ABORIGINAL RIGHTS

THE LAW AND THE POLITICS

IN THE ROBINSON SUPERIOR AREA

by

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This study is based on documents located in Indian Affairs records
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This study of relations between the First Nations of Lake Huron and Lake Superior and the Dominion and Ontario governments is primarily concerned with these relations during the second half of the nineteenth century. It examines W.B. Robinson's negotiation of treaties with these First Nations in 1850 and explores the treatment of these communities and their members over the next half century. The paper reflects a particular concern about the place of the Métis in the development of relations between the First Nations and the Province of Canada (as it was in 1850) and the Dominion government (which succeeded to the responsibility for these relations in 1867). The province of Ontario developed its own concern about the Aboriginal people of the Robinson treaty area after the Dominion government sought compensation from that government for the cost of the annuity being paid to the members of these First Nations. The fact that many of the members of these communities were Métis who received annuity payments under the treaty is only one of the facts that makes this study so interesting and important.

This study consists of three parts, following a substantial introduction that sets the stage for exploration of Aboriginal rights in the Robinson Treaty area. The first part builds on the introduction by exploring how the Aboriginal people of the region were treated by the Dominion government during the first quarter century after Confederation. Although the government of the Province of Canada had accepted responsibility for Aboriginal people in 1860, it and the succeeding Dominion government only slowly developed policies relating to "Indian Affairs." The relations these governments developed with the First Nations of Lake Huron and Lake Superior constituted an important part of their acceptance of this constitutional responsibility. The second part examines the struggle that ensued as the Ontario government, which had been given responsibility for Crown lands in the region under the British North America Act and benefitted from the development of resources there, sought to limit its financial obligation to the Dominion government after the latter began to pay the larger annuity that Robinson had promised in the treaty negotiations. Magistrate E.B. Borron's arguments, and Premier Oliver Mowat's response to them, are of particular interest for this discussion of the law and politics of Aboriginal rights. The third part examines the Dominion government's response to the arbitration decision that established Ontario's obligation. Although Indian Affairs inspectors were sent to review the lists of annuitants, some people of mixed blood continued to receive these treaty

payments into the twentieth century. Most surprising was the fact that the department yielded to Métis protests rather than holding to the letter of the law.

The First Nations of Lake Superior did not become a matter of concern to the Canadian government until prospectors found minerals in that region during the 1840s and companies began to develop mines there. As long as the region was valuable chiefly for the furs that could be produced there, Aboriginal people were of interest only to the fur trading companies. After the merger of 1821 between the Montreal-based North West Company and the London-based Hudson's Bay Company, the territory became almost as much a fur trade empire as Rupert's Land was to the northwest, where the Hudson's Bay Company exercised rights dating back to the Royal grant of 1670. The Hudson's Bay Company recognized, however, that its right to maintain posts and to carry on trade depended on the sufferance of the First Nations. Fort William had been established by the North West Company at the beginning of the nineteenth century following an agreement with the local chiefs, and the Hudson's Bay Company continued to make annual payments for the privileges it enjoyed at the head of the Great Lakes. This recognition of the sovereignty of the First Nations was not peculiar to the fur trade companies, although the Canadian government initially ignored the need to recognize the ownership and control of the land by the First Nations.

The struggle over land began at Sault Ste. Marie where Chief Shingwauk and his people were well aware of the consequences of American settlement across the St. Mary's River. As early as 1843, Chief Shingwauk and other chiefs petitioned the British Governor-in-Chief to protest the substantial stone dwelling and business place that fur-trader Charles Ermatinger had erected on their land at the Sault without permission from, or payment to, them. Ermatinger responded to this petition the following year by pointing to the movements to-and-fro between Sault Ste. Marie and Manitoulin Island into which Shingwauk and his people had been drawn by the Colonial government before they finally settled at Garden River on the St. Mary's River. An attempt by the Canadian Crown Lands Office to have a town-site surveyed at Sault Ste. Marie in 1846 aroused the strong protests of both Chief Shingwauk and his son-in-law, Chief Bebanaigooching of the Batchewana First Nation. The chiefs told Deputy Provincial Surveyor Alexander Vidal that the Canadian government had no right to these lands nor did it have any authority to grant rights to mining companies on lands that were still Aboriginal. They insisted that a treaty must be negotiated first. Vidal, for his part, warned them not to interfere with the miners.[1]

Prospecting activity on the north shore of Lake Superior had begun in 1845 and soon forced the Canadian government to consider how it might grant mining companies rights to the mineral deposits they had found (or wished to purchase). The initial entrant, John Prince, was disappointed to discover that the monopoly he thought he had obtained did not prevent the Canadian government from granting twenty-nine other licenses. Although many of the prospectors failed to report by the end of that year

1845, this did not prevent a hundred applications for renewals and new grants being made in 1846. Faced with the need to regularize this activity as well as the opportunity to profit from the new reality, the Canadian government issued regulations on 9 May 1846 under which applicants would be allowed to buy ten-square-mile mining locations outright rather than obtain the use of mineral lands for twenty-one years as William E. Logan, head of the recently-established Geological Survey of Canada, had recommended. These lands were valued by the government at four shillings per acre and the £1,280 cost of 6,400 acres could be met by a down-payment of £150 and five equal annual payments plus interest. However, all of this money would come to a government which had not yet dealt with Aboriginal title to the land.[2]

The inadequacies of the Canadian government became very clear during the next three years. The Crown Lands Office sold mining lands to companies with the capital and connections to acquire these "rights," and a few speculative companies succeeded in acquiring most of the lands. Only one, the Quebec-Superior Mining Association, which had acquired ten areas on the northeast shores of Lake Superior, undertook significant development work. At the same time, the Northern Superintendency, which was responsible for Indian affairs and answered to the Military Secretary to the Governor-in-Chief of Canada, worried about the failure of the Canadian government to deal with the First Nations. The grant to a Mr. Bristol of the Garden River lands on which Chief Shingwauk and his people were settled, a grant that was upheld by the Executive Council, demonstrated the combination of arrogance and ignorance that characterized this last Province of Canada administration before the achievement of Responsible Government in 1848. The concern of the Northern Superintendent was clearly expressed by Captain T.G. Anderson's presiding over a Native Council in August 1848. This Council included chiefs from as far away as Fort William; it also involved Anglican Bishop John Strachan and other mission leaders and such business people as Alan Macdonell, who led the Toronto interests in the Quebec-Superior Mining Association. Anderson's report to the Executive Council supported the chiefs' complaints and urged the negotiation of a treaty relating to the lands around the north shores of Lake Huron and Lake Superior.[3]

The failure of the Canadian government to respond promptly to this recommendation led Allan Macdonell to indulge in the sort of private dealing with First Nations that the British government had prohibited in 1763. In the Royal Proclamation issued following the French cession of Canada, King George III had "reserve[d] under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories" west of the old colony of Quebec. He also forbade, "on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for that Purpose first obtained." More particularly, the King did "with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians" and declared "that, if at any Time any of the said Indians

should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie."[4] Having become frustrated with the delays of the government, Macdonell negotiated a ninety-nine-year lease of a railway right of way along the St. Mary's River with promises of royalties for the First Nations on the freight that the railway would carry. He also negotiated for mining lands and other rights along Lake Superior with guarantees of "quick development, a Native share of profits and both employment and training in mining for the [A]boriginals who held this territory." (When he attempted to present his case to Commissioners Anderson and Vidal in the fall of 1849, Macdonell attacked both the morality of the Royal Proclamation constraints and the prevailing view of Indians as minors before the law.)[5]

The pace of developments began to pick up in 1849 as the Canadian government commissioned Captain Anderson and Deputy Provincial Surveyor Vidal to make a tour of the territory and its First Nations. The Commissioner of Crown Lands had made recommendations "relative to the compensation to be granted to the Indians of Lakes Superior and Huron in consideration of the surrender they proposed to make to the Crown of the Territory bordering on those Lakes," and Vidal and Anderson were "deputed [on 4 August 1849] to investigate and ascertain the expectations of the Indians."[6] Their meeting at Fort William was witnessed by Jesuit Father Frémiot who reported that Chief Joseph, Peau de Chat, had asked for "a reserve on both banks of the river where we are living" and "thirty dollars a head (including women and children) every year to the end of the world, and this should be in gold, not in merchandise." He also asked the government "to pay the expenses of a school master, a doctor, a blacksmith, a carpenter, an instructor in agriculture, and a magistrate." Given the high price asked, not to mention the intelligence shown in asking for personnel to assist the community, it was hardly surprising that Anderson should express his displeasure about the fact that the Governor "has not ratified your selection of first chief" and that "you ask too high a price for your land." He pointed out that the United States government had paid far less and suggested that clothing would surely be far more practical than money, which was all too likely to go for "a glass of water mixed with a little whiskey." The Fort William First Nation's negotiating response was to "cross out the doctor, the carpenter, the blacksmith, the farmer and the superintendent; we will only keep our school master."[7]

In the meantime, Allan Macdonell and his Aboriginal allies increased the pressure on the Canadian government. During the summer, while the government was clarifying its policy, Macdonell led a delegation of chiefs to Montreal to meet with the Governor, Lord Elgin, and present their case to him. The chiefs became the toast of the town, with the high point being Cornelius Krieghoff's painting the group of chiefs. When Anderson and Vidal reached Sault Ste. Marie, Macdonell met with them and endeavoured to have his negotiations with the chiefs recognized. Vidal refused even to listen to Macdonell; although Anderson listened, he refused to accept either his

arrangements or his opinions. Later that fall, while Anderson and Vidal were writing their report, Allan and Angus Macdonell and Wharton Metcalfe of Montreal, together with an Aboriginal force led by Chiefs Shingwauk and Nebanaigooching, forced the closure of the Quebec-Superior mine at Mica Bay. The Canadian authorities responded with a military force sent by ship from Collingwood which failed, however, to reach the site. When the Macdonells, both chiefs, and three other prominent men from Garden River surrendered to the authorities at Sault Ste. Marie on 4 December, they were taken to Toronto for trial. The media frenzy surrounding these events gradually died down as Chief Justice John Beverley Robinson declined to find the chiefs guilty of charges of conspiracy and insurrection and Northern Superintendent George Ironside emphasized the loyalty of the chiefs. These events served, however, to give the report that Anderson and Vidal filed on 5 December 1849 an unprecedented public interest and political concern.[8]

Writing a report many years later (in 1894) opposing the right of the Métis to share in Robinson Treaty benefits, Magistrate E.B. Borron noted a council called by Chief Shingwauk in 1848 or 1849 at which the Chief had "asked the Half-breeds (who had been invited to attend) to join his Band, and be his men or soldiers" and promised them "a share of whatever he might thereafter obtain (from the Government) for his land." Borron asserted that "this offer was doubtless made to induce the half-breeds to assist the Chiefs and Indians of the Garden River and Batchewana Bands in operations of an insurrectionary or rebellious character, then contemplated and which culminated in their taking forcible possession of the Quebec Mining Company's Copper Mines at Pointe Aux Pines, on the North shore of Lake Superior in the year 1849." The Ontario magistrate might regard Chief Shingwauk's defense of his land as an insurrection but we, knowing that the treaty sought by the Chief had not yet been negotiated and having some appreciation of the law of nations, would not indulge in similar aspersions today. More interesting in Borron's report was his conclusion that "a number of the half-breeds are known to have taken part in this affair." He believed that "it was almost certain that they were led to do so in consequence of the promises made to them by the Chiefs at the Council referred to or subsequently" and asserted that this explained "the pertinacity displayed by Chiefs Shinguaconse[sic] and Nebenaigooshing[sic] in their endeavors[sic] to obtain a recognition of these half-breeds, and a share of the money paid down--when the Treaties were made in 1850 and subsequently of Annuities."[9]

The participation of the Métis in the negotiation of treaties with the First Nations was only one of the issues facing the Canadian government. Father Frémiot observed of the meeting Anderson and Vidal held at Fort William that "the Métis were passed by in silence [during the roll call] for they have not the right to speak at such gatherings."[10] However, the Commissioners observed in their own report: "Another subject [which] may involve a difficulty is that of determining how far halfbreeds are to be regarded as having a claim to share in the remuneration awarded to the Indians and (as they can scarcely be altogether excluded without injustice to some) where and how the

distinction should be made between them; many of these are so closely connected with some of the Bands, and being generally better informed, exercised such an influence over them, that it may be found scarcely possible to make a separation, especially as a great number have been already so far recognized as Indians, as to have presents issued to them by the Government at the annual distribution at Manitowaning."[11] When the negotiations began at Sault Ste. Marie in September 1850, the status of the Métis did indeed become an issue. This Imperial recognition of them as Aboriginal people could only strengthen their hand.

