THE RIGHTS TO THE LAND MAY BE TRANSFERRED"

Archival Records as Colonial Text—A *Narrative of Metis Scrip* Frank

Tough & Erin McGregor

Introduction: Problem, Place, and Period

IN 1994, THE METIS of Northwest Saskatchewan launched a land claim against the governments of Canada and Saskatchewan.[1] To satisfy this claim they must meet three basic challenges: first, the Metis must demonstrate their existence as an Aboriginal people;[2] second, they must show their historic and contemporary land use and occupancy patterns in Northwest Saskatchewan, thereby establishing a proprietary claim to Aboriginal title;[3] and third, the Metis must prove that their Aboriginal title existed at the time of effective Canadian sovereignty. Similarly, any valid claims to Aboriginal rights must be based on the identification of specific activities that were practised at the time of Canadian control. Specifically, the Metis need to address the effect of the government's "Half-breed" scrip policies on their propriety interests in order to counter the government's legal claim that their Aboriginal title was clearly and plainly extinguished.

Our study here contributes to this third challenge by first establishing a general model of the land scrip system, and then examining one individual scrip claimant's paper trail in order to illustrate the ways in which this system might have failed to meet the standards of existing conventions for conveying interests in property. As arcane as the history of Metis scrip is, an understanding of the details of colonial land systems that became a central foundation of the Canadian nation state is necessary to work out the sharing of space today between Indigenous peoples and the present-day descendents of settler society.[4]

Abundant historical records exist to demonstrate the distinctive qualities of the Metis society that emerged in what is now Northwest Saskatchewan, along with accounts of their use of lands and resources.

The Metis refer to themselves as *Otipimsuak*, a Cree word meaning "the free people" or, literally, "people who own themselves." Although far removed from the power centres of contemporary urban Canada, a fascinating history and geography shaped the development of this Aboriginal society in Northwest Saskatchewan. This region, referred to as the English River District by the management of the Hudson's Bay Company (H B C), was a contact zone for the Dene and Cree peoples who were essential for the prosperity of the fur trade and crucial to the formation of Metis communities. This northern region was well suited to the many demands of the fur trade. The Metis, progeny of the intermarriage between European traders and Indigenous women, made the fur trade their occupation and this region their home.

A major continental divide or "height of land" separates the drainage systems of the Mackenzie/Athabasca from the Churchill/Hudson Bay rivers. By 1776, Montreal trading interests had penetrated the Athabasca country. The crossing of this drainage divide over the Methy Portage is a little known but truly monumental event in Canadian nation building. Thereafter, the development of the Methy Portage tied the rich fur country of the Athabasca and Mackenzie regions to the commercial expansion of the society of the St. Lawrence valley and, to a lesser degree in the competitive era (but much more so after 1821), to the rival interests of the H B C, which shipped fur to London through York Factory. The English River District posts along the Green Lake/Portage La Loche corridor served as a vital nexus in the Canadian fur trade, providing access to more northerly trade routes and creating a strong demand for the skills and talents of the Metis (e.g. trading, interpreting, provisioning, guiding, and transporting). The strategic importance of this region was reflected in the intense, and at times violent, local competition between Montreal and English merchants. Because of this rivalry, an HBC post was not permanently established at Ile-a-la-Crosse until 1814. The posts at Ile-a-la-Crosse, Green Lake, and Portage La Loche were the forerunners of today's Metis communities.

As a result of the creation of a commercial monopoly in 1821, the HBC assumed certain obligations towards Aboriginal people and, concomi-tantly, Metis communities continued to provide labour and products for the HBC. After 1870, when the Dominion of Canada acquired the HBC territory,[5] the perseverance of a fur industry in Northwest Saskatchewan provided stability for Metis communities of the English River District. Because fur trade resource needs required an extensive land base, the annual cycle of Aboriginal economic activities involved living off the land and periodic visits to posts. By the mid-nineteenth century, the concentration of French/Michif-speaking Metis people was so significant that Ile-a-la-Crosse was selected as the site of the first Oblate mission outside of the Red River Settlement. A permanent mission, housing a contingent of French-speaking priests and nuns, became a part of the community.[6]

According to census and treaty records, the Metis at the turn of the twentieth century constituted the largest part of the Aboriginal population of Northwest Saskatchewan.[7] An analysis of Metis scrip applications indicates a high degree of population stability, making the situation here markedly different from the out-migration experienced by the Red River Metis after 1870. The demographic significance of the Metis in Northwest Saskatchewan did not diminish. A 1971 population survey established that there were 4,395 Metis living in Northwest Saskatchewan and only 1,200 Indians.[9] From a broader geographical and historical perspective, this region is a highly significant regional homeland for the Metis Nation. Clearly, the Metis of Northwest Saskatchewan, unlike the Metis of the Red River Settlement, did not relocate or disperse en masse, nor were they subsumed by newcomers. The history and demography of this region exhibit a strong, continuing Metis presence.

The transition between HBC/mission dominance and the establishment of state agencies occurred incrementally after 1870. Through Treaty Ten in 1906, the federal government established Canada's formal presence in the region. The enforcement of conservation regulations was also an important impetus for state formation in northern Saskatchewan. Shortly after the onset of provincial control over natural resources in 1930, federal and provincial efforts were made to support the Native economy. Following the 1944 provincial election of a social democratic government, a system of extensive fur conservation blocks was organized with the intention that communities could sustain themselves through hunting, trapping, and commercial fishing. Once well suited to the specialized needs of the fur trade, and despite the growth of uranium mining, forestry, and tourism, this region continues to sustain a traditional economy based on trapping, hunting, and fishing.

Due to the long history of trade in Northwest Saskatchewan, the roots of Metis society in the region run deep. The Metis people of this region trace their ancestry to the French-Canadian and a few Anglo-Celtic employees of fur trading companies who came to the region in the late eighteenth and early nineteenth centuries, and to the Cree and Dene peoples indigenous to the area. This region, once a vital link in an expansive mercantile economic system that served as the geographic foundation of the Canadian nation state, is today largely a forgotten space, as are the Metis who have made this region their homeland for generations.[10]

With respect to the land claim, we are confident that the archival records will establish the nature of the Metis society that developed in Northwest Saskatchewan.[11]

In 1999, the University of Alberta was contracted to conduct archival research related to this claim, filed in 1994, on behalf of the Metis Nation-Saskatchewan. The research team, based at the School of Native Studies, set out to identify, locate, obtain, and compile archival records relating to the fundamental challenges of establishing a factual and valid claim. From the start it was decided to digitize these records, and much effort has been directed towards the conversion of archival information into searchable text stored in the form of databases. To a lesser extent than desired, efforts have been directed towards the scanning of maps, photographs, and documents. Early on, the research team adopted the moniker "matriX" (Metis Aboriginal Title Research Initiative-X) which reflects our unapologetic efforts to develop as precise a Cartesian-like control over the seeming chaos of a vast, complex documentary record deriving from a variety of repositories. Our method is indicative of a commitment to deal seriously with the contrasting "realities" of the scrip system.[12] Over the past several years, the matrix Project has employed students, generally undergraduates, to conduct research and to database archival records. By scrutinizing archival documents and reconstructing paper trails, our work provides important insights into how the scrip system was implemented. While the research is still in progress, we have developed a comprehensive appreciation for the Metis scrip system as a rather obscure feature of Canada's historical consciousness. Further, by transcribing the archival documents in a systematic and organized way, we have begun to unveil the layered complexities of the relationship between colonial policy, Metis communities, and the economic dynamics of the emerging Canadian nation.

Scrip Coupons: Paper or Land?

"Scrip" is a term used to denote "a certificate, voucher, etc. establishing the bearer's right to something" ("Scrip"). According to government officials then and now, Metis scrip, officially known as "Halfbreed" scrip, was issued to Metis people with the intent of "extinguishing" Indian title by granting land (or money) to individual Metis people. Figure i is a digital reproduction of a land coupon, redeemable for 80 acres of Dominion lands, drawn up in favor of Eli Roy on 2 October 1907. Figure 2 depicts his other coupon, in the amount of 160 acres. The scrip process entailed more than government officials simply issuing coupons printed on high quality banknote paper. Because the individual interest in a scrip

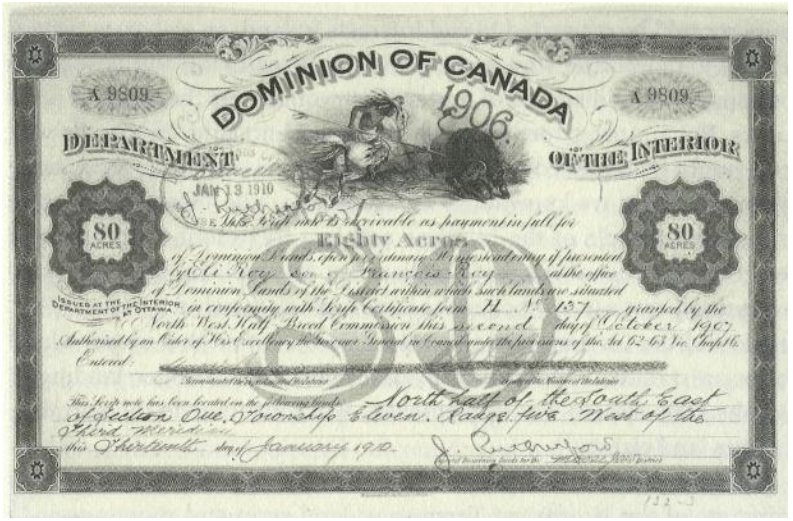


FIGURE 1 Land Scrip Coupon (AgSog) for 80 acres issued to Eli Roy, son of Francois Roy, located on N 1/2 of SE 1/4 of Section i, Township n, Range 5, West of the Third Meridian on 13 January 1910 at Moosejaw.

