CHAPTER 1

SETTING THE STAGE

This first chapter contains basic information about the legal framework for the taking of surrenders, dominion lands policies, railway expansion, and western settlement. It also deals with colonization companies, including companies chartered after 1900, along with their function at the time. It describes the development of Indian Affairs practices in the pre-surrender era on the prairies, as well as the organization of the Department of Indian Affairs from 1897 to 1911.

THE DEPARTMENT OF INDIAN AFFAIRS

Policies: 1871 to 1896

Between 1871 and 1896, the Department of Indian Affairs surveyed reserves and enforced a set of practices that derived from legislation set out in the *Indian Act*, general policy, and interpretation of the treaties. Collectively, these practices placed Indian people on reserves within a system that fostered dependency on the government. This outcome, in turn, provided the economic, cultural, and political environment within which surrenders were considered, discussed, and taken.

The relevant provisions of the *Indian Act* regulated, in part, the following matters:

- membership, in terms of who was considered to be an Indian and was entitled to live on a reserve;
- property, including wills and estates;
- land jurisdiction, including trespass, alienation, and on-reserve land management policies;
- governance, including the election of leaders, their powers to set and enact bylaws, and the jurisdiction of the government to overrule this leadership;
- agriculture, including the use of permits and the role of the agent as the manager of production and sales;
- land allotment, as a means of assimilation and of encouraging fee simple tenure for farming; and
- the power of the Indian agent, not only as a manager but as a magistrate as well.

The general policies of the Department that relate to surrenders apply to a broad range of issues:

- The use of farming instructors, home farms, and, later, under Hayter Reed, of peasant farming practices was seen as a means of economic transition between a hunting and an agricultural way of life.

- The pass system, used after 1885 as a means of restricting movement among reserves and preventing political and religious gatherings, was solely a policy instrument.

- Accounting practices were an important part of the system and were used to make estimates, appropriate money, and control spending. Money for on-reserve spending came from parliamentary appropriations (defended as treaty obligations), from sales of agricultural products, wood, crafts, furs, roots, and hay, from wage work, and from land or timber leases and sales. Some of this income was controlled by individual band members, and some by Indian agents. Expenditures for building supplies, rations, farm implements, furnishings, fuel, and seed grain were paid to both local merchants and general departmental suppliers. The system of spending, income production, and debt control is poorly understood at best, and a good understanding of the context of surrenders will depend on a better grasp of economics, especially since the income generated from land sales was expected in most instances to replace and enhance monies generated from other sources.

Treaty interpretation included matters such as fiscal responsibility and the implementation of specific programs and policies:

- The government paid in whole or in part for education, annuities, some specified types of agricultural assistance, rations for the destitute (Treaty 6), ammunition, surveys, and some other supplies.

- The intent of the treaties, which was reinforced in negotiations, emphasized changing the economic policies of the Department away from support of a hunting economy and towards a reserve-based, agricultural economy.

The settlement of people on reserves was a gradual and uneven process. The surveying of land began in Manitoba and the part of the North-West Territories that became the southern provinces soon after the first treaty was signed. In Saskatchewan, a few Treaty 4 reserves were surveyed in 1875 and 1876, but not all of them were accepted by the bands. Most but not all of the reserves in the southern prairies, in the valleys of the Saskatchewan, Bow, Battle, and Qu'Appelle Rivers, were surveyed between 1880 and 1885. The acceptance of reserves, and the actual settlement on them, can only be documented on a band-by-band basis. The demise of the buffalo-hunting economy by 1881, the enforced move away from the border and the Cypress Hills in 1882-84, and the events of 1885 are all critical in determining when each band settled on reserve, and, in fact, the actual size and

leadership of the bands. The loss of the buffalo, the effect of contagious diseases (where people were gathered for the hunt, or for ceremony or trade), and severe weather all played a role in this transition period. Studies of paylists, which were used for annuity payments, reveal frequent and profound changes in band structures as people sought leaders who might protect them. They also show population loss due to disease, starvation, and cold, particularly between 1880 and 1885 (see, for example, Tobias 1991; Brizinski 1993, ch. 4).

A number of studies have been made of the development of agricultural policies within the Department (see, for example, Carter 1990; Buckley 1992; Elias 1990; Dyck 1986). These policies tended to be incremental and experimental, as one initiative derived from another, depending on its success. Costs were high, and Indian farmers faced the same problems with insects, maladapted seed varieties, short growing seasons, and inadequate implements that all farmers confronted at the time. The authors of these studies assert that the overall failure of agricultural policy to lead to self-sufficiency had nothing to do with the disinclination of the Plains Indian to farm or to poor land on reserves, but, rather, was related to weather and seed problems generic to farming in that era, as well as to the dearth of effective policies and personnel from the Department.

Patronage-appointed farm instructors brought from the east after 1879 are sometimes blamed, as was the inclination of some of these gentlemen to focus on their "home" instructional farms rather than on assisting the Indians. Jealousy from white farmers, resulting in public pressures to suppress Indian agriculture, has also been discussed. The legal powers of the agent to control production and sales, and the high costs of tools and of breaking land, were all disincentives. The success of agriculture in generating income varied from one reserve to another. When the few available reserve histories are examined, we find that each had its own pattern of adaptation to the changing economy, as well as its own pattern of settlement (see Chapter 4). The Indians seldom relied totally on agriculture. More often, they developed a mixed economy drawing on a variety of sources of income: annuities, wage work, furs, cash sales, craft production, wood and hay harvesting, livestock, Seneca roots, and wild fish and game. Some reserves, such as those in the Pelly Agency in Saskatchewan, were divided between those that wanted to farm and those that continued to hunt and fish.

These same reserve histories also describe the "peasant farming policy" that Hayter Reed, as Commissioner and then as Deputy Superintendent General of Indian Affairs (DSGIA), tried to force

on reserves between 1888 and 1896. Reed believed that the best future for the Indians was that of the small farmer. To this end, he encouraged the subdivision of reserves into small holdings and the allotment of these parcels to individual farmers, as allowed under the law. He also tried to get agents to restrict Indians to using hand tools and animal-drawn ploughs on their individual plots. He held the view that Indians were not ready for modern machinery, and would find their time more occupied if they did labour-intensive activities. They would learn self-sufficiency as any peasant in Europe or Central America would know it, and grow most of their own foodstuffs. They would also learn the value of labour as a reward in itself, as a precursor to evolving their farming methods. Besides, machinery was costly, and the Department was reluctant to take this kind of expenditure to taxpayers:

> The fact is often overlooked, that these Indians who, a few years ago, were roaming savages, have been suddenly brought into contact with a civilization which has seen the growth of centuries. An ambition has thus been created to emulate in a day what white men have become fitted for through the slow progress of generations. The consequence is, that when the Indians see white men in possession of self-binders and other costly inventions for saving labour, which the condition of the white man renders highly necessary, they overlook the fact that the employment of such instruments is only justifiable where manual labours are comparatively scarce. They think that they should have such instruments, even though the possession of them leave them little more to do than to sit by and smoke their pipes, while work is being done for them without exertion on their part. To counteract such views is one of my most constant endeavours; and I never fail to impress upon those employed to train the Indians that they must be taught to handle such comparatively simple implements as cradles, scythes, hoes, etc. which will be readily obtainable by them when thrown upon their own resources, and afford employment to every hand which should be thus profitably occupied. (Canada, Department of Indian Affairs, *Annual Reports,* 1889, 162, Report from Hayter Reed)

Through this policy, Reed refused to approve expenditures for machinery, and bands were discouraged from buying it themselves. The results of the policy varied; some agents enforced it, while others, who were on reserves where the bands were already buying and using machinery, tried to avoid implementing it. They frequently made protests about the illogical and self-defeating nature of the budget cuts and restrictions. The Indian farmers themselves resisted it, and some, such as the farmers of Pasqua and Muscowpetung, made formal protests (Carter 1990, 220-29).