Negotiation of the Robinson Treaties followed more or less directly from the Mica Bay affair. As early as 11 January 1850, the Superintendent General of Indian Affairs wrote to W.B. Robinson (who was the brother of Chief Justice J.B. Robinson) to say that "I am directed by the Governor General to acquaint you that His Excellency in Council has had under consideration your memorandum presented to me on behalf of certain Indian Chiefs lately arrested at Sault Ste. Marie on a charge of having been lately implicated in the attack on the property of the Quebec Mining Company and who are represented to be now in Toronto anxious to obtain assistance to return to their homes, as well as an assurance that the government will speedily take measures to adjust the claims of the Indians for compensation on their renouncing all claims to the occupation of all lands in the vicinity of Lakes Huron and Superior portions of which have been occupied for mining purposes." Superintendent General Bruce went on to say that "His Excellency in Council is prepared to advance to the Indians a sufficient sum to enable them to return which will be paid to you by the Com[missione]r of Crown Lands, and further to authorize you on the part of the Government to negociate[sic] with the several Tribes for the adjustment of their claims to the lands in the vicinity of Lakes Superior and Huron or of such portion of them as may be required for mining purposes." Bruce added that "it is His Excellency's desire that you should communicate to the Indians the fact of your appointment . . . and that you should impress the minds of the Indians that they ought not to expect excessive remuneration for the partial occupation of the territory heretofore used as hunting grounds by persons who have been engaged in developing sources of wealth which they had themselves entirely neglected."[12]

The terms of negotiation with the First Nations of Lake Huron and Lake Superior were clarified over the next four months. A minute of the Executive Council dated 16 April 1850 stated "that Mr. Robinson should be informed that the amount of money actually circulatable for the purpose of the negotiation is about £7500 [and] that it is not considered expedient that any portion of the compensation money should be paid in presents [but] that the most desirable mode of compensation would be by perpetual annuities . . .." The rejection of presents had a good deal to do with the fact that they were still being distributed to the First Nations by the Queen's representatives as part of the military organization of the colony. As the minute stated, "the Committee of Council are of opinion that Mr. Robinson should carefully abstain from expressing any opinion on a subject with which Her Majesty's Imperial Government can alone deal,

and which ought not to be mixed up in any way with the present negotiations." Robinson was authorized by this time "to negotiate for the extinction of the Indian title to the whole territory on the North and the North-Eastern Coasts of Lakes Huron and Superior," in return for which annuities would be paid to individual Aboriginal people in perpetuity. According to the minute, "the Capital sum to which Mr. Robinson should consider himself limited should not exceed £25,000, the interest of which payable as a perpetual annuity would be £1500, it being understood that the number of claimants should be not less than 600, and that if reduced below that number a deduction of £2.10.0 per head should be made." The Executive Council envisaged the area to which it sought title as being worth no more than £25,000, and it was prepared to pay annuities out of this capital at the rate of six per cent annually. The individual annuity was to be no more than £2.10.00 (or ten dollars, at the later exchange rate of four dollars to the pound).[13]

The planning by the First Nations for the impending negotiations remains more obscure (because of the lack of documents) than that of the Canadian government. The events of the preceding winter, not to mention the earlier Native Council, had made clear that recognition of Aboriginal title to the land and financial compensation for its surrender were central to the First Nations' position. One document from the period, a letter from the Hudson's Bay Company Postmaster at Michipicoten, John Swanston, to the Governor of the Company, George Simpson, provided some interesting sidelights. Swanston wrote on 21 August 1850 to say that "I purpose starting for [Sault Ste. Marie] tomorrow, with the few Indians I can muster to attend the meeting." He also observed that "I am not certain whether the Government will acknowledge the rights and claims of the half breeds[sic], to a share of the payments to be made for the lands about to be ceded by the Indians of Lake Superior, but I would hope they would, as many of them have much juster claims then[sic] the Indians, they having been born and brought up on these lands, which is not the case with many of the Indians, particularly the Sault Chiefs Shin gwa konse[sic] and Neh bai ni co ching[sic], whose lands are situated on American Territory." Swanston's suggestion that the Ojibwa chiefs settled at Garden River and Batchewana originally enjoyed the use of lands that had become part of the United States of America might raise some interesting questions for the Canadian government, but it was by no means the only instance of settlement in Canada by Aboriginal people who had migrated from the United States. The government of Canada, as heir to British claims, had no reason to reject the Aboriginal entitlement of these First Nations. Whether it would be similarly generous to the Métis, only time would tell.[14]

Although the responsibility for Indian Affairs was focused in the office of the Governor of the Province of Canada, legislation dealing with Indians and their lands must needs come from the Legislative Assembly and Council of the Province. An important Act for the Protection of Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury was passed less than a month before the treaties were negotiated in Sault Ste. Marie. The first section made

the already-noted Royal Proclamation the indubitable law of the Province of Canada with its declaration: "That no purchase or contract for the sale of land in Upper Canada, which may be made of or with the Indians or any of them, shall be valid unless made under the authority and with the consent of Her Majesty, Her Heirs or Successors, attested by an Instrument under the Great Seal of the Province, or under the Privy Seal of the Governor thereof for the time being." Allan Macdonell's dealings were clearly proscribed by the second section which stated "that if any person, without such authority and consent, shall in any manner or form, or upon any terms whatsoever, purchase or lease any lands within Upper Canada of or from the said Indians, or any of them, or make any contract with such Indians, or any of them, for or concerning the sale of any lands therein, or shall in any manner, give, sell, demise, convey or otherwise dispose of any such lands, or any interest therein, or offer so to do, or shall enter on, or take possession of, or settle on such lands, by pretext or colour of any right or interest in the same, in consequence of any such purchase or contract made or to be made with such Indians or any of them, unless with such authority and consent as aforesaid, every such person shall, in every such case, be deemed guilty of a misdemeanour, and shall, on conviction thereof before any Court of competent jurisdiction, forfeit and pay to Her Majesty, Her Heirs or Successors, the sum of Two Hundred Pounds, and be further punished by fine and imprisonment, at the discretion of the Court."[15] These penalties were surely sufficient to ensure that only the Crown would deal with the lands of the First Nations in the Province of Canada.

The negotiation of the Robinson Treaties took place at Sault Ste. Marie during 7-9 September 1850. In preparation for this meeting, Robinson had travelled to that community the preceding May. As he later reported to the Superintendent General of Indian Affairs, while there he "took measures for ascertaining as nearly as possible the number of Indians inhabiting the north shore of the two lakes; and was fortunate enough to get a very correct census, particularly of Lake Superior." He was thus able to contradict assertions later "by those who were inciting the chiefs to resist my offers" that there were "on Lake Superior alone, eight thousand Indians." The census he had been given indicated that "the number on that lake, including eighty-four half-breeds, is only twelve hundred and forty."[16] As Robinson saw it, "the Indians had been advised by certain interested parties to insist on such extravagant terms as I felt it quite impossible to grant; and from the fact that the American Government had paid very liberally for the land surrendered by their Indians on the south side of Lake Superior, and that our own in other parts of the country were in receipt of annuities much larger than I offered, I had some difficulty in obtaining the assent of a few of the chiefs to my proposition." Robinson pointed out that "the lands ceded heretofore in this Province . . . were of good quality and sold readily at prices which enabled the Government to be more liberal [and that] they were also occupied by the whites in such a manner as to preclude the possibility of the Indian hunting over or having access to them." In sharp contrast, he asserted that "the lands now ceded are notoriously barren and sterile, and will in all probability never be settled except in a few localities by mining companies, whose establishments among the Indians, instead of being prejudicial, would prove of

great benefit as they would afford a market for any things they may have to sell, and bring provisions and stores of all kinds among them at reasonable prices."[17]

Robinson's offer to the several First Nations was based on the value of the region to the mining industry. He pointed out that, when Chiefs Shingwauk and Nebanaigooching were in Toronto the preceding winter, they "only asked the amount which the Government had received for mining locations, after deducting the expenses attending their sale." He could now tell them that the "amount was about eight thousand pounds which the Government would pay them without any annuity or certainty of further benefit; or one-half of it down, and an annuity of about one thousand pounds." The "twenty-one chiefs . . ., about the same number of principal men, and a large number of other Indians belonging to the different bands" who were in attendance "all preferred the latter proposition," except for the two chiefs who had been in Toronto and now "insisted on receiving an annuity equal to ten dollars per head." Unfortunately for Chiefs Shingwauk and Nebanaigooching, "the chiefs from Lake Superior desired to treat separately for their territory and said at once in council that they accepted my offer." Robinson "told them that I would have the treaty ready on the following morning, and I immediately proceeded to prepare it; and, as agreed upon, they signed it cheerfully at the time appointed." He "then told the chiefs from Lake Huron (who were all present when the others signed) that I should have a similar treaty ready for their signature the next morning, when those who signed it would receive their money." He added that, "since "a large majority of them had agreed to my terms I should abide by them."[18]

The struggle for the Lake Huron treaty was concluded almost as easily as the Lake Superior treaty had been. Robinson had "prepared the treaty and proceeded on the morning of the ninth instant to the council-room to have it formally executed in the presence of proper witnesses." Finding "all the chiefs and others were present," he "told them that [he] was then ready to receive their signature." When "the two chiefs . . . repeated their demand of ten dollars a head by way of annuity, and also insisted that [he] should insert in the treaty a condition securing to some sixty half-breeds a free grant of one hundred acres of land each," Robinson "told them they already had [his] answer as to a larger annuity, and that [he] had no power to give them free grants of land." The lack of a common front among even the Lake Huron chiefs doomed these negotiating efforts by the Garden River and Batchewana chiefs. As Robinson observed, "the other chiefs came forward to sign the treaty and seeing this the two who had resisted up to this time also came to the table and signed first, the rest immediately following." Robinson spoke with confidence in observing that he trusted "his[sic] Excellency will approve of my having concluded the treaty on the basis of a small annuity and the immediate and final settlement of the matter, rather than paying the Indians the full amount of all moneys on hand, and [giving?] a promise of accounting for future sales."[19]

Although Robinson thought that "the latter course would have entailed much

trouble on the Government, besides giving an opportunity to evil disposed persons to make the Indians suspicious of any accounts that might be furnished," his treaties included a provision not very different in its effect. He stated that, "believing that His Excellency and the Government were desirous of leaving the Indians no just cause of complaint to their surrendering the extensive territory embraced in the treaty; and knowing there were individuals who most assiduously endeavored[sic] to create dissatisfaction among them," he had "inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the government without loss to increase the annuity." This provision had been found by the chiefs to be "so reasonable and just that [he] had no difficulty in making them comprehend it, and it in a great measure silenced the clamor[sic] raised by their evil advisers." Robinson added that, "in allowing the Indians to retain reservations [he] was governed by the fact that they in most cases asked for such tracts as they had heretofore been in the habit of using for purposes of residence and cultivation, and by securing these to them and the right of hunting and fishing over the ceded territory," he had ensured that they could not "say that the government takes from [them] their usual means of subsistence and therefore [they] have no claims for support, which they no doubt would have preferred, had this not been done." The reserves included the large one at Garden River (where some mining locations filed earlier needed to be cancelled) and sixteen others on Lake Huron; the Lake Superior reserves were three in number, one at Fort William, a second at Michipicoten, and the third located where the Gull River flows into Lake Nipigon.[20]