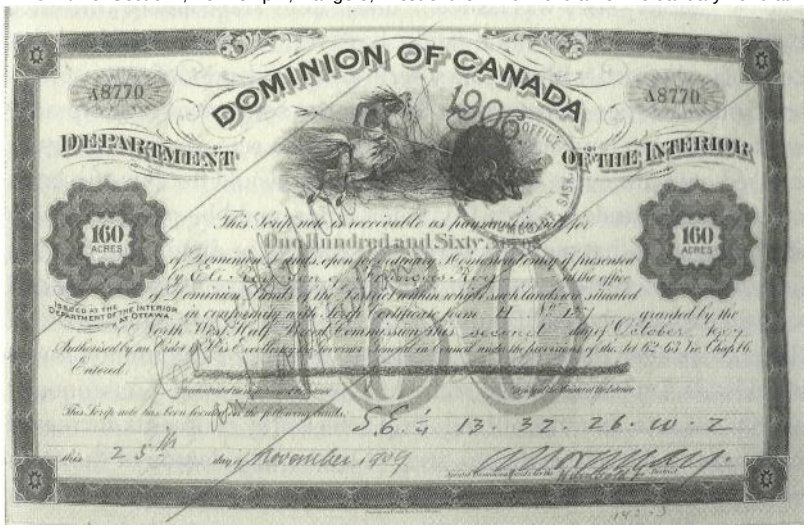


FIGURE 2 Land Scrip Coupon (ASyyo) for 160 acres issued to Eli Roy, son of Francois Roy, located on.SE 1/4 of Section 13, Township 32, Range 26, West of the Second Meridian on 25 November 1919 at Humboldt.

coupon could be converted to real interests in land, an elaborate system evolved to determine who was entitled to the coupons and how these coupons could be disposed of in ways that would meet the needs of scrip buyers. Put simply, paper could be converted into land. In a crude way, scrip might be regarded as compensation for surrendering proprietary interests in what we know today as "Aboriginal title." Or perhaps scrip is another example of the humane and just treatment of Indigenous people by the rule of Anglo-Canadian law. In any case, scrip coupons increasingly came to symbolize the historical relationship between Metis people and .the Government of Canada. To the extent that modern land claims are a mutual effort to rectify past injustices, an understanding of how the scrip system was implemented will contribute to the narrative of Metis land claims.[13]

The Government of Canada offered two types of coupons to Metis claimants of the Northwest Territories: land scrip and money scrip.[14] Land scrip could be exchanged by the grantee at par for acres of Dominion lands, that is, lands ordinarily open for homesteading in the prairie provinces.[15] Land scrip was usually doled out as two separate coupons in units of eighty acres and one hundred and sixty acres (see Figures I and 2).[I<5] Money scrip was issued in dollar units and could be converted by the bearer into Dominion lands; however, the acreage of land that could be obtained with a money scrip coupon depended upon prices set by the Interior Department. Early in the settlement of the prairie west, Dominion lands often sold for a dollar an acre. As land values increased over time, 160 dollars of money scrip would not buy 160 acres of homestead lands.[17] Since Dominion lands could be purchased with cash, it appears that money scrip was destined to be discounted from its face value, otherwise money scrip held no advantage for a buyer over a straight cash purchase of Dominion lands.[18] With the rapid settlement of the prairies after 1897 and the increase in the price of Dominion homestead lands, land scrip gained real value over money scrip. Consequently, after 1900, the amount of land scrip selected by claimants increased significantly relative to money scrip.[19] In the first decade of the twentieth century, land scrip became an important mechanism to obtain homestead lands.

A crucial difference between these two types of scrip was ease of convertibility. Land scrip was used to initiate a "chain of title" that necessitated many records, creating a large, complicated, and in some cases convoluted, paper trail.[20] While the name of the grantee appeared on the face of land scrip and the grantee had personally to select a plot of land, money scrip was more easily converted into land because the name of the grantee did not in most cases appear on the face of the coupon and it could be redeemed at any Dominion Land Office by whoever bore the coupon.

The Land Scrip Process: A General Model

The scrip system raises fundamental questions about Metis Aboriginal title and about the way scrip coupons were used in the transformation of prairie land use and tenure. The implementation of this system under Anglo-colonial politics and law was intricate and perplexing on many levels. To date, we have not found a government document that explains the entire process of Metis scrip, so we have reconstructed the manner in which government officials understood and implemented the process (see Figure 3). This model represents the government's view of the formal procedures and projected outcomes, and it might well be regarded as how the scrip system was supposed to work.[21] The land scrip system characterized in Figure 3 is representative of the claims taken by the 1906 Treaty Ten scrip commission, but also holds generally for other scrip commissions.[22]

Under authority of the Dominion Lands Act, the process began when the Privy Council (in effect, the cabinet) passed one or more Orders-in-Council, appointing a scrip commissioner and providing criteria to determine who qualified for scrip (Phase i).[23] Between 1885 and 1925 a number of distinct scrip commissions were created to deal with Metis in the North West Territories (Tough, "Activities of Metis Scrip Commissions," 61-62). Scrip commissioners would then visit communities to take claims and issue certificates to bona fide claimants. A Metis claimant would complete a declaration (or application) in the presence of the commissioner, and this declaration would be supported by a witness declaration, with information usually provided by an individual familiar with the claimant (Phase 2). Since many claimants would be known to local Hudson's Bay Company officials and missionaries, these additional sources of personal information provided assistance to commissioners in validating an individual's claim. The application would then be reviewed by the commissioner and staff, checked against ledger books that listed previous claimants, and, if the claimant met specific criteria, the claim would be approved. If the claimant did not meet the specific criteria, the claim would *be* rejected, but in certain instances a claim with potential might be reserved.[24] A Certificate of Entitlement, signed by the commissioner, confirmed that the claimant was entitled to scrip. One copy of this certificate was retained by the Department of the Interior and the other went to the Metis grantee. This certificate indicated approval of the claim and seems to have had market value, but was not the actual coupon.[25] Following the work of

the commission, documentation was sent to Ottawa and maintained by the Land Patents Branch of the Department of the Interior. Large ledger books tracked the details of each claim, the delivery of coupons, and the conversion of land scrip to Dominion lands.

The grantee would then send the certificate of entitlement to the Department of the Interior in Ottawa in order to have the certificate exchanged for scrip coupons (Phase 4). An "issue order" directed the Department's accountant to issue coupons, thereby confirming the entitlement promised by the certificate. Scrip coupons were printed on quality paper, resembled bonds, and had serial numbers (see Figures i and 2). These serial numbers have enabled us to reconstruct the scrip system, and serve as a key to tracking individual claims because the connections between documents can be established by these serial numbers. In Phase 4, the scrip coupons were delivered to the grantee (the "Agent/Present Owner," in the language of the delivery register), and delivery was acknowledged by the recipient, who signed a receipt that was returned to the Interior Department in Ottawa. At this point, the grantee held the required documentation to convert the coupon, a piece of paper, into a tangible piece of real property.

The conversion of the piece of paper into land began with the locating of the scrip coupon. The "locating" of the coupon entailed a registration of the grantee's interest in a precisely-defined parcel of land that had been acquired or secured by the entitlement promised by the coupon (Phase 4). Applying the coupons to a parcel of land represented another phase of the paper trail, which ultimately would have resulted in the grantee obtaining fee simple title to a total of 240 acres of land. Procedures and rules governed the conversion of the coupons into a land patent. Land scrip coupons could only be applied to lands ordinarily open to homestead entry. (Thus Metis scrip could not be used to secure title to homestead lands that had already been selected and occupied by a homesteader, and it could not be used to obtain land in the regions that had not been surveyed into townships.) At a Dominion Lands Office, the Metis grantee would present the scrip coupons to a Dominion Lands Agent and select 160 and 80 acres of land from those lands open for homesteading.[26] The location was then "entered" or the coupon "located." In effect, the grantee's interest in a particular parcel of land was registered. Local Dominion Lands offices kept track of the locales of specific tenures and lands available for settlement for the land districts under their jurisdiction.

A necessary procedure known as the "Rule of Location" required the grantee, and not any other individual, to locate the coupon. According to a Department of the Interior bulletin of 2 January 1930,

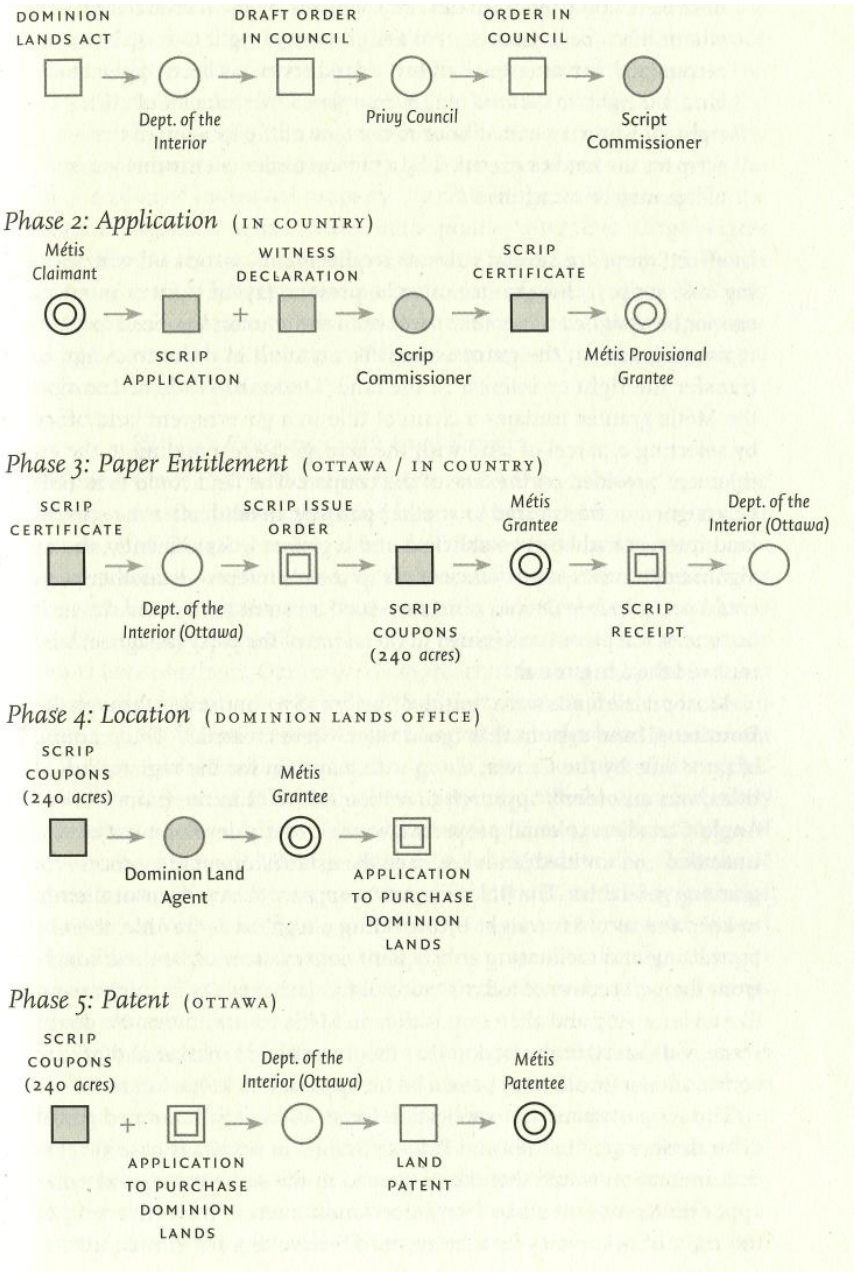


FIGURE 3 Land Scrip—The General Model, 00.1907.