Paradoxically, the policy was put in place at a time when other farmers were realizing that the conditions on the prairies required big holdings and large-scale production. Where implemented, the policy had the effect of discouraging Indian farmers and limiting them to small plots of land that became exhausted. They were not encouraged to produce surplus for sale, and, indeed, would not have had the means to do so. The failure to expand operations led, in turn, to the generation of what would appear to be, at the turn of the century, a great deal of surplus land.

The peasant farming policy ended when Sifton assumed control of the Department in late 1896, and it had been discontinued by the time the surrender movement gained momentum. It left a legacy of underused land, and the evolutionist and modernist theories that had motivated Reed continued to influence many others. Together, they led to the demand for surrenders to remove Indians from settled areas.

When surrenders began to occur at the turn of the century, reserves were in fact in a new economic era, one of expansion of production and increasing diversification. Some began to buy machinery, often with their own proceeds. They were rebounding from the Reed years. The labour savings of modern equipment assisted in the generation of other sources of income. Some farmers began to turn to livestock operations, in addition or supplementary to grain and root crop farming. The Department had come to realize that some reserve lands were better adapted to ranching, and that livestock could be a supplemental source of income and an insurance against bad crop years. A cattle loan program enabled farmers to get a start in livestock operations. As Chapter 3, Chronology, illustrates, many departmental circulars during the study period were dedicated to the cattle industry.

In conclusion, this report is an abbreviated view of a complex set of factors, some researched and understood, and some not as well known. There is a need for individual case studies of reserves and for comparative studies, to elucidate the context in which the taking of surrenders seemed to the Department and to some contemporary band members as the best economic option for self-sufficiency and income generation.

Structure: 1897 to 1911

The Indian Department of the years 1897-1911 was much smaller than it is today, and decisions made by a few key individuals, both in Headquarters and in the field, could have wide-ranging effects.

The division between Headquarters and the field offices was, as now, very significant. The central decision making took place in a small, Ottawa-based bureaucracy, headed by the DSGIA. With the changes of 1897, detailed in the Chronology, all correspondence was routed through the Secretary, John D. McLean. Mail could travel from the prairie region to Headquarters in as little as three days. McLean would then forward the item to the appropriate person.

- Policy issues might go straight to the DSGIA. Between 1896 and 1902 the deputy was James A. Smart, who was also Deputy Minister of the Interior. After 1902, Smart remained with Interior, but the DSGIA post went to Frank Pedley.
- Accounting issues went to the accounting office, headed by Duncan Campbell Scott. He was assisted by F.H. Paget, who had moved to Ottawa from the Regina Commissioner's Office in the reorganization and had Saskatchewan connections. Questions about advances and accounts in relation to surrenders were forwarded to Scott's office, and either he or Paget responded. James J. Campbell sometimes also dealt with this correspondence; his brother had been an agent in Saskatchewan. After 1897, agents sent their estimates and invoices straight to Headquarters.
- Survey questions went to the Chief Surveyor, Samuel Bray, and his staff, including A.W. Ponton, J.K. McLean, and J. Lestock Reid, depending on the year.
- Lands and timber issues went to W.A. Orr and his staff, including Peter J. O'Connor. Orr would handle the majority of questions with regard to land sales, and the correspondence for collections.
- All these offices in Headquarters had clerical staff.

By managing correspondence, and often making direct replies himself, McLean was in a position of considerable influence.

In the field, most of the work was done by the Indian agents, each in charge of an agency that comprised one or more bands and reserves. The composition of the agency was largely a factor of geographical proximity of reserves, but the Department's primary interest was in management. A reserve could be shifted from one agency to another if it was felt that another agent might have better geographical access to it or might manage it better. New agencies could be carved out of existing ones if an argument was made that a set of reserves needed separate management.

The agent was assisted, in some cases, by a clerk, an interpreter, and a farming instructor. There might also be labourers, millers, or blacksmiths, depending on need. The actual staffing varied

enormously. Where possible, the interpreter positions were dispensed with; the agent might be asked to have his wife do the clerical duties. There was heavy patronage influence in these appointments.

Many instructions and circulars issued to agents left considerable room for discretion in spending, fiscal allocation, the use of the pass and permit systems, and the distribution of houses, clothing, and rations. Visits by inspectors were, by most accounts, rare. Often an agent could engage in fraud, fail to do his duties, or overindulge in alcohol for a considerable period before being reprimanded. Misconduct was brought to the attention of the Department by local merchants, clergy, and politicians more often than by the Department's own staff. Even given the relative speed by which mail travelled, there were many instances where agents could, and did, make unauthorized decisions. This division of authority resulted in a continual pull of power between the field and Headquarters.

Two levels of administration facilitated communication between Headquarters and agents in the field: the Indian Commissioner's Office and the inspectorates. The division of responsibility between them was unclear and resulted in an ongoing power struggle. Before 1897, the Commissioner's Office had been in charge of the prairie region and was situated in Regina. It did all the field accounting for the region, and it had a large staff and a clear function. In a reorganization in 1897, however, the office was moved to Winnipeg and it lost its fiscal role and many of its staff. Although it should have been responsible for policy and personnel in the region, and for overseeing the inspectorates, it had little sense of direction. David Laird, who was appointed Commissioner in 1898, engaged in a constant battle with Headquarters over his role and that of his staff. For example, his assistant, J.A.J. McKenna, who had been secretary to the Minister of the Interior, Clifford Sifton, was often called away by Headquarters to do a job without Laird's knowledge. Some agents and inspectors bypassed the office, and Laird was frequently unaware of what was happening. Like Headquarters, he had to rely on McLean to forward correspondence to him. On occasion, chiefs and headmen wrote to Laird because he was more familiar to them, but most requests had to be forwarded to Headquarters.

In relation to surrenders, Laird was sometimes asked to take surrenders, and sometimes he was not even informed that a surrender was taken until after the fact. He and his staff were often asked to evaluate the potential for taking a surrender, and Laird might travel to the district in

question, but more often these questions were referred to the agent. Over the years, until the office was abolished in 1909, Laird complained about his lack of real power.

The inspectorates oversaw groups of agencies, though their composition was fluid and subject to change for the convenience of the inspectors. The inspectorates were also reorganized in 1897. Manitoba and the North-West Territories each had three inspectorates. In 1904, the number in Manitoba was reduced to two, one run by Samuel Marlatt and the other by Samuel Jackson. Saskatchewan had two inspectorates, one in the north run by William Chisholm, and one in the south headed by William Graham. John Markle was Inspector for all the Alberta agencies.

The inspector's job was to supervise the agents in the field, making regular visits to agencies and schools. He was also to deal with human resource and personnel issues, while ensuring that policies were being enforced. The inspector was to make annual visits to the agencies and to report on the status of housing, economic development, and morality. He advised agents of their responsibilities. Some inspectors, like William Graham, assumed greater authority for policy issues and bypassed the Commissioner's Office to deal directly with Headquarters. Like other positions in the field, the inspector's job was subject to the experience and personality of the incumbent. Similarly, job performance varied. Some agencies complained that they rarely saw the inspector. And, depending on the inspector's interest, schools, surrenders, investigations, or responding to local non-native political concerns might get the greatest attention.

In general, the Indian Department was small. Policy was continually in the process of formation, and there was considerable uncertainty about lawful obligations towards Indians. The result was a Department with far more latitude in practice than can be found today.