The demands of the Métis were among the issues that Robinson had faced and endeavoured to resolve. He told the Superintendent General of Indian Affairs that, "as the half-breeds at Sault Ste. Marie and other places may seek to be recognized by the Government in future payments, it may be well that I should state here the answer that I gave to their demands on the present occasion[:] I told them to treat with the chiefs who were present, that the money would be paid to them--and their receipt was sufficient for me--that when in their possession they might give as much or as little to that class of claimants as they pleased." Robinson thought that "no one, not even their advisors, could object [to this] and I heard no more on the subject." As it happened, however, "at the earnest request of the chiefs themselves I undertook the distribution of the money among their respective bands, and all parties expressed themselves perfectly satisfied with my division of their funds." As Robinson observed later in his report, he had "kept within the amount at [his] disposal." Thus, "of the £4,160 agreed to by me to be paid to the Indians of both lakes, there remain[ed] £75 unexpended," since he "could not from the information [he] possessed tell exactly the number of families [he] should have to pay, and [he] thought it prudent to reserve a small sum to make good any omissions." If none appeared to press claims, "the amount [could] be paid next year with the annuity to such families as [appeared] most deserving." This money might be used to compensate those affected by a fact Robinson had stated earlier: "the number paid, as appear[ed] on the pay list, [did] not show the whole strength of the different bands, as [he] was obliged at their own request to omit some members of the very large

families."[21]

By the treaty Robinson had made with the First Nations of the Lake Superior region, the chiefs had "freely, fully and voluntarily surrender[ed], cede[d], grant[ed], and convey[ed] unto Her Majesty, Her heirs and successors forever, all their right, title and interest in the whole of the territory" on "the northern shore of Lake Superior, in the said Province of Canada, from Batchewanung Bay to Pigeon River, at the western extremity of said lake, and inland throughout that extent to the height of land which separates the territory covered by the charter of the Honorable[sic] the Hudson's Bay Company from the said tract" as well as "the islands in the said lakes within the boundaries of the British possessions therein." They had done this "for and in consideration of the sum of two thousand pounds of good and lawful money of Upper Canada to them in hand paid; and for the further perpetual annuity of five hundred pounds, the same to be paid and delivered to the said Chiefs and their Tribes at a convenient season of each summer, not later than the first day of August, at the Honorable[sic] the Hudson's Bay Company Posts of Michipicoton[sic] and Fort William." The several First Nations were also assured of their rights to "the reservations set forth in the schedule hereunto annexed, which reservations shall be held and occupied by the said Chiefs and their tribes in common for the purposes of residence and cultivation." The treaty conceded to "the Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them and fish in the waters thereof as they have hitherto been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals or companies of individuals, and occupied by them with the consent of the Provincial Government."[22]

The Robinson Superior Treaty also gave the First Nations of the region a real interest in its economic development. They were first assured "that in case the Government of this Province, should before the date of this agreement, have sold or bargained to sell any mining locations or other property on the portions of the territory hereby reserved for their use and benefit, then and in that case such sale or promise of sale shall be perfected if the parties interested desire it, by the Government, and the amount accruing therefrom shall be paid to the tribe to whom the reservation belongs." Having already agreed that they would not "at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory . . . ceded to Her Majesty," the First Nations were promised "that in case the territory hereby ceded . . . shall at any future period produce an amount which will enable the Government of this Province, without incurring loss, to increase the annuity hereby secured to them, then and in that case the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound Provincial currency, or such further sum as Her Majesty may be graciously pleased to order." The annuity was clearly promised to all of the members of these First Nations as they increased in number, since the treaty spelled out provisions only in the event of a decline in numbers. They were assured "that the number of Indians

entitled to the benefit of this Treaty shall amount to two-thirds of their full benefit thereof." Only if their numbers fell below that proportion of the 1850 population of 1,240 would "the annuity . . . be diminished in proportion to their actual numbers."[23]

The acceptance of the Robinson Treaties by the government of the Province of Canada was probably never in question. According to the relevant Order-in-Council of 12 November 1850, a Committee of the Executive Council presented a report on Land Applications that day which included "the letter of the Hon[oura]ble W.B. Robinson, submitting for the approval of [His] Excellency two Treaties of surrender by the Indians inhabiting the northern shores of Lakes Huron and Superior which he was Commissioned on behalf of the Provincial Government to negotiate." The Committee recommended "that the Treaties be ratified and confirmed [and] that they be entered at length on the records of the Executive Council; and further, that they be registered in the Office of the Provincial Registrar." These latter actions ensured that the government had evidence of the new realities at both the executive and administrative levels.[24]

I

The administration of the Robinson Treaties was inevitably affected by the development of the "department" of Indian Affairs. Another decade would pass before the government of the Province of Canada accepted responsibility for Indian Affairs from the Military Secretary to the Governor. In the meantime, the Northern Superintendency (dating back to the Imperial system of the eighteenth century and the leadership of Sir William Johnson) continued to provide oversight. It was surely recognition of these realities that led W.B. Robinson first to tell Governor Simpson of the Hudson's Bay Company "how much [he] was indebted to your Mr. Swanston and Mr. McKenzie for their judicious assistance ever since I took the Indian quarrels in hand" and then to ask, "before I forget it, can the Gov[ernmen]t not make some arrangement with your Hon[ourable] Company to pay the annuity of £500 every year to the Indians on Lake Superior?" As he pointed out to Simpson, "if you were authorised to pay it and draw on the Gov[ernmen]t for the Am[oun]t: it would save much trouble and expense." It would also lessen the possibility that, "in the multitude of their [presumably meaning the Canadian government's] political affairs the poor Indians may be again forgotten." He feared that "the next thing we hear will be complaints of a breach of faith, [and] tho[ugh] innocent of the affair I shall be blamed."[25] These comments were addressed to Simpson even before Robinson completed his report to the Superintendent General of Indian Affairs.

The Hudson's Bay Company proved to be very accommodating. Governor Simpson wrote Robinson on 15 October 1850 to say, "With reference to my letter of 26 September on the mode of paying the Indians of Lake Superior the annuity, granted by Government as compensation for their mineral lands, [and] the distribution of their presents, I beg, through you, to tender to the Government the services of the Hudson's Bay Company in making those payments and distributions at their establishments of

Michipicoton[sic] and Fort William on the [first] of August every year, agreeably to the terms of the Treaty, - free of any charge or outlay to the Government, the annuity to be paid in money." They would clearly need to be "furnished with particular instructions as to the parties entitled to participate in the annuity and presents, but should the Government be unable to furnish us with the names of the Indians, we will procure, for their information, in the course of the present winter, a census of the native[sic] population of Lake Superior, after such form as may be pointed out."[26] Writing to the Superintendent General of Indian Affairs on 19 April 1851, Robinson directed his "attention to Sir George's letter of 15 Oct[ober] last, on the subject of paying the annuity to the Lake Superior Indians." As he noted, "you will observe that Sir George offers to pay in money the am[oun]t of the annuity free of any charges." The Hudson's Bay Company would require only "a list of the Indians entitled to receive it," and Robinson suggested that "the pay-lists left by me in the Crown Land Office will I think enable you to prepare such a list as will answer the purpose." Robinson also reminded the Superintendent General "of the great anxiety to receive [presents] at their respective places of residence, that is, at Garden River, for those residing near Sault Ste. Marie, [and] Michipicoton[sic] [and] Fort William for the Indians of Lake Superior."

The government considered the offer of its services by the great fur-trading company with some care. Writing almost three months later to the Superintendent General, the Agent of the Hudson's Bay Company alluded on 16 June 1851 to "receipt of your letter of the 13th Instant to the address of Sir George Simpson - who is now absent on his annual tour to the Indian country - intimating that his letter of the 18th Oct[obe]r last to the Hon[oura[ble] W[illia]m B. Robinson, was laid before the Governor General who was desirous to know, whether the tender which Sir George had made, in that letter of the services of the Hudson's Bay Company to facilitate the mode of paying the Indians of Lake Superior, the annuity granted to them . . . implies a guarantee of the payment of the said annuities, without deduction to the Indians entitled to receive them." As Agent, D. Finlayson was prepared to state "for His Excellency's information that, I think such a construction to be in accordance with Sir George Simpson's views and intentions as conveyed in that letter, and that under this impression, I shall, this season, be prepared to carry out his proposal, by guaranteeing the payment in money, of the annuities granted by the Government to the Indians, both at Michipicotton[sic] and Fort William without any deduction to, or making any charges against the Indians for the service, which is calculated to protect their interests." He would leave "to Sir George Simpson, when he returns to conclude a final arrangement with the Government for the future payment of those annuities, on the like conditions, or to modify and alter the present one in such a way as may be considered expedient." He also declared that "every facility will be afforded by the Hudson's Bay Co[mpany] for sending an officer of the Indian Department to be present at the distribution."[27]

Despite (or because of!) his being in the Indian country, Governor Simpson was well aware of the need to distribute the annuities carefully. He wrote on 30 June 1851 to John Swanston, the Company's Postmaster at Michipicoten who had attended the

negotiations in Sault Ste. Marie the preceding summer, with instructions on the procedure to be followed. Simpson enclosed a letter from the Superintendent General of Indian Affairs, dated 27 June 1851, and observed that "you are so perfectly conversant with the subject that I have little to add to the instructions contained in Colonel Bruce's letter, beyond drawing your attention to the circumstance that only £485 is to be distributed this season (£15 being deducted by Government to refund expenses incurred by a deputation of Indians in 1849) that the payments are to be made in specie and that receipts are to be taken from every head of a family, attested by the Chief of his band, and the resident missionary." Since there was "no resident missionary at Michipicoton[sic] [he] proposed to substitute for his signature that of two of the company's officers." The receipts were to "be taken in duplicate and sent to Lachine" with "the originals [being sent] by one Conveyance, and the duplicate by another." With the Hudson's Bay Company responsible for the distribution of almost five hundred pounds in good colonial money, Governor Simpson was clearly concerned to safeguard the credit of the Company when it assisted in thus adding to the purchasing power of the First Nations.[28]

Valuable as the regular payment of annuities was to the First Nations, the establishment of their reserves was surely of even greater importance. As defined by the Robinson Superior Treaty, the reserve for "Joseph Peau de Chat and his tribe [was] to commence about two miles from Fort William (inland) on the right bank of the River Kaministiquia; thence westerly six miles parallel to the shores of the lake; thence northerly five miles; thence easterly to the right bank of the said river, so as not to interfere with any acquired rights of the Honorable[sic] the Hudson's Bay Company."[29] Writing more than a year later, Allan Macdonell stated that he had "been written to on the behalf of Indians upon Lake Superior wishing me to urge upon the Government certain matters in relation to the treaty entered into last year 1850 at the Saut de St Marie[sic]." They alleged "that they were deceived in the description set forth in the articles of treaty as to the reserves that they had desired to make[,] the lands reserved them by these articles not being in accordance with what they were given to understand was inscribed therein." Macdonell observed, however, that he "was present at the treaty [and knew] that the reserves as therein described [were] the reservations as pointed out by the Chief Le Peau de Chat (who is since dead) and that Chief not the Agent of the Government [was] to blame." He added, however, that "at the time I knew that the reservations as made by him were not in accordance with the views of his band [but] I did not like to raise any question lest it might be imagined that I desired to thwart the Government in its wishes to settle the matter." He was well aware that "after all that had occured[sic] any motive but the true one would be ascribed to [him] should any new difficulty arise [and he] was therefore silent upon the subject but foresaw that future difficulty would arise respecting this surrender to the Crown."[30] The documentation is silent about the focus of dissatisfaction at Fort William, although the fact that the reserve was placed on the north side of the river while the starting point was declared to be on the right (or south) bank--does one not speak of banks "as the water flows"?--could point to a local preference for a reserve between the

Kaministiquia River and Mount McKay. A complicating fact is that it is impossible to draw a line in a "westerly" direction "parallel to the shores of the lake."