> Land scrip cannot be assigned. Entry for land upon which it is desired to apply the scrip can only be made by the half-breed to whom it has been issued.... No assignment of right to scrip is recognized, but after the half-breed land scrip has been applied to land, *the rights to the land may be transferred.* No transfer of such right, however, executed prior to the date of the location of the scrip on the land or executed by a person under twenty-one years of age may be recognized.[27]

In effect, there are several rules or requirements associated with locating land scrip: (i) the grantee must be present; (2) the right or interests cannot be assigned to another party until the coupon has been located/ registered; and (3) the grantee must be an adult in order to assign or transfer the right or interest in the land. Under the Rule of Location, the Metis grantee initiates a chain of title in a government land office by selecting a parcel of land with the acreage corresponding to the entitlement provided on the face of the coupon. The land could then only be assigned or transferred to another party by an adult after the specific land interest had been established and registered. Significantly, the assignment/transfer/conveyance of the grantee's interest to another party could occur before Ottawa officials issued a patent to the land. In such instances, the patent was issued in the name of the party (assignee) who received the assignment.

Most prairie lands were "untitled" before 1870, and it was through the Dominion Land system that "good titles" were created.[2] The granting of good title by the Crown, along with a system for the registration of titles, was an orderly approach to settlement. Within the framework of Anglo-Canadian colonial property law, the orderly development of vast unsettled and untitled lands required the establishment of a process for granting good titles. The Rule of Location appears to have been an attempt to keep the records straight by providing a legal basis for title, thereby permitting and facilitating subsequent conveyances of land, although, from the perspective of today's cultural fundamentalists, it might seem like an annoying and alien imposition on Metis communities. No doubt, some will entertain the notion that the unrestricted market and private conveyancing would have been a better approach to Metis interests.[29]

The scrip coupons and application for location (legally defined parcel of land) were sent to the Land Patents Branch in Ottawa (Phase 5). This documentation would then be processed in the same manner as other applications for patents to Dominion lands, such as the conversion of the right of occupancy by a homestead tenure to a fee simple title. If there were no complications concerning title, the Metis grantee would receive a Letter Patent for the located land and the patentee's fee simple ownership would be registered in the local Land Titles office, a procedure consistent with the registration of individual property interests. The Letter Patent declared the grantee's right "To have and to hold unto the grantee in fee simple" the land to which s/he was entitled.[30] Such elaborate procedures concerning Metis land scrip were consistent with the registration of individual property interests in the land system that the Interior Department had created in the prairies after 1870. Large ledgers were kept to register the details of the location of land scrip, the assignment of grantee interests, and the particulars of letters patent. While an understanding of the "official" model of the land scrip system provides some conceptual clarity, this model needs to be considered and evaluated against actual experience.

Eli Roy's Experience with Land Scrip

The above "official" model of the scrip process also enables us to analyze the vast documentation generated by many transactions involving thousands of Metis grantees. In order to determine how this intricate process was specifically implemented, we developed databases and spreadsheets to capture and organize archival materials. This technique permits an orderly and disciplined examination of many documents and the connections between them. Our research approach is facilitated by the fact that standardized forms were used and key documents (applications, certificates, and coupons) were given serial numbers by Interior Department officials. Initial findings indicate a much more complex and multi-dimensional process at work than that generally offered in the scholarly literature on the subject.[31] Indeed, our research suggests a narrative of the scrip system and those involved in it that departs widely from the official model. The following case study of a Metis man, Eli Roy, provides an alternative to the official government narrative of Metis scrip. Indeed, Roy's case foregrounds irregularities and incongruities that seem to typify the way in which the scrip system was implemented in the early twentieth century.

Privy Council Order No. 1459 on 20 July 1906 established the commission that treated with Indians and issued scrip to the Metis of northern Saskatchewan.[32] Roy's two-page scrip application declaration (Form A) is reproduced as Figure 4. Eli Roy's verbal answers to the questions would have been recorded on this document by the commissioner or more likely by his clerk. Roy's declaration was supported by a witness declaration, provided by Roy's godfather Thomas Desjarlais (Form A-2, Figure 5).[33]

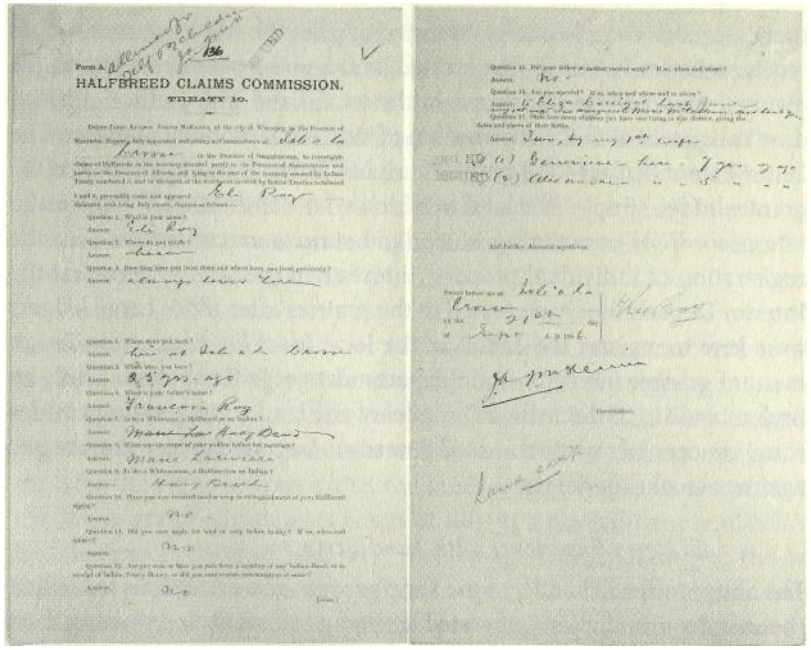


FIGURE 4 Eli Roy's Application for Scrip (Form A) [2 pages].

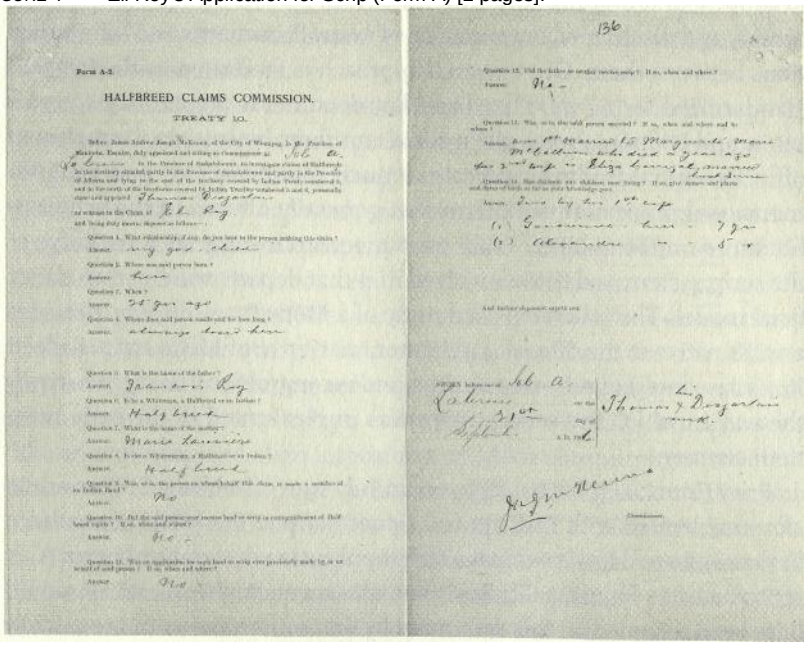


FIGURE 5 Witness Declaration (Form A2) supporting Eli Roy's Scrip Claim [2 pages].

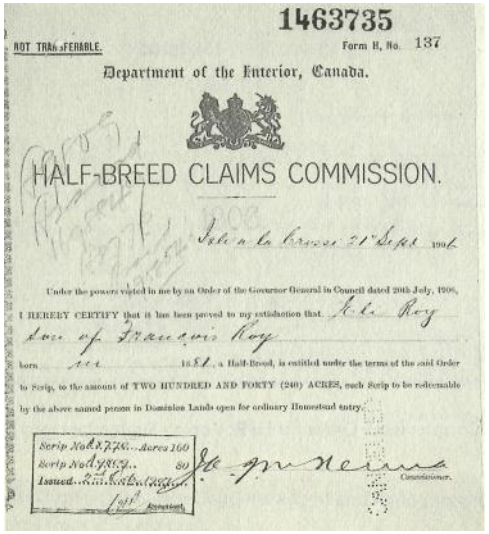
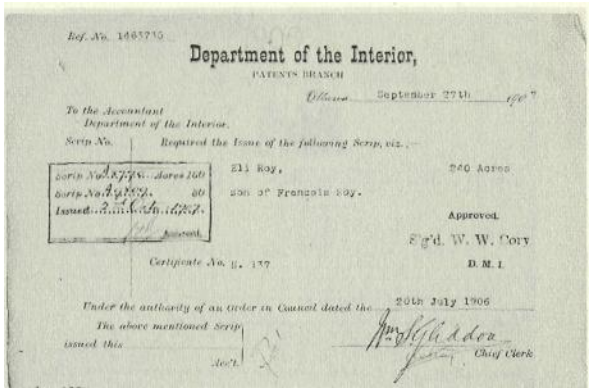


FIGURE 6 Scrip Certificate (Form H) issued by the 1906 Half-breed Claims Commission to Eli Roy, son of Francois Roy, on 21 September 1906 [copy from file 1463735].