The Department's *Annual Reports* contained listings of personnel, divided into the Inside Service and the Outside Service. The officers and employees of the Indian Department at all levels were well connected to the business and political community in the West. Some agents – for example, Matthew Millar of Moosomin, Saskatchewan – were businessmen and active Liberals before their patronage appointments. The more senior the position, the wider their sphere of influence and connections. Inspector Graham, for instance, was well connected to the social and political elite of Saskatchewan through both his father and his father-in-law, his wife and family, the Assiniboia Club, and associations with businessmen such as D.H. McDonald of Fort Qu'Appelle. Both Commissioner

Laird and his predecessor A.E. Forget had long-term political careers; Forget was also a buyer of Indian lands, as were several agents and clerks (see Chapter 7).

At Headquarters, the Superintendent General was an elective position and the Deputy Superintendent General a patronage position. The four individuals who held these positions during this Liberal era were all known for using them for personal gain: Clifford Sifton, Minister from 1896 to 1905; Frank Oliver, Minister from 1905 to 1911; James Smart, DSGIA from 1897 to 1902; and Frank Pedley, DSGIA from 1902 to 1913. The first three men had joint jurisdiction during their tenure of both the Indian and the Interior Departments, providing them with knowledge and opportunities to control land dispositions across the West. Pedley had responsibility only for the Indian Department, but he had previously worked for the Interior Department in its immigration division.

These connections are described in various sections of the report, such as Key People; Chapter 3, Chronology; and Chapter 2, Land and Colonization Companies. Sifton's investments and networks are described separately in Appendix D. Smart and Pedley conspired to buy land from several surrendered reserves, such as Pheasant's Rump, Ocean Man, Chacastapaysin, Cumberland 100, and Enoch. Sifton's involvement in these schemes remains cloudy, but it is likely that they had his tacit support when he was Minister, if not his assistance. These men were interested not only in Indian lands but in other land investments and in timber and grazing leases. Sifton was involved in the lucrative Saskatchewan Valley Land Company and its spinoffs, and in other land and resource companies. He was accused soon after his resignation of having favoured friends and relatives with timber leases. Many of his associates, such as C.W. Speers, A.J. Adamson, A.E. Philp, Jack Turiff, D.H. McDonald, Walter Scott, Frank Oliver, James Douglas, T.O. Davis, R.M. Matheson, and others in the Winnipeg/Brandon area, were land speculators as well as Liberals, and they used their political connections freely to gain favours.

Smart worked with some of these same individuals to make his own series of investments in land, including Indian lands. His U.S. connections, spearheaded by Wilbur Bennett and C.W. Speers (through the Interior Department), assisted in raising cash and attracting buyers from the central states. Pedley was accused in 1913 of conspiring with Smart to purchase Indian lands fraudulently, and he was later named in the 1915 Ferguson Report for profiting from leases on the Blood reserve

in Alberta. Similarly, Oliver was accused of using covert relations to acquire Indian lands, and of getting involved in shady dealings with the railway companies.

Although this report is a superficial review of their involvements (only some of which are actually known and documented), the main point is that these men were in a position to set policy and practice in the Indian Department, on the one hand, and to control the general disposition of land to railways and investment companies, on the other – and to mix the two for the benefit of themselves and their close associates. The blatant manoeuvres to acquire Indian lands in the early Sifton era gave way to more distant and cautious investments before the Department attempted to rein in its own officials in 1910-11. After 1904, it is more difficult to establish links between Department officials and land purchases, other than to speculate on how information on land sales was being deliberately leaked to investors. With a few obvious exceptions, such as Agent Millar at Crooked Lakes, Agent Day at Battleford, Agent Lewis at St Peter's, and Agent Blewett at Pelly, officials were careful not to have their names associated with purchases (see Chapter 7).

LEGAL FRAMEWORK FOR THE TAKING OF SURRENDERS

The legal rules for alienating reserve land, from the Dominion point of view, were set during the treaty era. The treaties researched for this study were negotiated and signed between 1871 and 1877, and one of their features was the allocation of reserve land:

- Treaties 1, 2, and 5 allowed for 160 acres per family of five, or in larger or smaller proportions thereof.
- Treaties 3, 4, 6, and 7 allowed for 640 acres per family of five, or in larger or smaller proportion thereof.

The land was to be chosen in consultation between the band and the government, and set aside for their use. The reserves were to be held by the Crown in trust. They were, according to Treaty 6, to "be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada." The government was to deal with settlers within the boundaries of the reserves in a fit manner. Land could be sold or otherwise disposed of only with the consent of those entitled to it.

At the same time, the legislation concerning Indians in eastern and central Canada was consolidated and was applied to the Indians of the West as they moved onto the reserves. The *Indian*

Act, which contained sections dedicated to the alienation of land and the manner of obtaining consent, was meant to govern Indians on reserve land. Its regulations were taken from experience in the east, and not from the treaties. The surrender provisions that appeared in the 1876 *Indian Act*, for example, date back to 1868. Whereas surrenders before 1868 were assented to by the chiefs of the band, after that date, and throughout the ensuing history of the legislation, this assent was to be obtained through the majority of eligible voters, however that provision was interpreted.

The history of the consent/assent issue via statute goes back to pre-Confederation legal requirements for surrender, the treaties, and the history of the *Indian Act* itself.

1850 *An Act for the protection of the Indians in Upper Canada*, SProvC 1850, c. 74

> There to be no conveyance of Indian land without Crown consent; lands to be free from taxation and from trespassers.

1860 *Management of Indian Lands and Property Act*, SProvC 1860-61, c. 151

> 4. No release or surrender of lands reserved for the use of Indians, or of any tribe or band of Indians shall be binding except on the following conditions:
>
> 1) Such release or surrender shall be assented to by the Chief, or if more than one Chief, by a majority of the Chiefs of the tribe or band of Indians, assembled at a meeting or Council of the tribe or band summoned for that purpose according to their rules and entitled under this Act to vote thereat, and held in the presence of an Officer duly authorized to attend such Council, unless he habitually resided on, or near the land in question;
>
> 2) The fact that such a release or surrender has been assented to by the Chief of such Tribe, or if more than one by a majority of the Chiefs entitled to vote at such Council or Meeting, shall be certified by the County Court Judge, or the Judge or Stipendiary Magistrate of the District or County within which the lands lie, and by the officer authorized to attend by the Commissioner of Crown Land by such Judge or Stipendiary Magistrate, and shall be submitted to the Governor-in-Council for acceptance or refusal.

1868 *An Act Providing for the Organization of the Department of the Secretary of State of Canada, and for the Management of Indian and Ordnance Lands*, SC 1868, c. 42

> Section 8
>
> 1) Such release or surrender shall be assented to by the chief, or if there be more than one chief, by a majority of the chiefs of the tribe, band, or body of Indians, assembled at a meeting or council of the tribe, band, or body summoned for that purpose

> according to their rules and entitled under this Act to vote thereat, and held in the presence of the Secretary of State or of an officer duly authorized to attend such council by the Governor General in Council or by the Secretary of State; provided that no Chief or Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near the lands in question;
>
> 2) The fact that such release or surrender has been assented to by the Chief of such tribe, or if more than one, by a majority of the chiefs entitled to vote at such council or meeting, shall be certified on oath before some Judge of a Superior, County or District Court, by the officer authorized by the Secretary of State of attend such council or meeting, and by some one of the chiefs present thereat and entitled to vote, and when so certified as aforesaid shall be transmitted to the Secretary of State by such officer, and shall be submitted to the Governor in Council for acceptance or refusal.