The second concern Macdonell passed on had to do with the Métis at the Sault. As he noted, "along the St. Mary river and particularly at what is called the Saut de Ste Marie[sic] there are settled a considerable number of half breeds and some few others who all cultivate more or less land[;] many of these are very respectable and intelligent mostly of French origen[sic]." Among them were "some who were formerly employes, in the Hudson bay[sic] [and] in the North West Companies and having married Indian women the Indians years ago assigned to some and sold to others parcels of land for farms upon which they or their decendants[sic] are now living most of whom have been . . . born upon these pieces of land [and] farms of Indian mothers [and] are emphatically the children of the soil and quite as much entitled to the consideration of the Government as the Indian of pure blood." Despite these claims, the Métis "do not participate in the benefits arising from payments or presents by the Government." Macdonell suggested that, out of his concern "that they should be protected in their rights to these properties[,] an article of treaty stipulating that these people so situated should receive free grants from the Crown for their farms so occupied was at the request of the Indians prepared by me and offered to the Commissioner Mr. Robinson." The latter had asserted that "there was an act which prohibited the Government making free grants of Land," but he had also urged Macdonell to "advise the Chiefs to execute the]surrender?] to the Crown and trust to the Government to confirm these parties in their possessions either by free grants or at a nominal price as should be deemed advisable."[31]

Unfortunately, the Canadian government had not yet acted on Robinson's hope and there was much uncertainty in the community. As one particular victim of the government's failure to act, Macdonell pointed to a "very respectable old man by the name of Biron who some half century ago married an Indian woman, and had there assigned to him a piece of land which he has cultivated and improved during a period of [forty] years past[;] he has lived upon it and raised a large family all [of] whom are tolerably well educated and highly respectable." Biron had been threatened for a year with loss of his land because an American resident named Johnson had been able to buy it from the Crown Lands Agent (and Collector of Customs) Wilson, who had been at odds with Biron ever since he came to the Sault. This situation contrasted sharply with Macdonell's own prescription for prosperity in the region: "to remove from the minds of all Indians as well as half breeds every subject of just complaint and afford facilities and encouragement to parties to examine and explore" the country as the Americans were doing across the Lake. In hopes of developing the country, where "I believe that there exists a wealth which can only be developed by individual energy and enterprise," Macdonell offered his "services to Government to settle to its satisfaction and to the satisfaction of those complaining all matters which are in any way misunderstood or which may tend to . . . retard that progress and advancement which I am so much interested in forwarding as speedily as possible upon our side of

the Lake."[32]

Although Allan Macdonell had real reason to be concerned about the Métis at Sault Ste. Marie, the treatment of others up the Lake was much better. That was particularly true in regard to the payment of annuities. Governor Simpson of the Hudson's Bay Company wrote his Postmaster at Michipicoten on 30 June 1852 to say: "At the request of the Hon[ourable] Colonel Bruce Superintendent General of Indian Affairs, I have undertaken that the annuity to the Lake Superior Indians shall be distributed this year by the H[udson's] B[ay] Co[mpany]'s officers at Michipicoton[sic] [and] Fort William in specie on or about the 1 August." He informed J. Mackenzie that "the amount payable is £500 currency less £25.7.6 the shares of the Batchewana Bay Indians, who at their own request will receive payment at the Sault." He also observed that "the census lists of last season are to be followed again, modifying them as deaths [and] other changes in the interval may render necessary."[33] The pay lists that F. Ermatinger used at Fort William (and which were recorded in the "Michipicoton Account Book") included payments to "Widows [and] Half Breeds," with the "Half Breeds" listed as a group by name. This group totalled fourteen families and sixty-one persons in 1850 and 1851 but only fifty-six persons in 1852.[34] The 1852 pay list sent to the Department of Indian Affairs, however, included sixteen Métis families with a total of seven-seven persons.[35] At Michipicoten, MacKenzie similarly listed the "Half Breeds" as a group and by name for 1850, 1851, and 1852. They totalled twenty-eight families with eighty-six members in 1850 and 1851 whereas by 1852 the list had grown to ninety-one persons.[36] The official (1852) list that MacKenzie drew up for Michipicoten included only twenty-seven families consisting of eighty-two persons. The fact that they received annuity payments is beyond question, however, given the statement on the list of "Michipicoten Half-Breeds" that "We, the undersigned (heads of families) of the different Tribes of Indians inhabiting the North Shore of Lake Superior, acknowledge to have received from the Indian Department by the hands of John Mackenzie the Sums set opposite to our Names respectively on this Sheet, being the proportion of the Annuity payable to us by the Provincial Government for the year 1852."[37]

It is clear that Métis people received annuity payments under the Robinson Superior Treaty from the beginning. The records of the Hudson's Bay Company provide evidence that annuity payments to the Métis continued through the middle of the decade. Where the number of Michipicoten families receiving such payments was stated to be twenty-seven in 1852, it apparently surged to thirty-four in 1853 and then fell back to nineteen families in 1854. The total number of Métis, however, was reported to be eighty-nine and seventy-seven respectively.[38] From that low, the number climbed to twenty families and eighty persons in 1855 and twenty-seven families with one hundred and seven members in 1856.[39] The report of a Special Commissioner on Indian Affairs who visited the area in 1857 indicated that the Michipicoten "Band now consists of 41 families containing 169 individuals; of these 11 families [and] 52 persons are of mixed descent, and 2 families have no further claim to

share in the Annuity than their father, a Canadian having married an Indian woman of the Band." The report concluded: "Six families seem to be Whites, and to be borne on the Rolls by mistake." In regard to a band that was still without any reserve, this same report observed that "about the Pic River 30 families of 138 individuuals still occupy their old hunting grounds" and added: "One white man has attached himself to this band, and claims a share of the annuity for his family, through his wife."[40]

To this evidence of Métis receipt of annuity payments at Michipicoten can be added the lists for Lake Nipigon and Fort William where both "Half Breeds" and Indians were placed on the pay lists by the Hudson's Bay Company postmasters. In 1855, for example, De La Ronde listed both "Half Breeds" and Indians as receiving annuity payments at Fort Nipigon, and F. Ermatinger listed fifteen "Half Breed" families with a total of sixty-six members as receiving annuity payments at Fort William.[41] The Special Commissioner described the latter community in 1858 as numbering 256 Indians who "enjoy the advantage of a R[oman] C[atholic] Missionary resident among them, under whose instruction they are making a steady though not a very rapid progress." Their improvements had created "a Village containing several substantial houses, and regularly fenced fields have taken the place of their former irregular patches of clearing at the edge of the forest." Although they also had "several head of Horned Cattle[, f]or want of Implements . . . they [were] still obliged to rely to a certain extent on the produce of the Chase, and their Fisheries" and were "occasionally pressed by famine." The Jesuit priest "labour[ed] for their education by teaching a school, in which he number[ed] 25 to 30 pupils." Although "most of the Indians at this Station ha[d] renounced Heathenism. . . about 70 still cl[u]ng to the superstitions of their ancesters."[42] The last figure suggested that more than one-quarter of the Fort William First Nation remained traditional around 1857.

The question, "who is an Indian?" had in fact been considered in more than one piece of Canadian legisaltion during the 1850s (even though the responsibility for Indian Affairs was still largely in the hands of the Imperial authorities). The 1850 land legislation already noted in the introduction was one of a pair of acts passed that year. Interestingly enough, the act that applied to Upper Canada (as the western part of the "United" Province of Canada still tended to be called) did not include any definition of an Indian. It did provide, among other things, that "Indians and persons inter-married with Indians, residing upon any such Indian lands and engaged in the pursuit of agriculture as their then principal means of support, shall be liable, if so directed . . . to perform labour on the public roads laid out or used in or through such Indian lands . . .." It also declared "that it shall not be lawful for any person or persons other than Indians, and those who may be inter-married with Indians, to settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada . . .."[43] The matching act for Lower Canada, which contained only six sections (as compared to the fourteen of the Upper Canada act), served primarily to establish the office of "a Commissioner of Indian Lands for Lower Canada, in whom and in whose

successors by the name aforesaid, all lands or property in Lower Canada which are or shall be set apart or appropriated to or for the use of any Tribe or Body of Indians, shall be and are hereby vested, in trust for such Tribe or Body . . .." However, the act also provided a definition in four paragraphs of the "classes of persons [who] shall be considered as Indians belonging to the Tribe or Body of Indians interested in such lands."[44]

The 1850 Lower Canada act recognized, first, "all persons of Indian blood, reputed to belong to the particular Body and Tribe of Indians interested in such lands, and their descendants." Secondly, it referred to "all persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons." A third group consisted of "all persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such." The fourth group of persons who might be considered as Indians were "all persons adopted in infancy by any such Indians, and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants."[45] This act was thus surprisingly inclusive in its statement of who an Indian was in the eyes of the law. Most surprising was the lack of any denial of status to Aboriginal women who married non-Aboriginal men. When this Lower Canada act was revised and re-enacted only a year later, however, the fourth class of Indians (by adoption) was dropped in the specification of the "persons and classes of persons, and none other, [who] shall be considered as Indians belonging to the Tribe or Body of Indians interested in any such lands or immoveable property." The first definition remained largely unchanged. The third 1850 statement became the second 1851 statement in the following form: "All persons residing among such Indians, whose parents were or are, or either of them was or is, descended on either side from Indians, or an Indian reputed to belong to the particular Tribe or Body of Indians interested in such lands or immoveable property, and the descendants of all such persons." The third 1851 definition involved a revision of the second 1850 statement: "All women, now or hereafter to be lawfully married to any of the persons included in the several classes hereinbefore designated; the children issue of such marriage, and their descendants."[46] As early as 1851, then, an infant could no longer become an Indian by adoption in Lower Canada nor could a man by marrying an Indian woman. The Indian wife, however, would not lose her status because she had married a White man.

While this Lower Canadian legislation is of interest in revealing who might be added to the Indian population in that part of the province after 1851, an act passed in 1857 was designed to reduce that population throughout the Province of Canada. This Act to Encourage the Gradual Civilization of the Indian Tribes in this Province, and to Amend the Laws Respecting Indians, declared at the outset that "it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinction between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to

desire such encouragement and to have deserved it." According to the first section of this act, the 1850 Upper Canada act noted earlier should "apply only to Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands, and shall not have been exempted from the operation of the said section, under the provisions of this Act." This statement left Aboriginal persons in a treaty area who did not live on a reserve in an anomalous situation. Much clearer on the face of it was the position of the "Indian of the male sex, . . . not under twenty-one years of age," who was "able to speak, read and write either the english[sic] or the french[sic] language readily and well, and [was] sufficiently advanced in the elementary branches of education and . . . of good moral character and free from debt." Such a person could choose to become "enfranchised under this Act" and all the "enactments making any distinction between the legal rights and liabilities of the Indians and those of Her Majesty's other subjects shall cease to apply to any Indian so declared to be enfranchised."[47]

The legislators appear to have realiized that they had enunciated an unlikely ideal in this specification of candidates for enfranchisement, and they offered a compromise in the fourth section. This empowered the Commissioners dealing with these candidates, namely, "the Visiting Superintendent of each Tribe of Indians, for the time being, the Missionary to such Tribe for the time being, and such other person as the Governor shall appoint from time to time for that purpose," to consider any adult male Indian who was "desirous of availing himself of this Act, although he be not able to read and write or instructed in the usual branches of school education; and if they shall find him able to speak readily the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs," they could nominate him for "a state of probation during three years from the date of the report," after which it would "be competent to the Governor to cause notice to be given in the Official Gazette that such Indian is enfranchised under this Act." According to section seven of the act, "every Indian enfranchised under this Act shall be entitled to have allotted to him by the Superintendent General of Indian Affairs, a piece of land not exceeding fifty acres out of the lands reserved or set apart for the use of his Tribe, and also a sum of money equal to the principal of his share of the annuities and other yearly revenues receivable by or for the use of such tribe." This land would, of course, become "liable to taxes and all other obligations and duties under the Municipal and School Laws of the section of this Province in which such land is situate." Similarly, "his estate therein [was] liable for his bona fide debts . . . and if such land be legally conveyed to any person, such person or his assigns [might] reside thereon, whether he be or be not of Indian blood or intermarried with any Indian; anything in the Act first cited to the contrary notwithstanding."[48]