Roy's scrip claim was approved and his certificate (Form H, No. 137) was issued on the date of application, 21 September 1906 (Figure 6).[34] Commissioner J.A.J. McKenna certified that Roy was a Half-breed entitled to "Scrip to the amount of TWO HUNDRED AND FORTY (24o)ACRES," which could be redeemed "by the above named person in Dominion Lands open for ordinary Homestead entry."[35] Charles Mair, commissioner secretary, witnessed Roy's receipt of the certificate.

On 27 September 1907, G.D. Boulton, Manager of the Imperial Bank of Canada (Ottawa Branch), forwarded four certificates, including Form H, No. 137, which had been issued to Eli Roy, to the secretary of the Department of the Interior, P.O. Keyes, requesting an exchange of the enclosed certificates for the grantees' coupons.[3] On the same day, the Chief Clerk W. S. Giddon drew up a scrip issue order that was approved by W.W. Cory, Deputy Minister of the Interior (Figure 7). The preparation of the actual coupons did not take long. On 2 October 1907, scrip coupons A877O (160 Acres) and AgSog (80 acres) were issued (see Figures i and 2). The next day, Keyes forwarded eight scrip coupons, including those granted to Eli Roy, to the Imperial Bank of Canada in Ottawa.[37] Evidently, his coupons were then sent to a Winnipeg Branch of the Imperial Bank of Canada, since the assistant manager of that branch signed Eli Roy's receipt (Form No. 65) on 12 October and this receipt was received by the Department of the Interior on 16 October (Figure 8). Again this paper-



Ref. No. 1463735

Department of the Interior,

PATENTS BRANCH

Ottawa September 27th 1907

To the Accountant
Department of the Interior.

Scrip No. Required the Issue of the following Scrip, viz.

Scrip No. A8770 Acres 160 Eli Roy, 240 Acres
Scrip No. A9809 80 son of Francois Roy.
Issued 2 Oct 1907
Approved.

Approved.
Sig'd. W. W. Cory
D. M. I.

Certificate No. H. 137

Under the authority of an Order in Council dated the 20th July 1906

The above mentioned Scrip issued this

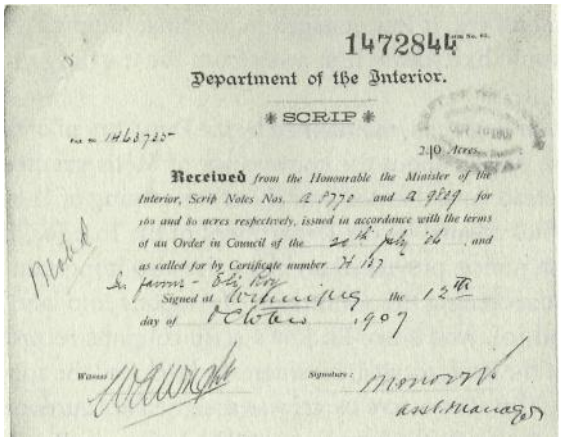
Acct.

Chief Clerk

FIGURE 7 Scrip Coupon Issue Order for Eli Roy on 27 September 1907 [copy from file 1463735J].

work passed though the Ottawa Branch of the Imperial Bank of Canada before arriving at the Department of the Interior on 16 October 1907.[3]

A little more than a year after Roy's claim had been recognized by a certificate issued by Treaty Ten and Scrip Commissioner McKenna at Ile-a-la-Crosse, his certificate was exchanged for land scrip coupons (A8770 and A9809). Significantly, the grantee did not initiate the exchange of his certificate for coupons. How his and many other Metis individuals' certificates came into the possession of the Ottawa Branch of the Imperial Bank is unknown at this point. Apparently, no documentation confirming lawful possession of the certificate by the bank was required in order for the Department of the Interior to issue coupons in exchange for Roy's certificate. Those interested in obtaining coupons (i.e. scrip buyers) travelled with scrip commissions and purchased certificates at the time of issue. Proof of receipt of the actual coupons did not have to be provided by the Metis grantee; the delivery ledger books accommodated this discrepancy by simply referring to the coupon recipient under the heading of "Agent/ Present Owner."[39] Not infrequently, scrip coupons were delivered to banks. In the case of the delivery register information for Roy, the delivery details and receipt number are missing. Correspondence between bank managers and Interior officials and the actual receipt document provides vital details about the process. In early October 1907, the Winnipeg Branch of the Imperial Bank of Canada was in possession of Eli Roy's coupons. Although Interior officials often claimed that "no assignment of right to scrip is recognized," third parties, and not the Metis grantees, were in almost every case in possession of the land scrip coupons.



1472844

Department of the Interior.

SCRIP

No. 1463735

240 Acres

Received from the Honourable the Minister of the Interior, Scrip Notes Nos. A 8770 and A 9809 for 160 and 80 acres respectively, issued in accordance with the terms of an Order in Council of the 20th July '06, and as called for by Certificate number H 137

In favour - Eli Roy

Signed at Winnipeg the 12th day of October 1907

Witness

Signature:

Asst. Manager

FIGURE 8 Receipt (Form 65) for Scrip Coupons A877O and A9809 signed at Winnipeg 12 October 1907 [copy from file 1463735]

After the coupons had been delivered to a bank, several years passed before Roy's coupons were converted to actual grants of land. The face of the scrip coupons provides evidence about the redemption of the grant. Roy's :6o-acre scrip coupon was redeemed at the Humbolt Dominion Land Office on 25 November 1909 and located on SE 1/4 section 13, township 32, range 26 west of the second meridian, on 158.70 acres (see Figure 2). Alex L'Esperance witnessed Roy's application for the land.[40] His coupon for 80 acres was redeemed at the Moose Jaw Dominion Land Office on 13 January 1910, and located on northern half of SE 1/4 section i, township ii, range 5, west of the third meridian on 81 acres (Figure i).[41] Hence, Roy's interest in two particular, legally described parcels of land was established and registered at two different land offices.

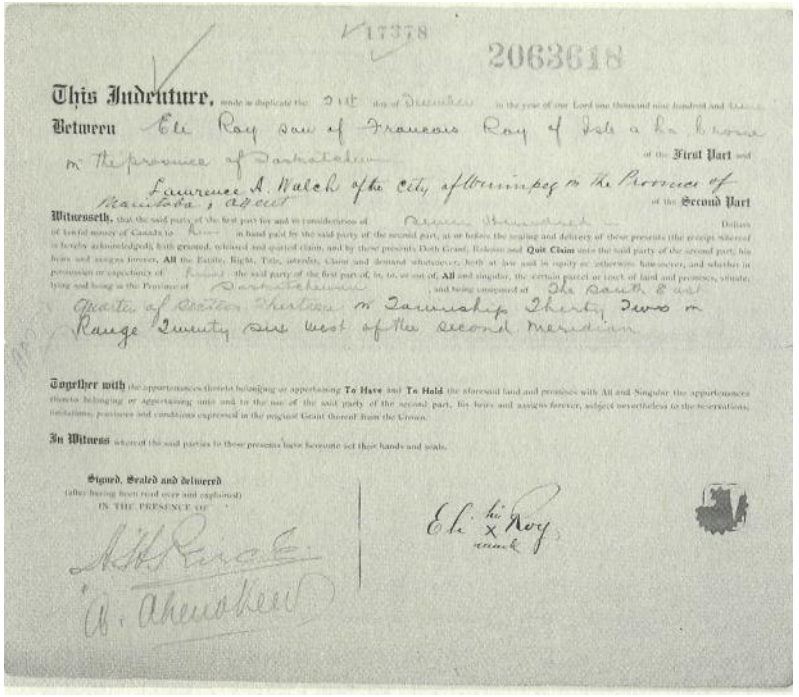
If compliance with the Rule of Location occurred, Eli Roy would have had to have made two trips to southern Dominion Land Offices in order to deal with his two land scrip coupons. The first trip, in 1909 to Humbolt, Saskatchewan, entailed a straight-line distance of 410 kms or 543 kms by today's road network. The second trip, in early January 1910, is 590 kms straight distance, or 701 kms by today's roads, to Moose Jaw. To locate the coupons in Humboldt and Moose Jaw and return to Ile-a-la-Crosse, Roy would have traveled between 2000 and 2582 kms. Since Eli Roy did not personally acquire title to these lands through a Letter Patent from the Lands Patent Branch of the Department of the Interior, it is not clear what would have motivated him or other northern Metis grantees to travel

to distant land offices. If Roy engaged in hunting, trapping, and fishing, these trips would have taken him away from the trapping grounds during harvest time.

The Location Registers, maintained by the Department of the Interior, recorded core details about the conveyance of Metis grantee interests in the homestead lands located and about the issuing of Letters Patent. Homestead files created by the Department of the Interior, now in the custody of the prairie provincial archives, are also important documentary sources concerning the conversion of coupons into land titles (see Figures 9 and 10). And since Eli Roy's scrip coupons recorded a legal description of the lands located, his interests developed the appearance of real property. The 158.70-30:6 parcel was assigned to Laurence A. Walch of Winnipeg. On 21 December 1909, at Ile-a-la-Crosse, Roy transferred his interests to Walch by signing a Quit Claim Deed, witnessed by Arthur H. Pierce and Angus McKay, for the sum, according to this document, of $700. On 25 February 1910, Walch forwarded the deed purportedly executed by Eli Roy to the Department of the Interior.[42] Assignment No. 17378 was registered on 16 March 1910 and verified by N.O. Cote "(Figure 9). A Dominion patent for 158.70 acres was issued to Walch on 22 March igio.[43]

Roy's other coupon was redeemed on 13 January igio.[44] This 8i-acre parcel was assigned to Emile Gravel, a farmer, on 14 January 1910. The assignment was conveyed in Moose Jaw the day after Eli Roy is purported to have located the land. On 4 February 1910, Cote registered Assignment No. 17323 (see Figure 10). A Dominion patent for these 81 acres was issued to Emile Gravel on 4 February 1910.[45] While the records generated by the scrip system document very specific property interests, they do not tell us how the scrip coupons journeyed from the Winnipeg Branch-of the Imperial Bank to Dominion Lands Offices in Humboldt and Moose Jaw.