Treaty 1 in 1871 contained no mention of the surrender or sale of Indian lands. Treaty 3, concluded in 1873, contains these words, in conjunction with instructions for setting aside reserves:

> . . . it being understood, however, that if at the time of any such selection of any reserve, as aforesaid, there are settlers within the bounds of the lands reserved by any band, Her Majesty reserves the right to deal with such settlers as she shall deem just so as not to diminish the extent of land allotted to Indians; and provided also that the aforesaid reserves of lands, or any interest or right therein or appurtenant thereto, may be sold, leased, or otherwise disposed of by the said Government for the use and benefit of the said Indians, with the consent of the Indians entitled thereto first had and obtained.

Treaty 4, in 1874, contained the same wording, with the addition of the phrase:

> with the consent of the Indians entitled thereto first had and obtained, but in no wise shall the said Indians, or any of them, be entitled to sell or otherwise alienate any of the lands allotted to them as reserves.

Treaty 6, in 1876, specified:

> the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained . . .

Treaty 7, in 1877, did not contain a similar clause.

These clauses required consent of the Indians "entitled" to the reserve; they did not specify any limitations on voting or the acquisition of consent.

The first consolidated *Indian Act* in 1876 did contain some specific provisions for obtaining assent, derived from previous legislation, but changing the nature of the voting population from "chiefs" to eligible voters of the band:

> No release or surrender of a reserve, or portion of a reserve held for the use of the Indians of any band or of any individual Indian shall be valid or binding except on the following conditions:
>
> 1. The release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules, and held in the presence of the Superintendent-General, or of an officer duly authorized to attend such council by the Governor in Council or by the Superintendent-General; provided that no Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near and is interested in the reserve in question.
>
> 2. The fact that such release or surrender has been assented to by the band at such council or meeting, shall be certified on oath before some judge of a superior, county, or district court, or stipendiary magistrate, by the Superintendent-General or by the officer authorized by him to attend such council or meeting, and by some one of the chiefs or principal men present thereat and entitled to vote, and when so certified as aforesaid shall be submitted to the Governor in Council for acceptance or refusal.

An early draft of the consolidated *Indian Act* contained a clause which indicated that a majority of the Council was required, so this change to the "majority of voters" came later. The Minister of the Interior, David Laird, was questioned by Mr Langevin on March 30, 1876, about whether the new clause should mean the majority of voters, which Langevin thought was the best interpretation. Laird interpreted the clause to mean the consent of a majority of those at a meeting. Langevin replied:

> I cannot prevent the clause from passing but I say once more that the protection is not sufficient. When I was at the head of the Department, complaints were preferred against our officers. They [the Indians] were very jealous, and properly so, of their rights. (National Archives of Canada [NA], RG 10, vol. 6808, file 470-2-1)

Many years later, in 1910, Laird said that the 1876 Act intended to broaden the scope of consent from the chiefs to the entire voting membership. He reiterated that the intent of the Act was to provide for consent to take place at a meeting. Mr MacKenzie amplified this statement to say that the presence of the majority of the band at the meeting would be required. (Canada, House of Commons, *Debates*, March 21, 1876, 749-53; NA, RG 10, vol. 7776, file 27127-15/1, memo from David Laird, March 24, 1910).

The surrender provisions appeared relatively unchanged in the *Indian Acts* of 1880, 1884, and 1886. In 1886, a change was made to allow the affidavit/declaration in subsection 39(2) to be taken by a Justice of the Peace as well as by a stipendiary magistrate or a judge; in some cases, on the prairies, this task might also be performed by the Indian Commissioner.

In response to an issue raised by Indian Agent H. Martineau about the affidavit used in the Pine Creek surrender, the DSGIA, Hayter Reed, took the question of consent to the Deputy Minister of Justice, E.L. Newcombe, in 1894. Reed pointed out that the affidavit used for certification did not specify which level of consent was required, but that the mention on the form that the "majority then present" assented did not necessarily mean that this majority was not also a majority of the whole band. In his response of January 15, 1894, Newcombe said he was inclined to the view that the section required a majority of all voters, but would suggest clarification of the law, as well as a provision in the new amendment of the *Indian Act* legalizing all surrenders heretofore taken (NA, RG 10, vol. 7776, file 27127-15 pt. 1).

Amendments to the *Indian Act* were repeatedly drawn up and dropped. A proposed amendment in 1897 would set consent as the majority of those present at a meeting called for the purpose, as would a similar amendment proposed in 1901 (NA, RG 10, vol. 6809, file 470-2-3). At that time, there was a question about whether all the Indians of Nova Scotia were one band; if so, would they all have to vote on a surrender of any single reserve (Townshend 1985, 12)? When law clerk Reginald Rimmer proposed the 1900-01 amendments, they were based on suggestions made from the field, and were meant to address the types of dilemmas faced there (NA, RG 10, vol. 1124, memo, McLean to Smart, February 13, 1901). These amendments were never passed. The wording remained similar in the new *Indian Act* of 1906, when the surrender section became section 49.

The problems with consent remained the same also, and the question went back to Newcombe in 1907. On March 13, 1907, he opined that subsection 2, taken alone, could best be interpreted to mean the majority of the voters in the band. If it is read in connection with subsection 1, however, about residence on or near the reserve, then it could be interpreted to mean the majority of those at a meeting. Newcombe suggested again that the law be clarified via amendment (NA, RG 10, vol. 2918, file 187,086-1).

In 1908, Deputy Superintendent General Pedley put forth several draft amendments to the *Indian Act.* The wording would have been changed from "of a full age of 21 years, at a meeting or council," to "of a full age of 21 years present at a meeting or council." These changes were never incorporated (NA, RG 10, vol. 6809, file 470-2-3/6).

For the most part, instructions to the officials in the field simply repeated the relevant statutory provisions, and they were often interpreted in a broad and flexible form. Problems did surface, however, that captured the attention of both the House and the media. In November 1909, Mr Herron challenged Superintendent General Frank Oliver in the House about the Peigan surrender. Herron described a series of three votes, and the alleged inducements that were needed to get the third vote; he described the Indian protests about the legality of the surrender. Oliver defended the various votes, taken on different proposals, and said that, at the time of the third vote, there was a clear majority of 12 in favour of consent among those present (House of Commons, *Debates*, November 16, 1909, 119-22).

The issue came up again in the House in early 1910, with the debates over the St Peter's 1907 surrender, thanks to the initiative of the MP from Selkirk, George Bradbury. Again, Oliver defended the policy of the Department of taking surrenders from the majority of voters present at the meeting (House of Commons, *Debates*, January 24, 1910, 2296). Subsequently, Laird was asked by Pedley to comment on the meaning of the surrender provisions for consent, and he wrote on March 24, 1910, that it had always been understood that the vote of the majority at the meeting was required, and that it had been unfortunate that a "comma" had appeared between the words "years" and "at" in the phrase "at a full age of twenty-one years, at a meeting or council." Laird called attention to the importance of a meeting summoned according to the band's rules, because if people are summoned

and do not choose to attend, they have the right to question decisions made in their absence (NA, RG 10, vol. 7776, file 27127-15/1).

These words of caution must have been passed along. Secretary McLean wrote to Inspector Markle in Alberta a few days later, warning him, in the surrender negotiations he was undertaking, to give adequate notice to all members and to keep a record of procedures, including the meeting and the vote, "in order that the fullest documentary evidence may be available" (NA, RG 10, vol. 7543, file 29120-1).

The debates on St Peter's intensified. A year later, on March 22, 1911, there was prolonged discussion on the legality of the surrender, including the nature of majority vote. Bradbury argued that the intent of section 49 was clearly that the majority of voters was required. He was supported by Montreal MP C.J. Doherty, later to become Minister of Justice, who argued the principles of common law. Oliver defended his actions and the policies of the government (House of Commons, *Debates*, March 22, 1911, 5837-912).