When the Executive Council of the Province of Canada accepted responsibility

for Indian Affairs in 1860, it apparently felt no need for additional legislation in regard to the Indians of Upper Canada. The legislation it did bring forward, An Act Respecting Indians and Indian Lands, dealt primarily with Lower Canada and included provisions prohibiting the sale of "strong liquors" to Indians and the settling of persons "without a license in writing" in any Indian village. The act also provided for annual distribution "out of the Consolidated Revenue Fund of this Province [of] a sum not exceeding four thousand dollars, to . . . certain Indian tribes in Lower Canada."[49] This provision appeared designed to provide members of the First Nations of Lower Canada with payments like the annuities being paid in the Robinson Treaty area. Although evidence of these annual payments is not readily available for the 1860s, during which decade the Confederation of the eastern British North American provinces was completed, there is no lack of evidence from the 1870s. The constituting act, the British North America Act passed by the Imperial Parliament in 1867, made the new Dominion government responsible for "Indians and Lands reserved for the Indians."[50] Writing to the Deputy Superintendent General of Indian Affairs five years later, J. Bissett of the Hudson's Bay Company acknowledged "receipt of your letter of the 22nd instant, enclosing official checque[sic] No 2930 in my favor[sic] for $1961.46/100, being amount of balance of annuity for distribution among the Ojibewa[sic] Indians of Lake Superior, for the year ended on the 31 March 1872." He promised to send on the pay lists as soon as they had been received and added: "The Agents of the Company stationed at Lake Superior will be requested to endeavor[sic] to forward, along with the Paylists[sic], a Return of those Indians on each Settlement who are not entitled to and do not share in the annuity."[51] This observation suggested that exclusionary policies had come into operation in regard to the population of these First Nations. However, a census of the Nipigon district taken by an Indian Agent in 1874 still included a number of Métis families among the Indians of the district.[52]

Annuity payments during the first quarter century of the Robinson Treaties were made to members of the First Nations at the original rate of eight shillings, sixpence, which was changed to a dollar after Canada converted to that currency in 1858.[53] The matter of an increase was raised on 28 November 1874 by E.B. Borron, M.P. for Sault Ste. Marie, in a letter to the Honourable David Laird, Minister of the Interior and Superintendent General of Indian Affairs in Alexander Mackenzie's Liberal government. Borron wrote to "call [Laird's] attention to the subject of the Annuities payable to the Indian Bands on the North Shores of Lakes Huron and Superior the amount of which should under their treaties have been four dollars per head for some time past." He added: "I was assured before I left Ottawa that a correspondence had been opened with the Provincial Government on this subject - and I hope by the time Parliament meets some arrangement will have been come to - under which justice will be done to these Indians a large number of whom have their homes in this District."[54] Borron wrote Laird again four months later following discussion in the House of Commons: "In view of the opinions expressed in the House last evening - that the Dominion Government is bound under the Robinson Treaties - to see that the Indians who were parties to the Treaty shall be paid the full amount of annuity to which they

may be entitled, I beg respectfully to submit the matter for your consideration and trust that on consultation with your Colleagues you may yet be able to see your way to paying them four dollars per head this year." As Borron saw it, "the only point on which it is absolutely necessary . . . to be satisfied, before granting the augmentation asked for is whether the territory ceded in 1850 under the Robinson Treaties has since that date produced an amount sufficient, if funded, to pay the increased Annuity secured to the Indians under those treaties."[55]

Feeling the need to make the case effectively, Borron pointed out that "the Clause in the Robinson Treaties on which this claim to an augmentation of the Indian Annuity is based reads as follows:-'The said William Benjamin Robinson on behalf of Her Majesty who desires to deal liberally and justly with all Her subjects, further promises and agrees that in case the territory hereby ceded by the parties of the second part shall at any future period produce an amount which will enable the Government of this Province without incurring loss to increase the annuity hereby secured to them, then and in that case, the same shall be augmented from time to time, provided that the amount paid to each individual shall not exceed the sum of one pound provincial currency in any one year, or such further sum as Her Majesty may be graciously pleased to order.'" Borron told Laird that his "own Colleagues, the Premier and The Hon[ourable], the Secretary of State both know perfectly well that for the sale of Timber lands alone within the territory in question a very much larger amount than one hundred and seventy eight thousand six hundred dollars has been received by the Ontario Government [and] they also know that in addition to this a very large amount has been derived from the sale of Mineral and Agricultural Lands." Since Borron believed that "the number of Indians entitled to Annuity under these Treaties [was] 3572," for an increase of "three dollars per head, the total sum [of the annuities would] be $10,716.00/100 per annum[,] the capital sum required to produce which at six per cent being $178,600.00." Borron was pressing Laird because "the Indians and Half-Breeds at Garden River and Sault Ste. Marie (owing to the stoppage of the Saw Mills - and of almost all demand by the Steamers for cord[wood,] coal being now generally substituted) have had little or no employment this winter, and are in greater straits than I have ever known them to be."[56]

The 1876 pay list for Tootoominai's band at Gros Cap indicated that each member of this Lake Superior First Nation received the increased annuity of four dollars the year after Borron's second appeal. The fact that sixty-eight "Half Breeds" were paid annuities at Michipicoten also indicated that no distinction between Indians and Métis was yet being drawn there.[57] The pay sheets for the Fort William and Lake Nipigon First Nations that year did not even distinguish between these two groups.[58] On 16 July 1879, however, the Indian Agent at Prince Arthur's Landing, Amos Wright, wrote J.S. Dennis, Deputy Superintendent General of Indian Affairs, "to inform [him] that, in paying Indians under the Robinson Treaty, I have found, in several instances, half breeds, whose fathers were White men, who, had married Indian women; the Children of whom were included in the old Pay list; they consider themselves Indians,

and live and associate with them; they are generally poor, and, in some instances, are Widows with their Children." Wright told his superior that, "being of the opinion, that, the statute makes no provision for such payments, I have refused to pay these their annuities, but as this has caused some dissatisfaction with the parties interested, I have thought it well to write to the Department, and, ask for instructions in the matter."[59] Wright's pay list that year for the Michipicoten band, however, still contained a number of the Métis.[60]

Wright's reference to "the statute" was presumably to An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31 Victoria Cap 42, passed in 1869. This act, in its sixth section, amended the fifteenth section of the consolidating act passed the preceding year by adding: "Providing always that any Indian woman marrying any other than an Indian, shall cease to be an Indian within the meaning of this Act, nor shall the children issue of such marriage be considered as Indians within the meaning of this Act; Provided also, that any Indian woman marrying an Indian of any other tribe, band or body shall cease to be a member of the tribe, band or body to which she formerly belonged, and become a member of the tribe, band or body of which her husband is a member, and the children, issue of this marriage, shall belong to their father's tribe only."[61] This provision followed from the desire to assimilate Indians declared by the Act to Encourage the Gradual Civilization of the Indian Tribes in this Province passed in 1857. The enfranchisement offer had been made only to men, but it was hardly surprising that Canadian legislators would see marriage of Indian women to non-Aboriginal men as an opportunity to reduce the numbers of Indians for whom they were responsible and to weaken the First Nations in the future. The fact that this legislation was discriminatory against women would not be recognized until more than a century later--when another Canadian Parliament carried out a half-hearted repair job for the damage done over the years to families and First Nations--but the First Nations, which had signed their treaties without being told that the government intended to interfere in their social organization and weaken them in the future, might well see this legislation as unfair dealing by the Crown.

The 1869 act was a clear departure from the earlier legislation which spoke without discrimination of "Indians and persons intermarried with Indians." These were the opening words, for example, of the sixteenth section of the 1868 act which followed the section whose amendment has just been discussed.[62] The obvious question was: would the First Nations of the Robinson Treaty area be subjected to this change, as Amos Wright suggested they should be? Surprisingly enough, L. Vankougnet, Deputy Superintendent General of Indian Affairs, replied to Wright on 1 August 1879 by saying in regard to "the existing law White men who have married Indian women and their children are not entitled to share in annuity or other moneys payable to Indians" but added that "the Dep[artmen]t does not intend however to interfere with the persons of that class above referred to by you who have heretofore been participating in the Robinson Treaty moneys and whose names are now on the Pay List." The government

was clearly not prepared to deny annuities to those already on the list, "but no new names of persons who are not Indian within the meaning of the Act must be added to the Pay L[ists]."[63] In keeping with this policy, the pay list that Wright compiled for the Lake Nipigon First Nations that summer included several of the Métis families but he had struck off the name of one of them.[64] The Nipigon pay lists produced by both J.P. Donnelly and A. Wright during the mid-1880s continued to include Métis families.

II

The inclusion of Métis people among recipients of the annuities paid to Indians under the Robinson Superior Treaty became more controversial during 1889. Soon afterwards, it also became an issue in an intense debate within the Ontario government as that government was called upon to fund the larger annuities paid after 1875 and contemplated the possibility of its financial liability for the unpaid annuities of earlier years. The liability of the Ontario (as well as the Quebec) government was based on the fact that they were the successors in their constitutional areas of responsibility to the Province of Canada which authorized Robinson's negotiations in 1850. These governments were responsible for the Crown lands from which Aboriginal title had been cleared in 1850, and they were also the governmental beneficiary of the development activities carried on upon these lands. Borron's reference to knowledge that the Secretary of State and the Prime Minister had in 1874 referred to their knowledge of economic activity in the forests and mines of Northern Ontario. One of the ironies of this debate in the 1890s was the fact that Borron, who had pressed the Dominion government in 1874 and 1875 to increase the annuities, was now a Stipendiary Magistrate determined to minimize the liability of the Ontario government. This provided a particularly ironic commentary on his observation in 1875 that, "if the question to be decided now was the amount due to the Indians for Arrears of Annuity, I grant that some delay might be necessary in order to obtain the necessary statements from the Ontario Government - but the question is whether in future these Indians shall receive the full amount of annuity ($4 per head per annum) secured to them by a solemn treaty made in the name of Her Majesty the Queen."[65]

The issue of Métis recipients of Indian annuities remained a concern in the Indian administration as J.P. Donnelly, the Indian Agent at Port Arthur, indicated in 1889 when he raised it again. Donnelly wrote the Superintendent General of Indian Affairs on 28 May 1889 to tell him that "I wish to mention to the Department that I am of the opinion from what I have been told, also by inquiry, that about thirty seven children of White men, married to Indian women and two supposed American Indians of the Fort William Band and five children of a White in the Red Rock Band, are not entitled to annuity money under the Robinson Treaty." He admitted that "they to a certain extent dispute me, and claim their right, by having been placed in the Band by their Chief, and the present Chief of the Fort William Band elected two months ago, asserts the same claim." Donnelly believed that the most satisfactory solution would be to have "some Superintendent or Inspector" sent to examine the claims being put forward.[66]

Writing further the next day to the Deputy Superintendent General of Indian Affairs, Donnelly asserted that "Mr. Indian Agent McIntyre, who knows all these parties from . . . their infancy [and] their Fathers . . . told me they have no right to annuity money; I have within the past three years taken off twenty five, the children of one Dick of Toronto[,] Burgess a H[udson's] B[ay] Co[mpany] man of Quebec, Alex Clarks[sic] family and [that] of B. Dona of this Town a wealthy man[;] these people were satisfied of their [lack of] right, but these others, are backed by the Chief [and] Ex Chief that their claim is good by being taken in[to] the Band and acknowledged and paid by my predecessor."[67]