In the official model of the land scrip system, once land had been located and the scrip coupon redeemed, the Metis grantee could then either have filed for a Letter Patent (equivalent to today's Certificate of Title) or "sold" his/ her interest in land acquired by redemption of their coupons. Clearly, this is not what happened in Eli Roy's case. Because Eli Roy did not take possession of the coupons or obtain a Letter Patent, his experience deviates significantly from the official model. His case is not unique: of 742 land scrip coupons issued in the Claim Region, 725 were assigned to third parties, and only 3 coupons were converted by the grantee to a Letter Patent.[46]


V 17378

2063618

This Indenture, made in duplicate the 21st day of December in the year of our Lord one thousand nine hundred and [illegible]

Between Eli Roy son of Francois Roy of Isle a la Crosse in the province of Saskatchewan of the First Part and Laurence A. Walch of the City of Winnipeg in the Province of Manitoba, agent of the Second Part

Witnesseth, that the said party of the first part for and in consideration of [illegible] Dollars of lawful money of Canada to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), hath granted, released and quitted claim, and by these presents Doth Grant, Release and Quit Claim unto the said party of the second part, his heirs and assigns forever, All the Estate, Right, Title, interest, Claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of [illegible] the said party of the first part of, to, or out of, All and singular, the certain parcel or tract of land and premises, situate, lying and being in the Province of Saskatchewan, and being composed of The South East Quarter of Section Thirteen in Township Thirty Two in Range Twenty six West of the second Meridian

Together with the appurtenances thereto belonging or appertaining To Have and To Hold the aforesaid land and premises with All and Singular the appurtenances thereto belonging or appertaining unto and to the use of the said party of the second part, his heirs and assigns forever, subject nevertheless to the reservations, limitations, provisoes and conditions expressed in the original Grant thereof from the Crown.

In Witness whereof the said parties to these presents have hereunto set their hands and seals.

Signed, Sealed and delivered (after having been read over and explained) IN THE PRESENCE OF

A. H. Pierce

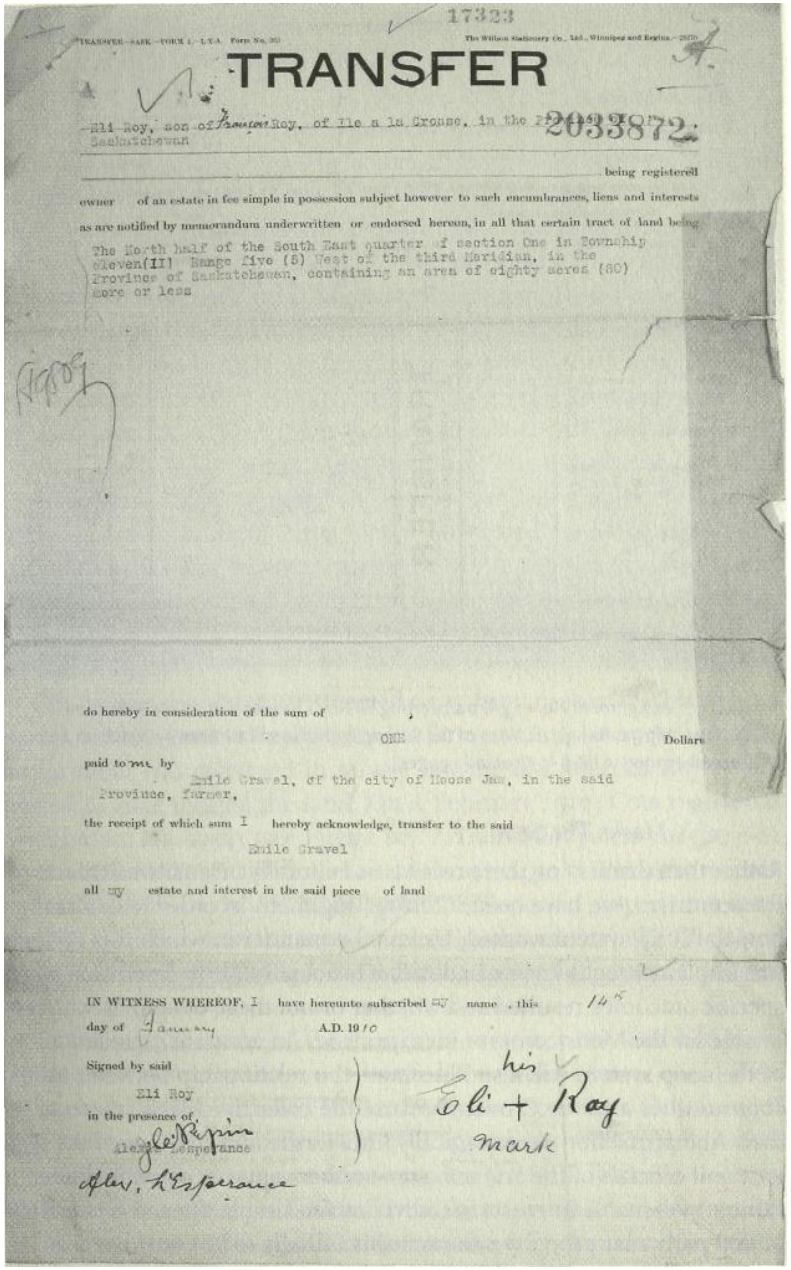
A. McKay

Eli his x Roy mark

FIGURE 9 Assignment No. 17378 transferring Eli Roy's interests in SE 1/4 of Section 13, Township 32, Range 26, West of the Second Meridian to Laurence A. Walch on 21 December 1909 in Ile-a-la-Crosse [2 pages].

X Marks The Spot

Rather than dismissing these records as culturally insensitive artifacts of Eurocentrism, we have been interrogating them in order to determine how the scrip system worked. Unless the manner in which this system was implemented is known in detail, it is not possible to determine what specific outcomes resulted and whether or not these outcomes were equitable for the Metis communities involved. An accurate representation of the scrip system will also illuminate the relationship between Metis communities and the Crown. Because the collective Metis interests in their Aboriginal title were magically transformed (in the view of the government officials of the era) into some rather vague or potential but conveniently alienable interests in individual fee simple titles, the propriety of that particular property system needs initially to be considered on its own terms as a foundation for further analysis. Most clearly, compliance with the Rule of Location and the validity of the transfer of the grantee's land interest to third parties are the fundamental property issues.[47] Once



17323

TRANSFER

2033872

Eli Roy, son of Transferor Roy, of Ile a la Crosse, in the Province of Saskatchewan

being registered

owner of an estate in fee simple in possession subject however to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed hereon, in all that certain tract of land being

The North half of the South East quarter of section One in Township eleven(11) Range five (5) West of the third Meridian, in the Province of Saskatchewan, containing an area of eighty acres (80) more or less

do hereby in consideration of the sum of

ONE Dollars

paid to me by

Emile Gravel, of the city of Moose Jaw, in the said Province, farmer,

the receipt of which sum I hereby acknowledge, transfer to the said

Emile Gravel

all my estate and interest in the said piece of land

IN WITNESS WHEREOF, I have hereunto subscribed my name, this 14th day of January A.D. 1910

Signed by said Eli Roy his Eli + Roy mark

in the presence of Alex. L'Esperance

Alex. L'Esperance

FIGURE 10 Assignment No. 17323 transferring Eli Roy's interests in N ½ of SE ¼ of Section 1, Township 11, Range 5, West of the Third Meridian to Emile Gravel on 14 January 1910 in Moose Jaw [2 pages].

these details are analyzed, we will have a better understanding of the extent to which the Crown fulfilled its obligation to deal honourably with Aboriginal peoples and interests (including lands).

As an initial appraisal, three empirical tests can be employed to consider the validity of the land scrip system: (i) the physical possession of scrip coupons; (2) the consistency of signature representations on documents; and (3) the geographical proximity between the home communities of grantees and the locales where coupons were located and land interests were assigned. The inability to prove credible on any one of these criteria is problematic, but a failure to appear credible on two or all three tests poses a serious challenge to the very validity of the scrip system. If serious doubts exist about the participation of grantees in locating and conveying land scrip interests, and/or if those in possession of the coupons (such as the agent or present owner) also had motives to circumvent the Rule of Location, then the scrip system was implemented in a manner that was inconsistent with the property conventions of the day that upheld standards for registering and transferring ownership. Furthermore, if the scrip system, as a facet of the emerging colonial land tenure order, failed on its own peculiar terms, then fundamental questions must ensue about the merits of this system to satisfy any long-term Aboriginal interests of the Metis arising out of their interactions with the European settlement frontier.[4]

Eli Roy's scrip coupons were not delivered to him but to a bank in Winnipeg, following a request made through the Ottawa Branch of the same bank. Our analysis indicates that of the 1015 coupon delivery destinations associated with the Claim Region, only 17 or 1.7 percent of the grantees received their coupons in person, while the rest were delivered to third parties or to the grantee in care of a third party. Of 1015 grants, 336 were delivered to banks and 173 to law firms.[49] Some 991 coupons were delivered outside of the study region.[50] The delivery of Eli Roy's coupons to a third party, a bank, was not exceptional. Grantees did not physically possess their coupons; the Department of the Interior established a delivery system that allowed third parties to take possession of both money and land scrip coupons.[51]

Several documents (Figures 4, 9, and 10) indicate inconsistent signatures and marks. A few years before McKenna's scrip commission, the 1901 national census identified Eli Roy as a Roman Catholic "French Breed" whose mother tongue was Cree but who had three years of schooling and could write English and French.[52] Given that individuals of that era did not have Social Insurance Numbers or driver's licences with picture identification, signatures are of interest because they were often

the only identity markers available. Roy's signature on the application (Figure 4) seems consistent with an individual possessing some education, as the application signature is likely in his own hand. In subsequent documents, Roy's signature does not reappear; instead, the mark of an X appears with his name. Individual scrip grantees are identified in the various records that make up the paper trail. On his "Half-breed" certificate Roy was identified as "Eli Roy son of Francis Roy" (Figure 6), and on the coupon issue order and both coupons he was identified with the same wording (Figures 7, i, and 2). Subsequently, the expression "Eli Roy son of Francis Roy" appeared on the conveyance instruments (Figures 9 and 10) and on the applications for Homestead Lands.[53] Clearly, all the available information required to present another individual as a grantee was already on the face of the coupon, which was in possession of those involved in the conversion of the coupon into title.