When the majority ruling of the Manitoba Royal Commission was delivered early in 1912, the two judges made it clear that they agreed with Bradbury and Doherty, but not with the Department's interpretation of majority consent. They stated that, in their opinion, the law required a majority of all the qualified voters, and this criterion was not met at St Peter's (see Chapter 6, St Peter's 1907):

> In our opinion the Statute expressly requires the assent of the majority of the male members of the band of the full age of 21 years. We cannot see how we can twist the plain language of the Statute and interpret it as meaning the majority at a meeting at which is present a majority of the band, that is to say a majority of a majority.

The Commissioners argued that the "comma" in the phrase cited above was critical; it separated the mandate of consent from the procedure by which it should be obtained: "at a meeting or council":

> The Statute does not say that the assent required is from the majority of the male members of the band who choose to be present at the meeting, but it requires that the majority of the male members of the band attend at such meeting and vote in favour of the same. The positive action of the majority of the qualified voters of the band is absolutely required, and as a further safeguard the assent must be given as [sic] a meeting properly called in the presence of the head of the Department and his deputy. (Report of the St Peter's Indian Reserve Commission, January 5, 1912)

After the release of the Commission report, Superintendent General R. Rogers referred the same question back to the Department of Justice, to Minister C.J. Doherty:

> The special question which I wish to submit is whether assent to a surrender requires a majority of the male members of the band of the full age of 21 years, or a majority of such male members of the band of the full age of 21 years as are present at the meeting or council summoned to consider the surrender. (NA, RG 13, vol. 79, file 199/1912, letter of January 19, 1912)

Doherty sent back a three-page internal (unsigned) memorandum, with Newcombe's opinions of 1894 and 1907 attached. Part of the St Peter's judgment was also part of the package, so the question was clearly a response to the recent report:

> The section may be clumisily [sic] worded, but the meaning would seem to be clear enough. It is difficult to suppose that as suggested the first part of the sentence is an independent and absolute requirement and the latter a mere direction as to the manner of procedure. There seems to be no object in the meeting if it can decide nothing, and moreover there is no other machinery provided for ascertaining the assenting majority. . . . It seems a most natural and usual thing that a representative meeting of the band duly called in accordance with its rules should be able to transact the business for which it is specially called and be able to bind the band by its decisions. There does not seem to be any difference between this and the practice of any corporate body. (NA, RG 13, vol. 79, file 199/1912)

Subsequent to this opinion, T.W. Crothers, the Acting Superintendent General, wrote to Pedley with new instructions:

> I am of the opinion that section 49 of the Indian Act requires that a majority of the male members of a band, who are over 21 years of age be present at a meeting called to consider the question of surrender, and that such majority should vote for the surrender before it can be legally accepted. You will understand me, I do not mean that a majority of those present at a meeting would be sufficient, but that there should be a majority of the male members over 21 years of age attending the meeting, and the majority of such whole voting for a surrender, and we shall not accept any surrenders hereafter without satisfactory evidence that such majority has been obtained. (NA, RG 10, vol. 7995, file 1/34-1-0)

These instructions were communicated within the Department. W.A. Orr drew attention to the problem with subsection 2 on April 11, 1913, dealing with those who are not resident on reserve, and pointed out that there was a potential contradiction here. These types of questions would lead, in 1914, to further attempts to standardize a surrender policy to go with the statutory requirements.

On May 15, 1914, Deputy Superintendent General Duncan Campbell Scott sent out formal instructions to all agents: "Instructions for the guidance of Indian Agents in connection with the surrender of Indian reserves." The instructions covered eight points, summarized here:

1 A proposal for surrender and a rationale must be preapproved by the Department.

2 The officer taking the proposal to the band must be duly authorized by the Superintendent General or his deputy, and shall make a voters list of all the male members of the band of the full age of 21 years who habitually reside on or near the reserve and are interested in the reserve in question.

3 The meeting or council for consideration of surrender must be summoned according to the rules of the band, which, unless otherwise provided, must involve the posting of written notices on reserve at least one week in advance of the meeting. The interpreter who is to be present at the meeting must deliver verbal or written notice to each person on the list, not less than three days before the meeting.

4 The terms must be interpreted to the Indians, and, if necessary, to individual people, with the use of a qualified interpreter.

5 "The surrender must be assented to by a majority of the Indians whose names appear upon the voters' list, who must be present at a meeting or council summoned for the purpose as hereinbefore provided."

6 "The officer duly authorized shall keep a poll-book and shall record the vote of each Indian who was present at the meeting or council and voted."

7 "The surrender should be signed by a number of Indians and witnessed by the authorized officer, and the affidavit of execution of the surrender should be made by the duly authorized officer and the Chief of the Band and a Principal man or two Principal men before a judge, stipendiary magistrate, or a justice of the peace."

8 "The officer taking the surrender should report the number of voting members of the band as recorded in the voters' list, the number present at the meeting, the number voting for and the number against the surrender." (NA, RG 10, vol. 7995, file 29103-1/1)

In practice, agents in the field challenged these rules, and the question did not go away. The Director of Indian Affairs, Harold McGill, wrote to the Deputy Minister on April 12, 1939, summarizing the history of the majority question and recommending that it go again to the Department of Justice, given the disparity between Crothers's and Scott's instructions and earlier interpretations of the clause, including the original interpretation in 1876. On May 2, 1939, the Acting Deputy Minister of Justice wrote back to the Deputy Minister of Indian Affairs to give his interpretation of the former section 49, now section 51:

> [[I]n my view a valid and effective surrender under section 51 of the Indian Act requires the assent of a majority of the male members of the band of the full age of 21 years entitled to vote or to be present at such council. (NA, RG 10, vol. 7995, file 29103-1/1)

The majority assent question was taken to court in the late 1970s, and a decision issued from the Supreme Court in 1982 in *Cardinal et al. v. the Queen* [1982] 1 SCR. When posed in the Court, the question was narrowly framed and lacked substantive historical documentation of the context from which it came – namely, the Enoch surrender of 1908. In its decision, the Supreme Court considered five possible interpretations of section 49(1), and concluded that the plain meaning of this section requires a majority of the male members eligible to vote to be present at a meeting called for the purpose of voting on the surrender and that a majority of those present vote in favour of surrender. This interpretation, the "majority of a majority," had been latent throughout the history of the interpretations of the surrender provisions, but had never surfaced to become a pre-eminent view of the government of Canada.

There is one issue with regard to majority assent that is worth further consideration: Was the decision NOT to attend the surrender meeting a deliberate and informed one? In later discussions about this issue, and in more recent litigation, it is assumed that it was. Note, for example, the Justice memorandum of 1912. Is a band the same as any other corporate body? The circumstances of the vote need to be examined in order to determine whether the decision was a deliberate and informed one. In some cases it is, and in other cases people were simply unaware of the meeting. Alternately, they may or may not have understood the significance of the meeting in relation to the voting procedures used.

Dominion Lands Policies

The roots of the government's settlement policies in the West may be gleaned from the post-Confederation survey and allocation of land practices. The situation in the 1870s can be summarized in seven main points.

1 / Canada had acquired Rupert's Land, or the watershed of Hudson Bay, the tract of land claimed by the Hudson's Bay Company, in 1870 when the Deed of Surrender was accepted. Among the terms of this agreement was the allocation to the HBC of one-twentieth of the fertile belt. This provision would be interpreted in the *Dominion Lands Act* as section 8 in every township in the fertile belt being reserved to the Company, along with three-quarters of section 26 in every township in the fertile belt and all of section 26 in every fifth township. This land would be offered for sale when markets were good. The total amount of land surveyed from this HBC allocation by 1913 was 2,722,691 acres in the three Prairie Provinces (NA, RG 10, vol. 4046, file 252647, memo from Orr, January 14, 1914).