Donnelly's fear that these claims "may be right and if so will be established by looking into the matter by your Inspector, this will also make me feel easy on the matter and then know that I am paying out money to those only having a right" did not produce the response that he had sought.[68] He was told on 7 June 1889 that he himself "should send full particulars after careful enquiry respecting each doubtful case and the Dep[artmen]t will then decide whether the party concerned is entitled to share in the annuity or not."[69] Donnelly responded on 17 June 1889 that he was preoccupied with the subdivision of the reserve, but "when this is done I will have the signatures of the different heads of familes[sic], witnessed and sworn to, then [I] will be in a position to send you my report upon any doubtful cases there may be of those who might not have a right to annuity money."[70] It is not clear that this work was actually undertaken. The pay list Donnelly produced for the Lake Nipigon band later that year involved the addition of some new families rather than any reduction in numbers.[71] More additions were made in 1890 and 1891.[72]

The debate within the Ontario government began in the spring of 1891. E.B. Borron, Stipendiary Magistrate, wrote on 26 May 1891 to Oliver Mowat, Attorney General and Premier, to observe that, "if (as I am led to believe) the settlement of the questions which have arisen between the Provincial Government and the Indian Department - in reference to arrears of Annuity, and other matters - is to be left to Arbitration - there are some suggestions that have occurred to me in reference to this subject." He suggested that "if it should be found that the Province is bound to pay whatever arrears of Annuity . . . may still be due to the Indian Bands, who were parties to the Robinson Treaties - Or to refund to the Federal Government . . . sums of money which its officers have paid . . . as annuity or otherwise whether under the Robinson Treaties, or other Treaties - it is in my opinion of the very greatest importance that such liability should be confined strictly to the claims of Indians." Borron went on to assert: "In other words the Province should object to pay either arrears of Annuity, or any Annuity whatever - to halfbreeds or quarter breeds," even though "Dominion Officers" or "the Chiefs" had placed them on the pay lists. He was prepared to make one concession: "Those half-breeds which have sprung from the union of Indian Fathers and [W]hite Mothers - might be allowed to remain on the lists" although "I only know of one or two such families in Algoma." However, "the children of White men - whether legitimate or illegitimate [-] have no legal right (as it appears to me) to be included [and

if] this point be carried, it will reduce the claims of the Bands who were parties to the Robinson treaties . . . by a very large amount."[73]

These critical observations on the Métis population Borron placed in the context of an unexpected Aboriginal population increase. As he told Attorney General Mowat, when "the Robinson Treaties were made - it is evident that neither the Hon[ourable] William Robinson himself nor any of the others who were parties thereto contemplated that there would be any increase in the number of Indians then treated with - On the contrary - they evidently expected that in accordance with the invariable rule - wherever the Indian and white races come into contact - . . . the former would diminish in numb[er] if not disappear altogether." The fact that the treaty contained a proviso "that [if] at any future period the number of [Indians] then . . . treated with should be red[uced] to two thirds - the fixed sums to be . . . divided among them should be dim[inished] in proportion to their actual numbers" - but included no proviso for any increase in Aboriginal numbers convinced Borron of the need to study the Aboriginal population with great care.[74] Over the next three years Borron wrote one report after another about the Aboriginal population of the Robinson Treaty area. As he observed in the covering letter on the first one written at the end of 1891, "should the Province be found liable in whole, or in part, for the payment of the increased annuities, or four dollars a year to each and every Indian, be they more or less--the importance of a correct enumeration of those entitled to receive such annuities, is sufficiently obvious."[75]

The growth of the Aboriginal population concerned Borron deeply. He began his December 1891 report with the observation that "it may be and no doubt has been a matter of surprise to many that[,] in view of the very serious burden these Annuities might . . . in the course of time entail on the Province, the Hon[ourable] W.B. Robinson did not insert in the treaties some provision to protect the people of the Province fromthe[sic] consequences of an unlimited increase in the number of these Indian Annuitants, each of whom was entitled to receive four dollars yearly." Borron doubted, however, that "the omission from the treaty of such a clause was an oversight" since Robinson was such an "able far-seeing and careful" man. Robinson was "thoroughly well acquainted with Indians, their character, mode of life and surroundings" and "must have noted all the influences that were making against the increase, if not survival of the tribes or bands with whom he was treating." Clearly, "under these Circumstances Mr. Robinson never could have anticipated that there would be any increase whatever in the number of Indians." Borron added that, "strange if not incredible as the assertion may appear[,] forty-one years have elapsed since these treaties were concluded and it remains yet to be proved, whether there has actually been an increase or a decrease in the number of 'real' Indians entitled to claim and to be paid Annuities under these treaties." He conceded "that the pay lists and reports of the Department of Indian Affairs show that there has a been a great increase in the number of persons who have been receiving Annuities" and "that this increase has been very remarkable since 1875 when the Annuities were augmented form one dollar to four dollars a

head." Borron asserted, however, as one who was "in a position to speak with some confidence, . . . that the pay lists are very incorrect, and quite unreliable as affording any evidence in support of the contention that there has been any increase whatever in the number of those legally entitled to receive Annuities."[76]

Borron knew what was wrong with the pay lists. He declared that they provided "conclusive evidence . . . that a great number of half-breeds and others, have been permitted to draw Annuities, who had no just right or legal claim thereto." Although he believed that "the number of Indians really entitled to Annuities c[ould] only be ascertained by a rigorous scrutiny and revision of the pay-lists[sic] and census returns, by competent and impartial men," he conceded that "such a revision is not possible until certain fundamental questions have been settled, either by agreement between the several Governments interested, or an authoritative decision of the courts." Among the issues, "the first and by far the most important of these questions is the legal right of Half-breeds to participate in the Annuities paid by the Government in terms of the Robinson treaties." Borron noted that the Treasurer of Quebec had asked the Deputy Superintendent of Indian Affairs in 1884, "What do you call Indians, Half-breeds or Quarter breeds? If you stick to the letter of the Treaties you have to pay only Indians." Vankoughnet had responded that "those who are recognized by the Government are Indians" and added the "rather startling assertion-'Half-breeds are by the law of Ontario Indians-as long as they have Indian blood in their veins they are Indians legally.'" Equally significant was the fact that "this bold declaration appears to have silenced both the Hon[ourable] Mr. Robertson and . . . the Hon[ourable] A.M. Rose who represented the Province of Ontario at the Meeting." Thus, "the permanent Head of the Department of Indian Affairs" had declared the Métis to be Aboriginal (although in the language of his day) and had not been challenged in this assertion by the provincial representatives. Borron's assertion that the Métis had "no just right or legal claim" to annuities was clearly far more dubious than he was prepared to admit.[77]

However, Borron was not to be silenced. He took "exception to any such general and sweeping declaration, as being . . . contrary to law, to common sense, to the obvious meaning and intention of the Hon[ourable] W.B. Robinson and even to the understanding of the Indians themselves when these treaties were made." In his opinion, "half-breeds the offspring of white men and Indian women, are not Indians and were never intended by the Hon[ourable] W.B. Robinson to be included in these treaties." Borron was clearly committed to the patriarchal principle that the father's ancestry governed. The children of non-Aboriginal men could not be Aboriginal themselves. Borron justified this conviction under four heads: his reading of Robinson's report on the negotiation of the treaties in 1850, the actual text of the treaties, his critical view of Robinson's failure to limit the cost of the treaty if the number of annuitants happened to grow, and his insistance "that 'Indians' means and was intended to mean one class of person--and 'half-breeds' another and different class of persons."[78]

Borron's examination of Robinson's report on the treaty negotiations was not without peril for his argument. If Robinson had "distinctly refused to recognize any right on the part of the Half-breeds to participate in the annuities to be paid to the Chiefs and their tribes," he had also told the chiefs that "when [the money] was in their possession they might give as much or as little to that class of claimants" as they pleased. The possibility that the chiefs would regard the Métis as members of their communities having been opened, Borron had to use the chiefs' later attempt to obtain for "some sixty half breeds a free grant of one hundred acres each" as evidence that the Metis were not "regarded as members of the tribes or bands of Indians, then treated with--either by the Hon[ourable] W.B. Robinson himself or by the Chiefs and principal men of these tribes." Borron's capacity for hyperbole was well expressed in the rhetorical question: "Otherwise in view of the large reservations set apart for the Chiefs, and their tribes, what necessity could there have been for their demand of a free grant of one hundred acres of land each for each of these half-breeds?"[79]

Borron went on, in this substantial report, to consider the life of the Métis. The Canadians who had applied to Robinson for land grants "had been, with few exceptions, voyageurs or servants of the Hon[ourable] Hudson's Bay Company[;] some might have been in the service indeed of the North West Company before the two great Fur-trading Companies united." In addition, "a very few might have been trading or otherwise employed on their own account." They were French Canadians and "almost every one of them was or had been married to Indian women and [was] the father of a more or less numerous progeny commonly known as half-breeds." As products of the fur trade, such families were "most numerous of course at the principal posts" but "at Sault Ste. Marie situated midway betwen[sic] these great Lakes--and an important destributing[sic] centre, and on the main route to and from the North West--these old French Canadian Voyageurs and their half-breed families were particularly numerous." These families "lived in log houses and when not employed by the Hon[ourable] Hudson's Bay Company or others--as voyageurs, boatmen, couriers or labourers[--]would eke out a subsistence by hunting and fishing or in various other ways." They had a seasonal round of subsistence activities: "in early spring they and their families made considerable quantities of maple-sugar[;] during the summer small patches of potatoes and corn were cultivated, and hay cut and made on the marshes, for their cattle (if they had any) in winter[;] in 'the fall' when white-fish and trout sought the shallow water to spawn--they would go to well known points on lakes Huron and Superior and if provided with a sufficient number of nets would generally catch and salt down an ample supply of fish for use during the winter."[80]

The question whether these were Aboriginal activities clearly motivated Borron's sketch. He said of the "winter season" that "cutting and hauling cord-wood for their own use or for sale, and catching rabbits were the principal occupations" when they were not employed by others. He conceded that "some of these Canadians or their sons might also during the winter set out a few traps for foxes or other fur-bearing animals in the neighborhood[sic] of their dwellings." However, "few if any such

Canadians or their half-breed children had any regular hunting grounds--as the Indians always had." They were not, "like the Indians dependent on Game and Fur-bearing animal[sic] for their subsistence." Borron was convinced that, except for "the lots on which they might have built and made improvements - these men and their half-breed sons - useful as they were - had no more title or interest in or to the soil-timber or minerals of the territory, than any other Canadians or sons of Canadians." Borron was convinced that "they had nothing to cede or surrender. . . suffered no loss . . . [and could experience] the opening up and settlement of the country [not as] an injury and misfortune [but as] a boon and blessing to them - providing them as it has done with all the necessaries, conveniences and luxuries of life at greatly diminished prices." Thus, the Metis "had no moral claim whatever - under such circumstances - to compensation either in the form of annuities or otherwise." It was only "as squatters [that] the Half-breeds in the ceded territory . . . were entitled to be liberally dealt with - in respect of the land on which they had settled and made improvements."[81]

Borron saw the Department of Indian Affairs as "chiefly if not entirely responsible for these irregularities" in paying annuities to the Metis. In his opinion, "the contention of Mr. Vankougnet that every one 'recognized' as such 'by the Government, is an Indian,' that 'half-breeds are by the law of Ontario Indians'; and that 'as long as they have Indian blood in their veins, they are Indians legally'--if not extravagant and absurd is certainly not the meaning attached to these words by the Hon[ourable] W.B. Robinson of 1850." Given this conviction, Borron felt that he had reason to attack the Department of Indian Affairs both as "Guardians of the Indians" and "as Guardians of the Public interests." Its officers needed to be "vigilant in maintaining the rights of the Indians on the one hand - and in protecting the Public from unreasonable and unjust claims on the other." Their failure on the first point was obvous in the fact that for "a period of twenty-three years [they were] entirely ignorant of, or entirely indifferent to, the fact that there were clauses in the Robinson treaties, providing, under certain circumstances, for an augmentation of their annuities." In fact, "it was only when the Indians themselves moved in the matter, and then with the assistance of other than their paid Guardians, that the Indians obtained the increased annuities to which they were entitled."[82] Borron's memory of his own role in obtaining the increased annuity made him all the more critical of the Department.