Nevertheless, a certain Alex L'Esperance stepped forward to identify Eli Roy at both the Humboldt and Moose Jaw Dominion Land Offices.[54] So far, our database information indicates that Alex L'Esperance's signature appeared as a witness on fifty conveyance instruments, and on the reverse sides of forty-eight land scrip coupons.[55] Between 15 March 1906 and 18 July 1911, L'Esperance identified coupon-holders at the Battleford, Saskatoon, Humboldt, Regina, Estevan, Moose Jaw, Medicine Hat, and Calgary Dominion Land Offices. Unless he was inclined to hang out at various Dominion Land Offices, it would appear that the identification of Metis grantees at Dominion Land Offices was an organized operation. Nevertheless, possible discrepancies in signatures and marks highlight problems with the conveyance of scrip interests.

At this point we have some nagging doubts about the compliance with the Rule of Location. For one, it would have taken a Metis person from the Claim Region several days, in the most ideal conditions, to travel from Northwest Saskatchewan to a Dominion Land Office in order to locate and register his scrip and then assign his interests to lands he would never see.[5] Given that the conversion of scrip into land largely involved land speculators, the Metis grantee had no practical role to play. Significantly, the grantee was not operating as land speculator with the profit motive to flip parcels of scrip/homestead lands; the grantee is therefore not needed to select the land and, at any rate, held little knowledge of local land markets with which to select the most desirable lands. Apart from the need to comply with the Rule of Location, the Metis grantee had no necessary role to play in the conversion of paper to land.

It was also potentially somewhat costly to transport grantees to Dominion Land Offices. Alluding to the cost of travel in a different situation, N.O. Cote wrote to Deputy Minister A.M. Burgess that a grantee lived "seventy-five miles west of Edmonton, and to bring her to Calgary and take her back would cost as much as the scrip is worth."[57] The difficulty with complying with the Rule of Location was also revealed by the experiences of a young Winnipeg law student, William Parker Fillmore, who had participated in scrip buying during the Treaty Ten Commission in 1906. Much later he recorded his memories of this process:

> I have always wondered how the buyer, or purchaser, of scrip from him, got title...which the person named in the scrip was entitled to get, by attending at a Dominion Land Office, and locating the scrip.... It would have been a matter of considerable difficulty to go north and find the person named in the scrip and bring him out to the Land Office. I have a hazy memory that the buyers, when purchasing the scrip, would have the vendor sign a form of Quit Claim Deed. He would sign by making his mark, and this would be witnessed by two persons, presumably other dealers (Fillmore i28).[58]

Here Fillmore identifies the purchaser of the scrip as responsible for making the arrangements to comply with the Rule of the Location. Further, Fillmore explains how the difficulties of arranging the participation of northern grantees were overcome:

> After my return to Winnipeg I made some inquiries, and I was told that the practice was for the holder of a scrip to pick out some local Indian or half-breed and take him to the Dominion Land Office and present him as the person named in the scrip. The holder of the scrip, pretending to be the agent of the half-breed, would designate the land. The patent to this land would then be issued, and the scrip holder would then have to get title. Presumably, this was done by completing and registering the Quit Claim Deed. (Fillmore 128)

Given the logistical difficulties outlined above, and the fact that grantees were not holding their coupons, motives and opportunities not to comply with the Rule of Location clearly existed.

Signature discrepancies, costly travel barriers, and third-party possession of scrip coupons support Fillmore's statement that Metis grantees were impersonated in order to circumvent the Rule of Location. If impersonation was widespread, then the establishment of "good title" was uncertain in this era. Knowledge of such impersonation generates a "cloud on title."[59] And if many of the lands obtained with land scrip

were problematic, a very large cloud would have been cast over the prairie landscape.

In fact, the impersonation of a grantee for the purpose of obtaining a patent, as reported by Fillmore, was not a minor transgression in the early twentieth century. Several sections of the *Criminal Code* (1910) dealt with property frauds. For example, section 408 "Personation with intent to obtain property" states that "Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who, with intent fraudulently to obtain any property, personates any person, living or dead...." ° In section 468 "Punishment for forgery," the scope of forgery in relationship to property is established. Several examples of forged documents would seem to have been relevant to the Rule of Location and the assignment or conveyance of land scrip interests, including "(c) any document containing evidence of, or forming the title or any part of the title...; (d) any entry in any register or book; (e) any document required for the purpose of procuring the registering of any such title;... (o) any power of attorney or other authority to transfer any interest;. ..(s) *any scrip* in lieu of land...is guilty of an indictable offence and liable to IMPRISONMENT FOR LIFE if the document forged purports to be, or was intended by the offender to be understood to be or to be used as genuine."[61] The inclusion of "any scrip in lieu of land" suggests that Metis scrip coupons were something more than a mere piece of chattel. Clearly, with sentences ranging from fourteen years to life imprisonment, violation of the individual interest in property was punishable.

Despite severe punishment for such offenses, Metis scrip grantees do not appear to have been protected against impersonation and forgery. [2] On i June 1921, Bill 138, a bill to amend the Criminal Code was itself abruptly amended in the Senate. Section 1140 of the Criminal Code imposed time limitations for the prosecution of several offences, and it was amended so that "Any offence relating to or arising out of the location of land which was paid for in whole or in part by scrip or was granted upon certificates issued to half-breeds in connection with extinguishment of Indian title" could not be prosecuted after three years from the occurrence of the offense. [5] Prior to this amendment, section 1140 was largely aimed at treason and moral crimes. On 21 June 1922, Senator Sir James Lougheed read aloud in the Senate Chamber a letter from the Parliamentary Counsel Francis R. Gisborne justifying the amendment: "It is urged that there were a good many irregularities amounting to fraud and perjury in connection with the location of these lands, and parties are raking up these frauds for the purpose of blackmail." [4] If the Parliamentary Counsel is a reliable authority, then Fillmore's report on

impersonation of scrip grantees and the lack of support for compliance with the Rule of Location gains additional and official support. Moreover, the justification advanced by Gisborne and Lougheed indicates a greater concern about the blackmailing of scrip buyers than the property frauds ("irregularities") associated with the interests of Metis grantees.

As of yet, we have not found an instance in which the Parliament of Canada placed similar time limits on prosecutions with respect to frauds or forgeries for any other category of the many land tenures arising out of the Dominion Lands Act. The concern of Parliament would seem to have been somewhat selective. The effect of this amendment was to decriminalize scrip frauds arising out of the relationship between the Crown and the Metis in respect to Aboriginal title.

Parting Considerations

Without the specific research needs generated by the Metis claim to Northwest Saskatchewan, the history of scrip would have pretty much remained as it was. While it is understandable that the academy would be reluctant to accord any credibility to "adversarial" claims research, this activity does affect the Ivory Tower.[65] Clearly, the position taken today by government officials and advocates claiming that the scrip system successfully ended Metis interests in Aboriginal title is an invitation to inquire into some rather obscure corners of Canadian history. Our investigation into the scrip system suggests that many historical complications potentially confound the broad legal assertions about the effect of scrip on Aboriginal title.

The reasons why scrip became integral to the settlement frontier and yet at odds with intrinsic principles (good title, lawful assignments, orderly conveyances, reliable registration of interests) of the very property foundation that colonialism was seeking to establish requires an analysis informed by the precepts of political economy and historical geography that is beyond the scope of this paper. Once the individual cases of Metis grantees "selling" scrip certificates to buyers who in turn converted paper into land are identified and compiled, the general discharge of property will be understood. For now, the capacity of the scrip system to promote the commercialization of public homestead lands is clear: under the scrip system, public lands regulated by the Dominion Lands Act were privatized and entered the sphere of the market, meeting a demand for land by farmers, ranchers, agents, and developers. Under the guise of an acknowledgment of Metis entitlement to lands, the government implemented a system that facilitated western settlement and, in a few cases, the accumulation of wealth.

Although it is somewhat provisional, our counter-story of Metis scrip was arrived at through tedious examination of archival documents and emerges as a series of connected stories, or as pieces of a larger, still unfolding account. Each document, usually generated in response to a previous document, involves its own cast of individuals. Linking documents, made feasible by database technology, allows us to connect the individuals, resulting in a rather eclectic group of investments and motives working within the larger colonial scheme and, more particularly, the National Policy of the Canadian government. In a certain sense, Eli Roy has been rescued from the obscurity of official history; because this research relates to a present-day land claim and also to contentious and polarized views about the past treatment of Aboriginal peoples, Roy and many more Metis will be re-instated as representatives of a historically significant people.

Following the treaties between the Crown and First Nations, a system of property with an efficient surveying system and a host of tenures and grants to register these private grants transformed the organization of geographical space. Indeed, for the Metis, the rights to the land appear to have been transferred. In a certain sense, the scrip system was a collision of two property systems. Aboriginal systems of tenure, as described by Peter Usher, are characterized as communal, a form of social property in which resource harvesting and management create a unified system that promotes conservation (Usher 38-44). To a large extent, the failure of both the scrip system and treaties to accommodate this system of tenure as settlement and development encroached is fundamental to the current land and resource conflicts. Recently, in *R. v. Blais,* the Supreme Court of Canada provided this comment on the scrip system:

> The perceived differences between the Crown's obligations to Indians and its relationship with the Metis was reflected in separate arrangements for the distribution of land. Different legal and political regimes governed the conclusion of Indian treaties and the allocation of Metis scrip. Indian treaties were concluded on a collective basis and entailed collective rights, whereas scrip entitled recipients to individual grants of land. While the history of *scrip speculation and devaluation Is a sorry chapter in our nation's history,* this does not change the fact that scrip was based on fundamentally different assumptions about the nature and origins of the government's relationship with scrip recipients than the assumptions underlying treaties with Indians.