2 / Manitoba entered Confederation in 1870. Under the terms of the *Manitoba Act*, 1.4 million acres were set aside for the benefit of families of "half-breed" residents. Although the numerous transactions of the "scrip" policy, which extended in the North-West until the 1920s, will not be covered here, the issuance of land and money scrip to Métis people would feature prominently in land allocation. Many of the speculators who operated in surrendered Indian lands were also scrip speculators, and land companies would be allowed to use money scrip to pay for dominion lands.

3 / British Columbia entered Confederation in 1871. The land in between Manitoba and British Columbia, the North-West Territories, was divided into the districts of Alberta, Athabaska, Saskatchewan, Assiniboia, and Keewatin. By the beginning of the Laurier era, 1896, the Athabaska territory had expanded to include the area north of Prince Albert, but in the electoral system, Assiniboia was divided into eastern and western regions. In 1905, Saskatchewan and Alberta became provinces and absorbed the northern districts of Assiniboia, and in 1912 the province of Manitoba expanded to absorb the southern part of the Keewatin district (see the map in Martin 1938, 224).

4 / The first of the treaties, designed to secure the cooperation of the Indians in the West, was signed in 1871 at Fort Garry. The new federal government of Canada viewed these agreements as a means to secure Canadian rights to the land, including that ceded by the HBC. These lands then

became dominion lands, owned and regulated by the Dominion of Canada under its various departments. The treaties allowed for reserves to be set aside for the Indians of the West. By 1913, 2,722,691 acres had been reserved for Indians; of these, 576,781 acres had been surrendered (NA, RG 10, vol. 4046, file 252647, memo from Orr, January 14, 1914) (see below).

5 / The consolidated *Indian Act* was passed in 1876, bringing together legislation from Canada which would then be applied to reserves in the West (see below).

6 / The *Dominion Lands Act* was passed in 1872, consolidating previous land regulations. It set out the various regulations that applied to dominion lands, including those for homesteading, railway lands, and the survey system, which had been adopted from a modified U.S. model in 1871. The Department of the Interior was created in 1873 from the old Dominion Lands Branch of the Department of the Secretary of State, and it was given responsibility for implementation.

The land survey system was based on a section of 640 acres, or 1 square mile. There were 36 sections in a township, which were numbered in sequence running north from the U.S. border. Each north-south strip of townships was identified by a "range" number, running numerically east-west for each of the meridians running west of the 1st, or principal, meridian in Manitoba. With each meridian, the system of ranges renumbers at 1, running to range 30 just before the next, westerly, meridian. Thus, a legal description may read: section 20, township 36, range 5, west of the 2nd meridian. When land was sold at Indian reserve land sales, it was generally sold in quarter sections of 160 acres, or a "fractional" of a quarter if the surrender line crossed an existing quarter. Thus a buyer might purchase the "NW 1/4 of section 20."

The survey system moved west in the 1870s and 1880s. There were three major survey systems: the first began in 1871; the second in 1880, entering Saskatchewan; and the third in 1881, extending through Alberta. The outline of the township might be surveyed years before the land was surveyed into sections and quarter sections. Areas where settlement was anticipated, such as the railway belt, were surveyed first. Land could not be sold or homesteaded until it had been subdivided. Road allowances 90 feet wide were allowed between townships and sections; after 1881 these allowances were 66 feet, and were placed every two sections instead of at every section. Where reserves were surveyed before the township system was imposed, there were no road allowances, but when a reserve was carved out of a grid, the issue of ownership of the road allowances would become

more problematic. This was also true when reserves were set on top of lands to be surveyed, or already surveyed, as in school or HBC lands (see Lambrecht 1991, 11-12; McKercher and Wolfe 1978).

The survey system also provided the basis for land titles. Survey plans were the basic elements of the land description needed to register grants and deeds. The government could issue grants to companies or individuals, and these grants could be registered to indicate ownership. The Torrens system, introduced in 1887, and applicable to Indian land sales in the prairies, involved a layered system. The grant or sale by the Dominion resulted in the issuance of letters patent. The holder of the letters patent could take them to a land office and have a title drawn up in his or her name (Lambrecht 1991, 13).

The *Dominion Lands Act* provided for the retention of school lands, sections 11 and 29 in every township, to be sold at auction by the Dominion to raise money for educational purposes. This money would be transferred to provincial or territorial authorities. These lands were usually sold only when the demand for land in the local area, and the prices, were high. The total acreage of school lands surveyed by 1913 in the three prairie provinces was 8,585,227 acres (NA, RG 10, vol. 4046, file 353647, memo from Orr, January 14, 1914).

The *Dominion Lands Act* also codified homestead policy, which would undergo several changes over the years. This policy, too, was modified from the U.S. system. Only the even-numbered sections in the surveyed townships could be claimed as homesteads, and the basic unit of the homestead was the quarter section. In general, the homesteader would be required to pay a registration fee on entering his land at the local dominion lands office, and to live on and cultivate the land for a period of time. The initial five-year residence was cut to three years; the minimum age for a homesteader was cut in 1875 from 21 years to 18 years of age. After 1876, women heads of families could also enter. If the homesteader could not prove occupation for the minimum period, he might have his entry cancelled. If he was successful, he would receive letters patent (Lambrecht 1991, 22-23).

From 1871 to 1890, and again from 1908 to 1918, the homesteader had pre-emption rights. This meant that, if he successfully met the homestead requirements, he could purchase the adjacent quarter in even sections. The purchase price was stipulated by the Act. In 1871, this policy was used

to allow people who had occupied lands in Manitoba at the time of its entry into Confederation to purchase the rights to that land, but in 1874 this policy was extended to homesteaders. The pre-emption could be entered with the homestead, and the land could be cultivated (although this was not necessary), but it would not be paid for and letters patent granted until after the homestead assignment was completed. The purchaser had three years from the time he got letters for his homestead to pay for his pre-emption. The pre-emption system allowed speculation, and when inspectors were sent to determine whether the homesteader genuinely intended to cultivate and pay for the pre-emption, it was often cancelled. Over 90 per cent of pre-emptions in 1874 were cancelled for this reason. These difficulties resulted in the cancellation of the pre-emption policy in 1890, but it was resurrected in 1908 when it was discovered that farmers in drier areas needed more than a quarter in order to have a self-supporting farm. It was only allowed within a circumscribed area of semi-arid land (Lambrecht 1991, 23-27). By 1913, 75,368,544 acres had been surveyed and allocated in the prairie provinces by homestead, pre-emption, and scrip (NA, RG 10, vol. 4046, file 353647, memo from Orr, January 14, 1914).

The *Dominion Lands Act* also regulated timber resources for private and commercial use. The latter are of interest here, since many land speculators also engaged in the commercial timber industry, including Clifford Sifton. A timber limit or berth was a specified area not exceeding 25 square miles licensed for cutting for a 21-year period, or one year, renewable, after 1886. The individual acquiring these timber berths could then allow an operator to cut timber under certain conditions, including the payment of a ground rent of $5 per square mile per year, and royalties on production. The licensee had exclusive occupancy of the area during the period of the licence. These timber berths were sold at auction, using an upset price set by the Department of the Interior (Morton 1938, 444-45; Lambrecht 1991, 34-35).

7 / The *Dominion Lands Act* included authorization for railway grants. The policy of using railway land grants to raise money for construction was another U.S. import. Through the 1870s there was a series of Canadian regulations for the granting of land to the lines, beginning in 1871 with the provision of land on either side of the Inter-Oceanic Railway in Manitoba. In 1874 the first of a series of regulations was made for land grants for the projected Canadian Pacific Railway, and they were modified as requirements changed. The *Canadian Pacific Railway Act*, SC 1880-81, c. 1,

included a schedule of land grants that was to govern the CPR's interest in land in the West. The government would grant a subsidy to the CPR of 25 million acres.