Borron thought that the Department of Indian Affairs had been even more remiss in its responsibiity to protect the public interest when it paid annuities to the Métis. Although Robinson wished to leave the distribution of funds to the chiefs in 1850, it was "at the earnest request of the Chiefs themselves [that] he undertook the distribution of the money among their respective bands." Borron did not think that "this division . . . meant more . . . than the payment to the Chiefs and principal men of each band of the share that such band was entitled to receive, in right of its numbers." The distribution could not have been to the families because "not more than one tenth or at the most one fifth of the total number of Indians included in the treaties were at all likely to have been present on the occasion referred to." In later years, when "the Annuity of

the Lake Huron Indians had fallen to one dollar and ten cents each in the year 1856; and that in 1874, the year before the permanent augmentation clause came into effect, it had fallen still lower, or to ninty[sic]-two cents a head," one could only infer either "(1) That there must . . . have been large additions to the number of individuals who have been allowed to share in the $4,400 of perpetual Annuity, or (2) That large deductions must have been made from that lump sum before it was divided." Borron conceded that "the Indian Chiefs were from the first willing to allow some of the Half-breeds to participate in or to obtain a share of their Annuity money; and that in dividing this $4,400 among them the Indian Agents and Hudson['s] Bay Company's Officers readily complied with their wishes." During the first quarter century of the treaties, "it made no difference so far as the Provincial Government was concerned, whether this fixed sum was divided up among two, three, or four thousand, individuals, or whether they were Indians or Half-breeds."[83]

However, "when in 1875 the Dominion Government decided that the circumstances were at length such as fully entitled the Indians to an increase in their annuities, to the maximum amount named in the augmentation clause of the Robinson treaties, and an Order in Council was passed under which each individual Indian was to be paid in future one pound Provincial Currency ($4.00) yearly, the pre-existing conditions which had been only temporary came to an end, and a new order of things which both parties to the treaties had undoubtedly intended should be permanent, was inaugurated." In Borron's view, when "the Government . . . was bound in future thereafter to pay an amount which when divided would yield every Indian legally entitled to annuity the sum of four dollars a Year, it now became a matter of very great importance indeed to the Government, that all those Indians and others who were not legally entitled to receive annuities under these treaties should be excluded." His conclusion was that, "if the Officers and Agents of the Department [of Indian Affairs] have not apprehended the true meaning of the treaties; or have failed to exercise that care and vigilance which were necessary, to guard against imposition - and if in consequence of this misapprehension or neglect, a large and constantly increasing number of persons have been paid annuities by the Dominion Government, to which they were neither legally or[sic] morally entitled - the Province of Ontario cannot surely be liable for the money thus expended." As a proponent of the annuity increase in 1874-75, Borron was desperately anxious sixteen years later to limit its cost for the Province of Ontario.[84]

Among the principles that Borron thought should govern a rigorous review of the pay lists was "that the said Indians (male or female) are descended in the male line from ancestors who inhabited the ceded territory, and were parties to the treaties in question." He would allow any "females entitled to annuities in their own right [to] continue to receive the same as long as they live, and that whether they be married to white men or non-treaty Indians." However, "the children of such by white men or Indians - other than those included in the treaties under consideration [- had] no valid claim to annuities." Borron knew that, "if it be conceded that this right to receive treaty-

money can be inherited from the Mother or Grand-mother, who ever may have been the Father or Grand-father - it [would] necessitate the allowance of a vast, and constantly increasing number of claims to annuities, and impose a very heavy and . . . very unjust burden on the Country, whether those annuities [had] to be paid by the Dominion or by the Province." Thus, he concluded that "the importance of contesting to the utmost the legal right of half-breeds to claim annuities cannot be overestimated, or impressed too strongly on Counsel of the Province."[85]

Although Borron gave his large report the date of 31 December 1891, the covering letter to Attorney-General Mowat was dated 20 January 1892. In this letter Borron sought to convince Mowat both that the Indian claim to larger annuities was strong and that the Métis claim to any payment at all was illegitimate. On the first point, Borron went so far as to say that "the expression in the treaties - that 'the Annuities were to be augmented from time to time' warrant[ed] the inference that it was never intended that the increase promised by the Hon[ourable] W.B. Robinson, should be delayed, until the ceded territory had produced such an amount as would enable the Government of the Province without loss - to increase the Annuities, at one jump from a dollar a head to four dollars a head - as was done in 1875." (It could lead to the further inference that four dollars need not be the perpetual level of the annuity payment after 1875!) Borron warned that "the contention put forward on behalf of the late Province of Canada - that it is not liable for arrears that have accrued before confederation[sic] - or on behalf of the Province of Ontario - that it is not liable for arrears which have accrued since Confederation will not . . . be sustained by the Court." Borron suggested "that the Indians will be fairly entitled to plead - that they are minors or infants in the eyes of the law - and that the parties putting forward this plea - that they have forfeited their claim to arrears - because neither the increased Annuities or[sic] Arrears were demanded - were really their Guardians and are now seeking to profit by their own wrong-doing or neglect of duty." After all, "the Department of Indian Affairs [had been] a branch of the Executive Government of the Province of Canada and the Commissioners of Crown Lands - were . . . for many years before Confederation - the Superintendents of Indian Affairs."[86]

Borron argued strenuously that "we should not nor cannot if we would - shirk our fair share of the responsibility for these Annuities or for the arrears - that may be due to the Indians included in the Robinson Treaties." He also questioned "the contention that [the Province] was not bound to pay such Annuities at any future time to a greater number of Indians than were included in the treaties when made in 1850." In fact, "the Annuities promised were never intended to cease as soon as the Indians, with whom the treaties were made, died - but were to be paid to them and their children after them for ever." Borron was convinced, however, "that the Hon[ourable] W.B. Robinson never expected there would be in accordance with these laws, any increase in the number of real Indians and [persons] other than real Indians he never expected or intended should be included in the treaties." Borron himself believed "that the Indians are, as a race, dying out - and will continue to do so, until comparatively

few if any remain." Borron was "convinced that a revision of the pay lists will prove that there has been no increase whatever in the number of real Indians, included in the Robinson Treaties." However, "as regards several of the bands, [he was] persuaded more than one half of those whose names appear[ed] on the pay lists of the Dominion as having been paid Annuities last year - [were] really half-breeds." Given his conviction "that the real Indians are decreasing - and will ultimately become all but extinct - it [had been] an egregious mistake on the part of the Provincial Government - when it consented to the capitalization of any part of the Annuities payable to them." The Provincial Government should ensure that such a mistake was "avoided in all future arrangements with the Dominion Government whether arising out of the increase of Annuity payable under the Robinson treaties - or the Morris No. 3 treaty." Instead, "the amount of such annuities - should be paid yearly to the Department of Indian Affairs to be distributed among those legally entitled thereto" and "as the Indians die out - or become merged in the dominant white race - the sum required to pay the survivors their four or five dollars each - will be less and less - and the Capital at last will remain with the Province as it should - and not with the Dominion."[87]

Disposing of the Métis claim to annuities required a review of pay lists and further criticism of the Dominion position on this matter. Borron worked on both through 1892. He wrote a letter reviewing the annuitants in the Robinson Treaty area on 11 October 1892 and noted the difficulties he faced: "In the absence of any authority to call and examine witnesses under oath - with partial and incomplete statements and lists only, and an impression abroad among the Indians that the investigation in which I was engaged would probably deprive a large number of Indians and Half-breeds of the Annuities they have been and are still receiving - You will readily perceive that my inquiries have been made, in the face of considerable difficulties and are necessarily less thorough and complete than they would otherwise have been." Despite these difficulties, Borron was prepared to say that his inquiries "show conclusively . . . that a very large number of persons are - and for the last eighteen years have been receiving from the Dominion Government - Annuities to which they have had no just or legal right whatever." This conclusion was based on his having sent a "copy of the Dominion Pay Lists which Att[orne]y Gen[eral] Mowat had rec[eive]d from the Dom[inion] Gov[ernment] . . . to officers of the Hudson[sic] Bay Company generally - and received from them - Returns of Information on whether [there were] Half Breeds or Non Treaty Indians, etc.[, among them] and these Hudson[sic] Bay agents - in the vicinity of their respective Trading posts - know all these Indians." At Fort William, for example, "the total number of persons in receipt of Annuity Money (as per Pay List for 1890) was 350 - Of whom not fewer than 147 are Half-breeds and 14 others Non-treaty [American] Indians, leaving only 189 whom[sic] it is thought by my informants may be legally entitled to treaty-money." In the "Red Rock Band at or near the mouth of Nipigon River . . . the number of persons in receipt of Annuity money is 205[,] of whom, 72 would appear to be Half-breeds - leaving 133 . . . apparently entitled to treaty-money." At Michipicoten, "the number of Annuitants . . . is 327 [o]f whom I find - that 100 are Half-breeds and 67 are Non-treaty Indians mostly belonging to unceded Territory in the

North [l]eaving 167 - or about one half only - as being apparently entitled to treaty-money."[88]

Since "Half breeds, or persons of mixed race who are of White descent on the father's side, and Indian on the mother's side" were Borron's particular bête noire in this struggle over annuitants, a second report dated 31 December 1892 focused on them. Borron began by saying that he was "totally at a loss to understand upon what grounds such an apparently wild and absurd definition could be maintained" as Vankoughnet had stated, i.e., that "Half breeds are by the law of Ontario 'Indians'." He was sure that "there was no law of Ontario in existence in 1850. . . which thus describes the legal or social status of half-breeds, and others with more or less Indian blood in their veins." He had to concede that at least one of the chiefs with whom Robinson negotiated in 1850, namely, "Nebenaigooching, Chief of the Batchewanaung Band of Indians," was of mixed blood but "although of mixed blood, he is, I believe, of Indian descent on his father's side and therefore, as already said, fully entitled to rank as an Indian." Borron suspected, however, that "the principal ground that [would] be taken by the Department of Indian Affairs in support of the half breed claims and of the course that it has itself pursued in dealing therewith" would be the fact that the Aboriginal population figures that Robinson gave, e.g., "1240 in the Lake Superior Territory, . . . included not only the Indians of pure blood, but all of the Half breeds in the respective territory." Since "the number of Indians, stated in the treaties exactly correspond with the number of Indians and Half breeds together, as given in the Report," the Department of Indian Affairs certainly had reason to allow Métis people to receive annuity payments along with the Indians. Borron's counter was to quote again Robinson's claim in his report that he "came to treat with the chiefs who were present, that the money would be paid to them [and] that when in their possession they might give as much or as little to that class of claimant as they pleased."[89]

Borron was convinced that "no one [could] carefully read this statement of the Hon[ourable] W.B. Robinson and fail to see, that it is altogether irreconcilable with the assumption, that these same half breeds had already been recognized and included 'with the Indians' in the treaties made by Mr. Robinson himself only few days before." As he saw it, "if recognized as Indians, or as Members of the tribes or bands treated with, and thus entitled to claim the full benefit of the treaties, then and for ever, what possible motive could have led Mr. Robinson to warn the Superintendent General of Indian Affairs, and the Government, that these half breeds, whose demands he had refused to acknowledge might 'seek to be recognized by the Government in future payments'." Borron was convinced that Robinson "did not himself consider that the half breeds, as a class, had any legal right to participate in these treaties, or that they were, as 'Indians,' or otherwise parties thereto, and included therein." Equally important, "nor, in my opinion, did the parties of the Second part, namely the Chiefs and Principal Men of the Ogibbewa[sic] Indians inhabiting the ceded territory, understand that the Half breeds were included with them in the treaties made by Mr. Robinson." Since "the

original parties to the treaties should be the best judges of the interpretation that the treaties were at least intended to hear," Borron concluded that "there was really and truly no recognition on the part of Mr. Robinson of the claims of these half breeds, as against the Crown, nor were they knowingly and intentionally included in the treaties made by him with the Chiefs and Principal Men of the Ojibewa[sic] Indians."[90]