Such a fundamental assumption about the government's historical relationship with the Metis might prove to be constrained by the realization that the scrip system could be justified not as a loss of lands available for settlement, but as a gain. Once comprehensively researched, this chapter in Canada's history may end up being sorrier than the Supreme Court could ever have imagined. As this article suggests, the problem is not simply a serious difference (devaluation) between the price paid for scrip and the value of land that could be obtained with a coupon or even that such prospects attracted "speculators"; rather, claims to equity, fairness, and impartiality of the scrip system may be challenged. Widespread impersonation of land scrip grantees cannot be justified by the assertion that the government did not want to deal with the Metis as it had done with the Indians. Ultimately, it might turn out to be an even worse breach of justice if the courts determine that the Metis, with respect to their land interests, were entitled neither to the Crown's protection enjoyed by Indians nor to the property rights that the Anglo legal system provided to "Europeans."

Our initial reconstruction of a trail of documents reveals that the scrip system was, at best, a curious attempt to mesh two notions about prop-erty-an Indian title that had to be extinguished and a European system of varied tenures and specific rights-but which promoted fee simple title in a frontier prairie region where a system of land registry had just been laid down. Of course, it is hard to imagine how all this might really have succeeded for the Metis and, in the long run, it may have, apart from a small group of scrip buyers, failed for all concerned.

Acknowledgements

We would like to acknowledge the many individuals who have worked on the matrix project since 1999, most of whom were students at the time of their involvement. The collective endeavours of these individuals have led us to a better understanding and appreciation of the Halfbreed Scrip process. Converting archival documents into database records is tedious and often mind-numbing work. During the early years of the project, Anna Ryding, Kevin MacLennan, Clayton "Buster" Leonard, Nonnie Jackson, Sara Cardinal, and Katie Morrison, in particular, provided dedicated contributions to the project. More recently, Katherin McArdle also provided valuable assistance. We also benefited from the interest shown by Clem Chartier, Jean Tiellet, Jason Madden and Douglas Kovatch, all lawyers. The support of the Metis Nation-Saskatchewan, Metis National Council, and the University of Alberta has made this work possible. The inter-

pretations, along with the errors and mistakes, are our own and do not represent the views of the University of Alberta, Metis National Council, the Northwest Saskatchewan Metis Council Land Claim Committee, or the Metis—Nation Saskatchewan.

NOTES

1 Gerald Morin et *at.,* Metis Nation of Saskatchewan, "Statement of Claim" Queen's Bench No. 619, Judicial Centre of Saskatoon, SK (1994). The Claim Region includes lands north of Meadow Lake, south of Lake Athabasca, west of the Alberta/Saskatchewan border and east towards approximately 105°W longitude.

2 The Supreme Court of Canada in the recent Powley decision recognized the Metis as Aboriginal people with Aboriginal rights. See R. u. Powley 2003 Supreme Court of Canada 43, File No. 28533.

3 Aboriginal title is regarded as unique or special. The Supreme Court of Canada has defined Aboriginal title as "suigeneris, and so distinguished from other proprietary interests, and characterized by several dimensions. It is inalienable and cannot be transferred, sold or surrendered to anyone otherthan the Crown. Another dimension of aboriginal title is its sources: its recognition by the Royal Proclamation, 1763 and the relationship between the common law which recognizes occupation as proof of possession and systems of aboriginal law pre-existing assertion of British sovereignty. Finally, aboriginal title is held communally." *Delgamuukui \i.* British Columbia [1997] 3 S.C.R. 1010, [1997] S.C.J. No. 108 (preamble). An accessible source for this judgment is The Supreme Court of *Canada* Decision on Aboriginal Title: Delgamuukui.

4 For an informative summary of Metis rights, see Canada, Report of the Royal Commission on Aboriginal Peoples: Perspectiues and Realities, 4:199-386.

5 Forthe details on the significance of the events of 1870, see Frank Tough, "Aboriginal Rights Versus the Deed of Surrender: The Legal Rights of Native Peoples and Canada's Acquisition of the Hudson's Bay Company Territory."

6 Fora history of this region based on genealogical archival sources, see Brenda MacDougall, "Socio-Cultural Development and Identity Formation of Metis Communities in Northwestern Saskatchewan, 1776-1907."

7 In the 1901 national census, the Native population of this region was almost entirely identified as "Breeds," National Archives of Canada, Record Group 31, Census of 1901, Microfilm ReelT6555 (hereafter NAC, RG 31). In 1906, a total of 394 Indians were paid by Commissioner J.A.J. McKenna, compared to the 546 individual claims for scrip in the same year. See Canada, Treaty No. 10 and Reports of Commissioners, 9; and NAC, RG 15, vol. 1515, Claims Register.

8 On the migration from Red River, see Gerhard J. Ens, Homeland to Hinterland: The Changing World of the Red Riuer Metis in the Nineteenth Century; Gerhard J. Ens, "Dispossession or Adaptation? Migration and Persistence of the Red River Metis, 1835-1890"; and P.R. Mailhot and D.N. Sprague, "Persistent Settlers: The Dispersal and Resettlement of the Red River Metis, 1870-1885."

9 A.A. Seaborne, "A Population Geography of North Saskatchewan."

I o On the question of the significance of the fur trade to the development of Canada, see Harold A. lnnis, The Fur Trade In Canada: An Introduction to Canadian Economic History and its introductory essay by Arthur J. Ray.

I1 Northern Saskatchewan Metis communities, under the auspices of the Northwest Saskatchewan Metis Council, have been conducting training and research in the area of traditional land-use studies.

12 Kevin MacLennan suggested the name "matrix." For an introduction to the matrix Project, see Linda Goyette, "Land Grab: The X files."

13 For an overview, see Peter J. Usher, Frank Tough and Robert M. Galois, "Reclaiming the Land: Aboriginal Title, Treaty Rights and Land Claims in Canada."

14 The Dominion government issued scrip and warrants redeemable in western Canadian lands to particular groups, including the original white settlers, those who served with the militia under Colonel Wolseley, the North-West Mounted Police, the militia forces in North- West in 1885, and the South African Volunteers. These western grants had been preceded in the pre-confederation era for Upper Canada by scrip issued to members of the militia and United Empire Loyalists. Money scrip could also be used as payment to secure other types of Dominion land tenures and titles.

15 On homestead policies, see James M. Richtik, "Competition for Settlers, The Canadian Viewpoint"; James M. Richtik, "The Policy Framework for Settling the Canadian West, 1870- 1880"; and Kirk N. Lambrecht, The Administration of Dominion Lands, 1870-1930.

16 In the Claim Region, successful claimants were granted 240 acres of land scrip or 240 dollars of money scrip. Since the Dominion Lands survey system allotted lands in i6o-acre quarter sections and 80 acres or halves of a quarter sections, the grant of two coupons of 160 and 80 acres each would conform to the geometry of the survey system. Coupons of less than the normal value were issued to heirs who shared in the award to a deceased claimant.

17 The Department of the Interior sold lands closer to railways at a higher price than the average price of homestead lands.

18 Scrip coupons were purchased by private interests, not the government, but the Interior Department redeemed both land and money scrip from interested parties as a means of paying for land and othertenures. Ifthe cash received by the Metis grantee is regarded as compensation for Indian title, then it is important to note that compensation was paid out by private interests and not the Crown.

19 One estimate indicates that Northwest Halfbreed grants of money scrip amounted to $2,095,817, compared to a land scrip total of 1,161,612 acres. Thus 35.6 percent of the total was land scrip. The amount of Metis scrip lands was much less than the Dominion Lands allocated to railway interests or the Hudson's Bay Company; however, this form of grant was not irrelevant to prairie settlement, history. This figure does not include the grants of land and scrip for the Red River Settlement in Manitoba, ca. 1870. See N.O. Cote, "Administration and Sale of Dominion Lands, Claims Underthe Manitoba Act, Half-Breed Claims and Letters Patent for Dominion Lands, 1871-1930," copy found in NAC, RG 15, vol. 38, file 2. See also FrankTough, "Activities of Metis Scrip Commissions," 61-62.

20 Chain of title is defined as "Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source down to the present holder" (Black 290).

21 Beginning in 1907, scrip commissioners no longer approved claims "in country" by issuing certificates. Also around this time, coupons were delivered personally to the grantee after the validity of the claim had been determined in Ottawa.

22 The scrip issued underthe Manitoba Act and in the scrip commissions in the late 18805 would only approximate this particular representation. Money scrip was a simpler process.

23 Under the authority of a statute, Orders-in-Council carry the force of law and are a mechanism for implementingthe more general provisions of a statute. Beginningwith the 1889 territorial adhesion to Treaty Six, treating with the Indians and taking scrip claims were simultaneous. The scrip commission of 1885,1886, and 1887 covered lands "ceded" in the treaties of the 18705. With Treaty Ten and the Adhesion to Treaty Five, a single commissioner served to treat with the Indians and to approve scrip claims.

24 Where and when claimants were born were important factors. Also, commissioners would reject claims if a claimant had already received scrip from an earlier commission. Claims with some merit, but which had not been anticipated by the exact criteria established by the Order-in-Council, would be considered by the Ottawa staff of the Department of the Interior.

25 An appreciation for the difference between certificates and scrip coupons or notes is essential, but often this distinction is not obvious in the correspondence records of the Department of the Interior.

26 Neither coupon had to be converted at the same time or in the same land office. "Open" homestead lands were surveyed, unoccupied, and set aside for homesteading. Land lying outside of the belt of land surveyed by Dominion land surveyors or lands set aside for railroad companies or other interests within the surveyed townships were not available. Scrip coupons could not be applied to unsurveyed lands because the township/range survey system was the basis for allocating homestead lands. The process was similarto a prospective settler selecting a parcel of open homestead lands. For a comparison of scrip and homestead procedures, see Kevin MacLennan, "Forthe 'Purposes of the Dominion': Metis Entitlement and the Regulatory Regime of'Halfbreed' Scrip."

