, p. 128.

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