The land would be selected from odd-numbered sections in a belt 24 miles to either side of the line. Should any of these lands be deficient, the CPR could exchange them for other lands along the fertile belt within the five blocks of land "reserved" for the company. This practice was also applied to other railway land grants.

The *Dominion Land Regulations* issued in 1881 established the system whereby the odd-numbered sections in the belt would be reserved for the railways, and the odd sections beyond the railway belt could be offered for sale. Even-numbered sections were, as noted above, open for homesteading and pre-emption; school lands and the HBC lands were exceptions to both these policies.

The CPR would not be the only company receiving land subsidies. Other lines applied for, and received by legislation, grants of 6400 acres per mile of line constructed. The company was responsible for survey costs before letters patent could be issued. As with the CPR, the lands had to be selected from within a block "reserved" for the company. The companies would then "select" the lands in the grant, without reference to the province/territory in which construction occurred. Although the system of giving land grants ended with the CPR Pipestone Branch in 1894, it was not until 1908 that all the land was selected by the companies, when the CPR, Canadian Northern, Grand Trunk Pacific, and other companies were actively constructing main and branch lines (Lambrecht 1991, 15-19). Occasionally, conflicts would occur over selections. By late 1913, 31,864,074 acres had been surveyed to railway companies in the three prairie provinces (NA, RG 10, vol. 4046, file 353647, memo from Orr, January 14, 1914).

RAILWAYS TO 1896

The CPR was the first major route west into the prairies. In 1881, when the company was reorganized and received its land grant, the line was routed in a more southerly course than had originally been planned. This decision placed settlers in the drier southern prairie area and, by extension, greatly increased the value of that land. The climate in this area also required special adaptations in farming techniques.

The line, constructed across the prairies in the early 1880s, extended 208 miles in Manitoba, 419 miles in Saskatchewan, and 336 in Alberta. Much of the land selected was outside the 24-mile belt, and totalled an equivalent of 24,000 acres per mile through the prairies. In Manitoba, approximately 2.2 million acres were selected; in Saskatchewan, approximately 6.2 million acres; and in Alberta, 9.8 million acres. Almost 6.8 million acres were given up by the company in 1886 to retire a government construction loan (Martin 1938, 270).

The bulk of the land was selected in these three Prairie Provinces, rather than in Ontario or British Columbia; combined, these two provinces on the extremities had about half the mileage. Because the company had a great deal of leeway as to when and where it selected its land, it was able to acquire some of the best land in the prairies, which remained tax free for 20 years from the date of selection (Martin 1938, 272-73). Additional grants were made in 1890 and 1894 for the Souris and Pipestone branches, and the company picked up more grant lands when it absorbed some of the smaller lines, also with branches (see below).

The CPR was an advocate of the homesteading policy, since more homesteaders meant more customers for the line, and more demand for their land.

The CPR also secured a monopoly in the West when it made its agreement with Canada to secure funding, and there was a 20-year moratorium on the construction of lines within 15 miles of the border, to prevent the Americans from moving in. The monopoly would be a source of irritation to the people of Manitoba. In the 1880s, the farmers protested high rates, monopolies on grain handling, and lack of competition, and the province attempted to pass legislation, disallowed by Canada, to build competing provincial lines south of Winnipeg to the border – the site of the first CPR line in the province. The Red River line was nonetheless constructed, and later taken over by the Northern Pacific. The province also attempted to build a northern line to Hudson Bay (see below), but the federal government balked at transferring a land grant. The dispute raged during the decade, before the monopoly was broken with the construction of the Northern Pacific and Manitoba Railway in 1888-89 by the American firm Northern Pacific, in affiliation with several small Manitoba companies. The line, extending north-south and east-west across southern Manitoba, provided competition for the CPR. Prime Minister Macdonald, an advocate of the monopoly, allowed the

monopoly clause to be broken for this construction to proceed. The rates were not substantially lower, however (Regehr 1976, 1-18).

Two lines were chartered before the CPR monopoly came into effect. The **Manitoba and South Western Colonization Railway Company** was chartered in 1879 to build from Pembina to Rock Lake, through the Souris coal-mining area. Little construction ensued, and the CPR absorbed it in 1882 and expanded the lines westward. This company received land grants in 1885 and 1891, for a total of 1.396 million acres, administered by the CPR. The company selected 530,000 acres in Manitoba, 547,000 acres in Saskatchewan, and 320,000 acres in Alberta, although the line was built only in Manitoba. Not all the projected mileage was constructed (Martin 1938, 283-84).

The **Manitoba and North-Western Railway** was chartered in 1879 by Manitoba. It obtained a federal charter in 1882, and received land grants in 1885 and 1886 totalling 1.5 million acres. Only 255 of the original 430 miles were constructed, extending 52.59 miles into Saskatchewan (to Yorkton). Most of the land selected was in Saskatchewan. This company entered into a unique land arrangement whereby it would issue "warrants" for land to individuals or companies. On purchase of the warrant, for as little as a quarter section, the individual could select land within the railway reserve. The province of Manitoba picked up a half-million acres worth of warrants in loan repayments. Some of this land was in Saskatchewan, and was sold by the Manitoba government between 1900 and 1929. Since the selection took place over time, it had the effect of tying up the reserved lands from other dispositions (Martin 1938, 284-86). This company became a CPR affiliate. In 1887 it made an arrangement with the Commercial Colonization Company of Manitoba, Ltd., whereby the company would sell railway lands at $3 per acre and bring in homesteaders, paying them advances against expenses. The company, which had primarily British investment, brought settlers from England and Scotland and settled them in a colony near Saltcoats, Saskatchewan. The company was wound up in 1893 (NA, RG 15, vol. 509, file 143842).

In 1898, three small Manitoba lines became part of the new Canadian Northern Railway (CNOR) formed by William Mackenzie and Donald Mann, entrepreneurs who had experience as railway contractors. Two of the prominent employees of the new company, solicitor Zebulon Lash and administrator David B. Hanna, were themselves investors in many enterprises, and their names show up repeatedly in the land companies of the West. Two of these component lines were chartered

after the breaking of the monopoly; the first, the Winnipeg Great Northern, emerged out of the disputed Hudson Bay Railway.

The **Winnipeg Great Northern Railway** was one of the earliest railways in the West. The company, originally known as the Winnipeg and Hudson's Bay Railway and Steamship Company, was formed in 1883 through a merger of two other companies, and the intent was to construct a line from Winnipeg to Hudson Bay. This was the first "colonization railway" to receive a free grant, in 1884; before that, in 1882, the component companies had secured the right to purchase dominion lands. The grant was for 2.6 million acres, and was a tradeoff for Manitoba's request to have its northern boundary extended. The land grant prohibited amalgamation with the CPR. Construction began in 1886, but the extension to Hudson Bay would not take place until 1908, after the company had become part of the Canadian Northern partnership in 1899 (Martin 1938, 290-92).

The **Lake Manitoba Railway and Canal Company** was the second component of the new Canadian Northern company formed by William Mackenzie and Donald Mann in 1899. It was incorporated after the CPR, in 1889, and received its land grant in the same year, followed by another grant in 1890. The total was 798,400 acres. The purpose was to build a line from Portage la Prairie to Prince Albert. T.O. Davis from Prince Albert was one of its promoters, and he was anxious to get a line into that area. The company was acquired by Mackenzie and Mann in 1895, and it represented their first partnership venture in railway promotion. The line was built only as far as Lake Winnipegosis and had no Saskatchewan mileage. When their land was finally selected, the bulk of it, too, was in Saskatchewan, within the reserves of other companies (Martin 1938, 293-94).