27 Typescript copy of a section of Bulletin No. 21 (2 January 1930) Department of the Interior, copy found in Archives of Manitoba, Record Group 17, 60x89, 81, File 17.2.1,19 November 1931. However, a process known as "Red backing" permitted the locating of the coupon without the presence of the grantee. See Frank Tough and Leah Dorion, "The Claims of the Halfbreeds...Have Been Finally Closed"': A Study of Treaty Ten and Treaty Five Adhesion Scrip."

28 Accordingto Black's *Law* Dictionary, good title is "free from all encumbrances. A title which on the record itself can be again sold as free from obvious defects and substantial doubts...." Good title "differs from 'good marketable title,' which is an actual title, but which may be established by evidence independent ofthe record"(Black 353).

29 For an analysis ofthe advantages of orderly title registration over costs and defects of private conveyances, see S. Rowton Simpson, Land *Law and* Registration.

30 For exam pie, NAC, RG 15, liber 329, folio 158, fiat number 167580 granting lands to C.C. Hague on 4 January 1909. Also on the Letter Patent is the notation that N.O. Cote had recorded the grant on 5 January 1909.

31 This literature tends to privilege the official narrative ofthe way the process was supposed to work, often overlooking the discrepancies revealed through detailed archival research. See, for instance, D.J. Hall, "The Half-Breed Claims Commission"; D.N. Sprague, "The Manitoba Land Question, 1870-1882"; D.N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887"; Joe Sawchuk, Patricia Sawchuk, and Theresa Ferguson, Metis Land Rights in Alberta: A Political History, 87-158; Ken Halt, "The Northwest Scrip Commissions as Federal Policy: Some Initial Findings"; Ken Halt, "North- West Rebellion Scrip Commissions, 1885-1889"; Thomas Flanagan, "Comment on Ken Halt, 'The North-West Rebellion Scrip Commissions, 1885-1889'"; Thomas Flanagan, "The Market for Metis Lands in Manitoba: An Exploratory Study"; and Thomas Flanagan and Gerhard Ens, "Metis Land Grants in Manitoba: A Statistical Summary." .

32 This became known as Treaty Ten. See PC 1459 (20 July 1906) copy found in NAC, RG 15, vol. 227, parts.

33 We can only wonder how the Metis of this era reacted to this unprecedented, intrusive data collection by a group of official-looking strangers. Today, however, these records, which are more detailed than the band annuity pay-lists forTreaty Indians kept by the Department of Indian Affairs, provide much demographic information about Metis individuals and communities. Since many applications record personal information on three generations of Metis, and since married women were required to provide information on separate declarations, these details help researchers reconstruct some ofthe social history ofthe Metis and the historical Metis Nation. Today such data can assist with the individual need to meet verifiable and objective criteria concerning connections to Metis ancestry and Metis communities.

34 The duplicate copy of his certificate retained by the Department ofthe Interior is found in NAC, RG 15, vol. 1384, Scrip Certificates, H No. 137.

35 Note that the certificate indicates that the grantee is the individual who redeems the coupon. Roy's certificates are found in NAC, RG 15, vol. 1008, file 1463735; and NAC, RG 15, vol. 1384.

36 NAC, RG 15, vol. 1008, file 1463775, Boulton to Keyes (27 September 1907).

37 NAC, RG 15, vol. 1008, file 1463775, Keyes to Boulton (3 October 1907); and NAC, RG 15, vol. 1520, Delivery Register.

38 NAC, RG 15, vol. 1008, file 1463775, Boulton to Keyes (15 October 1907).

39 See NAC, RG 15, vols. 1518,1519 and 1520, Delivery Registers.

40 Saskatchewan Archives Board, Homestead File 1908546, Application to purchase SE 1/4 of section 13, township 32, range 26 west ofthe second meridian (25 November 1919) (hereafter SAB).

41 NAC, RG 15, vol., 1548, Location Register; and SAB, Homestead File 1698842, Application to purchase N 1/2 of SE 1/4 of section 1, township n, range 5 west ofthe third meridian (13 January 1910).

42 SAB, Homestead File 1908546, Walch to Department ofthe. Interior (25 February 1910). The letterhead on the correspondence accompanying the Quitclaim Deed depicted "The Walch Land Co. Lands-Mortgages-Investments."

43 See NAC, RG 15, vol. 1547, Location Register; NAC, RG 15, Land Patent, liber 406, folio 117, patent fiat 198901; and on 5 April 1910 Walch was advised by Perley G. Keyes, Secretary, Department of the Interior, that his patent had been issued on 22 March 1910 and that it had been forwarded to the Registrar of Land Registration District of Saskatoon, SAB, Homestead File 1908546.

44 SAB, Homestead File 1698842, Application 13 January 1910.

45 See NAC, RG 15, vol. 1548 location register; and NAC, RG 15, Land Patent, liber 398, folio 89, patent fiat 195303.

46 As of 1933,10 coupons were unredeemed and 4 coupons had missing information. Based on an analysis of data in NAC, RG 15, vols. 1539^1550, Location Registers.

47 How officials responded to allegations of non-compliance with the Rule of Location and/ or questionable conveyances of the grantee's interests is another important feature of the implementation of the scrip system, but space does not permit consideration here.

48 Two fundamental references on the question of Aboriginal land interests surviving the advent of European systems of property are the Royal Proclamation of 7 October 1763 and an Imperial Order-in-Council of Her Majesty in Council admitting Rupert's Land and the North western Territory into the Union (23 June 1870).

49 Based on an analysis of NAC, RG 15, vols. 1518-1520, Delivery Registers.

50 Fourteen coupons were delivered to the Claim Region and the Adjacent Treaty Territory. Based on an analysis of NAC, RG 15, vols. 1518-1520, Delivery Registers.

52 In instances when two groups of scrip buyers claimed ownership of the same coupon, problems ensued when the coupon was delivered to one of the competing parties. The

Department of the Interior abandoned this delivery procedure in 1907 and had the coupons delivered to the grantees.

52 NAC, RG 31, Census of Canada, 1901, Reel 16555. Three years of schooling would not equip anyone to read and understand the conveyance instruments; however, this would seem to be more education than many Aboriginal people received in that day and region.

53 "Eli Roy, son of Francis" appears in the records generated for the locating of scrip; see SAB, Homestead File 1908546, Application 25 November 1909; and SAB, Homestead File 1698842, Application i3Januaryigio.

54 Alex L'Esperance (also Alexis and Alexander) identified Roy on the backs of Land Scrip Coupons A8770 and A9809.

55 Based on 1727 records of land scrip coupons, NAC, RG 15, vols. 140610 1410, Land Scrip; and records for 5477 transfer documents (assignments) from NAC, RG 15 vols. 1430-1474, Land Assignments.

56 Scrip coupons could only be used to purchase land in surveyed territory. The Claim Region had not been surveyed into townships at the time scrip was in circulation. Location for their own use would have meant the Metis grantee would have had to relocate from a region in which their community had been well established for many years. Further, the Northwest Saskatchewan economy was based largely on fishing and hunting, so relocating to the southern surveyed lands would have necessitated an economic shift and risk.

57 NAC, RG15, vol. 708, file 360372, N.O. Cote to A.M. Burgess (15 July 1894).

58 W.P. Fillmore, QC, practised law following his call to the Bar in 1907 until his retirement in 1972; he practised with Bradshaw, Richardson, and Affleck, later with Richards, Affleck, Kemp, and Fillmore, and still laterwith Fillmore, Riley. He served on the executive of the Canadian Bar Association (1943-19441,353 Bencher of the Law Society of Manitoba (1946- 1948) and as President of the Manitoba Bar Association (1946-1948). See obituary of William *Parker* Fillmore Q.C., Manitoba Tribune, 7 M3y 1978.

59 An important concept in the context of scrip assignments, "cloud on title" is defined as "[3]n outstanding claim or incumbrance which, ifvalid, would affect or impairthe title ofthe owner of a particular estate, and on its fsce has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question. A conveyance, mortgage, judgment, tax-levy, etc., may all, in proper cases, constitute a cloud on title" (Black 322). A cloud on title indicates uncertainty about the legitimacy of ownership of a piece of property or parcel of land (estate). If a grantee's scrip interest had been improperly conveyed to another party, then the validity of title is in question.

60 Criminal Code, 1910, Revised Statutes of Canada, 1906, c.146, 5.408.

61 Criminal Code, 1910, R.S.C., 1906, c.146, 5.469 [uppercase in original, emphasis added].

62 In 1916, the Exchequer Court of Canada held that land scrip was chattel. See L'Hirondelle (Antoine) v. The Kim;, [1916] 16 Exchequer Court of Canada Reports, pp. 193-195 and L'Hirondelle (Joseph) v. The King, [1916] EX.C.R. at p. 196-198. These decisions are published in Brian Slatteryand Linda Charlton, eds., Canadian Natiue Law Cases: 1911-1930 vol. 4:258- 265; they are also available online: http://library.usask.ca/native/cnlc/volo4/258.html and http://library.usask.ca/native/cnlc/volo4/258.html.

63 The amendment occurred during Committee of the Whole Government of Canada, Debates ofthe Senate ofthe Dominion of Canada: 1921, 720-721). On this issue, see also Sawchuk, Sawchuk, and Ferguson 148-151.

64 Government of Canada, Debates of the Senate: 1922, 500, indicating correspondence from Francis H. Gisborne to Sir James Lougheed (31 May 1920).

65 For further discussion, see Arthur J. Ray, "Aboriginal Title and Treaty Rights Research: A Comparative Look at Australia, Canada, New Zealand and the United States"; and Arthur J. Ray, "Native History on Trial: Confessions of an Expert Witness."

66 R. v. Blais, Supreme Court Reporter, 2003, paragraph 34 (neutral citation 2003 S.C.C. 44. File 28645) [emphasis added]. This comment does not provide any additional context, and it is important to realize that there are differences between the scrip issued in relation to the Manitoba Act and the scrip provided by the Dominion Lands Act.