The third line that became part of the Canadian Northern was the **Manitoba and South Eastern Railway**, also founded in 1889. It received a land grant in 1890 on 680,320 acres. The line was built by 1899 from Winnipeg to Lake of the Woods, a distance of 110 miles. The company did not become part of Canadian Northern Railway until 1901, and did not select all its lands until much later, most of it in Saskatchewan (Martin 1938, 295-96).

Moving west, there were other early lines that were absorbed into either the CPR or the CNOR system.

The **Saskatchewan and Western Railway** extended only 16 miles from Minnedosa to Rapid City, Manitoba. Its land grant in 1894 (at the end of the land grant system) was 98,800 acres and was

selected entirely in Saskatchewan. Its original charter was in Manitoba, and it became part of the CPR system around 1903 (Martin 1938, 286-87).

The **Great North-West Central Railway** was also built only in Manitoba, with a 50-mile line, although it was originally projected to run from Brandon to Battleford. The 1886 land grant for 320,000 acres was primarily located in Saskatchewan (Martin 1938, 287-88).

The **Calgary and Edmonton Railway** would become a major western feature of the CPR system and was closely associated with the company from its inception. The line was projected to run from the CPR line at Calgary, north to Edmonton, and beyond to Peace River. It received a land grant of 1.8 million acres in 1890, at the same time that it received a government transportation contract, with a security of one-third of the Calgary-Edmonton portion of the land grant. The grant stipulated that the land had to be chosen in a belt along the line, with the result that the selections were in Alberta. The line was completed to Edmonton in 1891 and would become a factor in the pressure for land surrenders in the Edmonton district. E.B. Osler was a director of the company, and his firm of Osler, Hammond and Nanton, based in Winnipeg, were agents for the land sales of the Calgary and Edmonton Land Company, formed to sell the company's lands (Martin 1938, 282-90). The company's land grant was unique in that precious minerals were reserved in the Crown.

The **Qu'Appelle, Long Lake, and Saskatchewan Railway** was an early colonization railway, located exclusively in Saskatchewan. The company was incorporated in 1883 and received its land grant in 1885 for the first portion of the line, a 20-mile line from Regina to Long Lake. A second grant in 1887 authorized a grant for an extension to Prince Albert. As with the Calgary and Edmonton line, the government reserved "security lands" against the value of a contract for transportation services, which the company was to provide to the government.

The entire land grant was selected and located within Saskatchewan, for 254 miles of line. The story of the sale of land through the Saskatchewan Valley Land Company is included in Chapter 3. The line was leased and operated by the CPR from 1889 until 1906, when it was put up for sale because it was not doing well. Mackenzie and Mann bought it, and it became part of the CNOR system (Regehr 1976, 179-81; Martin 1938, 296-97).

The original shareholders of the Qu'Appelle Valley, Long Lake, and Saskatchewan Railway and Steamboat Co. included William and Gilbert Pugsley; A.M. Nanton; Robert A. Smith; Hon. Donald McInnes; Edgar Dewdney (a Director 1885 while he was Lieutenant Governor of the North-

West Territories; he sold his shares in 1888 when became Minister of the Interior); E.B. Osler; Gerard Ruel; A.C. Hammond (Osler, Hammond and Nanton); William Van Horne, T. Shaughnessy, and C. Drinkwater (all with CPR links); Z.A. Lash (solicitor for CNOR, who began to acquire shares around 1902); Lash, McInnes, and Osler (with Hammond and Nanton, bought up the majority of shares in 1906 and sold them later to Mackenzie and Mann, who, in 1914, sold them to the National Trust Co. and the British Empire Trust Co.) (see Appendix D, Sifton: Investments) (NA, RG 30, vol. 1366, Stock ledgers). Interestingly, Lash was part of the CNOR realm, whereas Osler, Hammond, and Nanton were the major land agents for the CPR.

WESTERN SETTLEMENT TO 1896

In the 1870s, the settlement of the West by non-native people was slow. A few parties of settlers, such as the Mennonites, came to the prairies. Transportation was restricted, particularly west of Manitoba. There were 10,988 homestead entries by 1880, but half of them were cancelled (Hedges 1939, 12). The implements and seed varieties used by the homesteaders were inadequate for the short growing season and semi-arid conditions in many areas. Weather conditions were erratic, and farmers without other means of making a living were vulnerable to drought, flooding, frost, and insects. Because it matured earlier, the Red Fife grain introduced in the 1870s enabled farmers to take better advantage of the growing season. It would take some time, however, before dry farming methods became more reliable (see Morton 1938, 69-71).

There was a depression in land and grain prices in 1881-82, followed by two years of poor crop conditions, and then the Riel Rebellion in 1885, all of which resulted in a loss of population. The West gradually rebounded in the 1880s. In 1881, 47,991 immigrants came to Canada, the second largest number in any year since Confederation. The numbers began to climb until 1884, when they slowed and remained under 100,000 per year until 1903. Another depression in the mid-1890s slowed immigration and affected land values. Homestead entries followed a similar pattern of growth and stabilization, peaking in 1892, and declining until after 1896. It is important to note that there was also a high rate of cancellation. Of the 59,520 entries between 1881 and 1896, 16,326 were cancelled (Hedges 1939, 89-92; Macdonald 1966, 264).

The population of Manitoba and the North-West Territories grew in the 10-year period between 1881 and 1891 from 118,706 to 251,473 (Hedges 1939, 92). The movement west followed

the CPR into the Qu'Appelle Valley. Small pockets of colonists from Scandinavia, Iceland, Austria, and Russia were scattered near existing trading settlements: Icelandic colonies at Gimli, Glenboro, and Medicine Hat; Swedish near Whitewood; Romanian near Balgonie; Russian Jews at Wapella; and Germans near Grenfell and Langenburg. The Hungarians, for example, settled near Esterhazy, Neepawa, and Minnedosa. The immigration of the colonists was facilitated by Count Paul O. d'Esterhazy. The French moved into the Edmonton/Stony Plain/Saint Albert area, and the Scots came to Moosomin. Southern Alberta began to attract ranchers in the 1870s, including the family of missionary John McDougall, who would later be influential in land surrenders. The Mormons came up from the United States into southern Alberta in the late 1880s, joined by many English and Scots ranchers. Later in the 1880s the new cities of Regina, Moose Jaw, and Saskatoon began to fill, attracting colonists from Ontario. The colonization companies were strongly influential in placing settlers (see Morton 1938, 88-99).

The CPR had its own immigration department as well, under Alexander Begg, which operated in Europe and Great Britain. It began a policy within North America of sponsoring excursions for potential buyers to come west from eastern Canada or the United States, particularly the mid-western states, to inspect western lands. Colonization agents were appointed to find recruits, posters and pamphlets were distributed, and articles were planted in newspapers. Relations with the press were crucial to the success of most immigration efforts; the CPR, in conjunction with the local press, would also bring in journalists from other regions to extol the virtues of western agriculture. Exhibition cars were sent out, with exhibits and advertising from the North-West (Hedges 1939, 92-120).

Weather conditions continued to shape prairie agriculture. A severe drought in 1889 forced relocation north for some farmers; more droughts followed through the early 1890s. New techniques such as summer fallowing were introduced, and the CPR set up experimental farms along its lines as an inducement for settlement. Only in 1896 and 1897, at the time that the Liberals took over the government of Canada, did conditions substantially improve, with stabilization of farming methods and grain varieties, rising grain prices, and a fortuitous improvement in the weather. The Liberals were later able to take credit for the conditions that attracted both immigrants and investors. Above all, it was land speculators who drove up land prices, many of them with Liberal patronage connections.