Borron recognized in his second report that the claims of the Métis could be based on the fact that the Department of Indian Affairs recognized them as Indians. He pointed out that "another Argument which will probably be presented in support of the claims of the half breeds, is, That although the rights of half breeds to participate in the annuities and other considerations, may not have been expressly stated in the treaties themselves, the subsequent payment to them of annuities and other moneys by the Indian Agents for a great many years, was and is a practical recognition of their claims, and as such now binding upon the Government." Since "annuities and other moneys ha[d] not only been paid to half breeds, but [also to] the Indians inhabiting 'unceded' territory, to Indians of Manitoulin Island, and other non-treaty Indians, that such payments have been made in some instances to United States Indians, and even to White Men," however, "it does not follow that these payments have been made in terms of the treaties." In Borron's opinion, "nor d[id] the fact that half breeds and others have been thus permitted to receive a share of the Indian Abbuities[sic] and other Moneys confer upon them any rights as against the Crown." Borron then reviewed the history of the time when "the half breeds (with some few white men) were not only the instigators and advisors of the Indians in the extreme and unlawful measures taken on that occasion, but that they were the chief actors in the attack upon and seizure of the mines in question." As one of the consequences, although Robinson "knew that [the half breeds] had no more right to the territory about to be ceded, than the native[sic] Canadians of European origin, who had settled in the same . . . he knew also how powerful their influence was among the Indians of the bands, with which they were related on the mother's side, and that if their influence were exerted to the utmost (as it would have been, had they been told point-blank, that they would be paid nothing directly or indirectly) it would have been almost, if not quite, impossible to make a treaty at all."[91]

Determined to limit the liability of the Ontario government, Borron was quite happy to see the payment of annuities to the Métis as a decision of the Department of Indian Affairs. "With the payment of this money [i.e., the settlement in the ongoing arbitration] to that Department, all future further responsibilities on the part of the Province in respect thereof . . . really ended." Henceforth, "the coinclusion[sic] of half breeds and non-treaty Indians in the lists of those who have been permitted (by the Indian Agents) to receive a share of this annuity money, can impose no obligations whatever . . . on the Province." With this comforting position taken, Borron could say that "it follows therefrom, that whether this annuity money has been divided and distributed by the hands of the Hudson[sic] Bay Company's Officers, or those of Indian Agents, such was virtually done in accordance with the wishes of the Chiefs and

principal men of the bands, specially interested in the funds thus distributed." Borron claimed, however, that "the fact that hundreds of persons of all sorts never included in the Robinson Treaties or never intended to be included have been thus paid annuity money for a considerable number of years, and that their names appear in the vouchers and on the pay-lists of the Indian Agents, fails entirely to establish a practical recognition of the claims of these people even on the part of the Indian Agents." Ultimately, "even if there had been such a recognition on the part of the Indian Agents, or other officials of the Department as will probably be asserted by their Counsel, such an unauthorized recognition [had] no legal or binding force whatever as against the Crown or the Province." Surely the court could "come to no other conclusion than that to which [he had] come, namely, that the half breeds as a body or class were not recognized by Mr. Robinson [and] that the subsequent action on the part of Indian Agents or other Local Executive Officers, entrusted with the payment of the Indian annuities or other moneys, in allowing half breeds to receive a share thereof, [had] not established any legal or moral right thereto on the part of the said half breeds as against the Crown or the Government."[92]

A letter Borron wrote to Attorney General Mowat early in 1893 suggests that Mowat was not himself convinced by all of Borron's arguments. Having completed a revision of the pay lists for 1890-91, Borron sent this report on "the Half-breed Claims to Annuities" to Mowat with a covering letter dated 11 February 1893. In the latter, he observed: "When we last met I formed the impression - that you were inclined to take [an] unfavourable view - of my contestation - that half-breeds - of White origin or descent on their father's side - have no right to Annuities." Borron knew the consequences of such skepticism for his own case, since this group was "by far the most important class with which [one had] to deal in connection with these Annuities." Borron stated that he had "devoted most of [his] time and attention to a re-examination of the grounds upon which [he] had arrived at this . . . conviction - and to the anticipation - and refutation of what may be said on the other side." He clearly had not changed his mind since he asked Mowat to "please read what I have said carefully over - and if there be any strong point in their case which I have overlooked - or weak point in our own . . . kindly point such out to me."[93] The patriarchal nature of Borron's assumptions, which prevented the children of non-Aboriginal fathers from being treated as Indians, involved a myopia that Borron was probably not capable of overcoming. Oddly enough, however, he would allow their Aboriginal mothers to continue receiving annuities even though the Dominion act of 1869 cited earlier denied an Indian woman who married someone other than an Indian continued membership in her band.

The report Borron provided on 11 February 1893 indicated that a large number of the recipients of annuity payments in the Robinson treaty area were Métis. The persons receiving annuities in 1890-91 totalled 5,231 but Borron regarded fewer than half of them, or only 2,337, as "Indians, supposed pro tem to be entitled to annuities, otherwise known as Treaty-Indians." Among the 2,894 "non-treaty Indians and others

whose right to be paid annuities [he] questioned" were 1,710 "Half breeds, or [persons] claiming only in right [of] their mothers." These Métis people represented almost one-third of the total number regarded by the Department of Indian Affairs as Indians forty years after the signing of the Robinson treaties. Given Borron's patriarchal prejuduces, it was not surprising that he should assert that "when this change [the increase to four dollars] in the system or mode of payment was made in 1875, by the Dominion Government, the Department of Indian Affairs should have known enough, in regard of the Treaties and of the promiscuous character of the persons and claims of those who had previous thereto, simply shared in the annuity-money of the Treaty Indians, to have instituted a strict scrutiny and revision of the lists, such as is now called for by us, with the view to eliminating therefrom those who had no claim to annuity, and to paying to each band only such an amount of annuity as those members of the band who were bona fide Treaty-Indians might (in the aggregate) be entitled to." Given "this omission, and its consequences, the Dominion and not the Province [should be] responsible."[94]

Writing less than a month later, Borron continued to press his case against the Métis descended from non-Aboriginal fathers. In analysing the Dominion and Ontario positions, he suggested that they were probably agreed "that those members of the bands who are of mixed blood, if of Indian descent on their father's side, are entitled to rank as Indians." They were likely not to agree, however, on "the rights, under the Treaties, of Half breeds and their descendants." Borron saw the provincial "definition of this word 'half-breed' [as] founded upon a statement by the Superintendent General of Indian Affairs, some eight years after the conclusion of the Robinson Treaties, as follows:-'An Indian woman marrying a white, looses[sic] her rights as a member of the tribe, and her children (that is half-breed children) have no claim on the lands or moneys belonging to their mothers[sic] nation." On the other side, the "definition that will be contended for by the Dominion Counsel will probably be 'that half-breeds are Indians in the eye of the Law,' and therefore entitled to participate in the annuities and other benefits of the Robinson Treaties." The Dominion would surely argue (and Ontario contest), "in view of the fact that the Agents and officers of the Department of Indian Affairs, have, since 1875 or for a period of eighteen years, been paying a very large number of these non-treaty persons, four dollars each per annum, the highest amount of annuity named in the Robinson Treaties, . . . that all these persons are legally entitled to annuity-money, and that the amount paid to them must be refunded by the Province as well as provision made for the future payment." Ontario should not, however, contest "the second claim of the Dominion, namely, that of the Indians to arrears of annuity [for some part of] the time or period between the years 1851 and 1875, when the ceded territory had produced such an amount as, in the opinion of the court, justly entitled the Indians to an increase of their annuity, in terms of the treaty." Borron thought that such an increase might not have been justified until 1870 in the Lake Superior region.[95]

Borron's fears were borne out by a conference of Dominion, Ontario, and

Quebec representatives on 21 October 1894. Mr. Robertson asked, "What do you call Indians? Half or three-quarter breeds? If you stick to the letter of the treaties you have to pay only to Indians." Superintendent General of Indian Affairs Vankoughnet replied, "Those who are recognized by the Government as Indians." When Roberson responded, "Have we nothing to say in the matter when we have to pay the money[?]" Vankoughnet stated again that "Half-breeds by the law in Ontario are Indians. As long as they have Indian blood in them they are legally Indians."[96] That same day, Borron wrote the Ontario counsel to comment on Attorney General Mowat's views on the Métis issue. He noted that "the Hon[ourable] The Attorney General - [had] expressed an opinion some time ago in a letter . . . 'that he saw little chance of excluding those Half-breeds who lived, a tribal life with the band to which they belonged - but that other half-breeds, there may be some hope of excluding as not having been intended (to receive Annuities) by the Treaty'." Borron promised one more report in which "you will find some important information bearing on this point in the statement of the Chiefs and Principal Men - of the Bands in which these half-breeds are most numerous [-] sent herewith."[97]

This last report from Borron's pen was in many ways the most interesting for the social detail it provided on the Aboriginal people of the Robinson treaty area. Piqued by Mowat's reference to "tribal life," which Borron took as relating to way of life rather than the social unit, he laid out his understanding of the "tribal life" of the "Ojibbewa Indians" as contrasted to "How the Half-Breeds Lived" as well as "Semi-Civilized Indians." Borron suggested that the tribal life was "a homeless wandering nomadic life" of Aboriginal people who "had no houses or fixed abodes of any kind, but lived in wigwams and roamed about . . . as inclination prompted, or necessity compelled." Borron believed that "they rarely encamped or remained long at any one point or place during the summer and even in winter not infrequently moved their camps from one part of their hunting grounds to another." He recognized, however, that "each Indian family had its hunting ground [which] embraced a large extent of country - frequently as much as one hundred square miles." He also knew that "any encroachment on these hunting grounds in pursuit of the larger game of fur-bearing animals - without the permission of those claiming by inheritance or otherwise - a right thereto - was resented." In a significant amendment of the aimlessness suggested by his earlier description, Borron stated that "on these hunting grounds the family generally resided from the latter end of September until the middle of May" and thus conceded that "so far as an Indian could be said to have any domicile it was undoubtedly 'on his hunting grounds'." He also conceded that "some of those families whose hunting grounds were near to Lake Huron and Superior or to the Hudson[sic] Bay Company's posts cultivated small patches of potatoes and Indian corn [and] others living further inland may have gathered a little wild rice but the potatoes, corn and rice thus obtained, formed a very small part of their food." These "tribal" Indians "ate all they could in seasons of plenty but stored up very little, if any foods, for periods of scarcity." Borron went on to sketch the seasonal cycle of these Aboriginal people and made the observation: "It was on these furs [gained by 'trapping on their hunting grounds'] that

the real Indians in the surrendered territory - all those who lived an Indian life[-] depended for obtaining such of the products of more civilized races and countries - as had by that time - become almost indispensable." Borron concluded this characterization with the observation that "as might be expected - their tribal organization was very loose and imperfect[; t]he Chiefs had little influence or authority over their followers - and one band little intercourse or sympathy with another."[98]

By way of contrast, Borron declared at the outset of his discussion of "How the Half-Breeds Lived" that "the Half-breeds at that period (1850) did not dwell in wigwams or huts - like the Indians - but in houses." Nor did they "have hunting-grounds like the Indians - to which they had an exclusive right, and upon which, they and their families resided the greater part of the year." The Métis "were not entirely dependent, for food and other necessaries of life, on the game, fish and fur-bearing animals in the territory, as the Indians were." These "Half-breeds - like their French-Canadian Fathers - many of whom were still living in 1850 - not only resided in houses, but had land cleared and fenced upon which, they grew potatoes, corn and other crops." Borron remembered that "some of them even had horses and cattle," a more obvious instance of European influence than the New World crops that both the "tribal Indians" and "half-breeds" grew. Their fathers had worked for the Hudson's Bay Company as "voyageurs, boat-builders, canoe-builders, blacksmiths, servants and traders," and many of the Métis continued "to be employed in like manner, by the Hudson's Bay Co[mpany] and others, who needed their services." Sometimes they worked as guides and "when voyaging with explorers - sportsmen and tourists, . . . usually received from seventy-five cents to a dollar a day and rations." Others "made a good living 'scooping' white fish in the rapids of St. Mary's River," while "during the hay-making season many were profitably employed making hay on the marshes and beaver meadows for their own cattle and horses or for sale." Despite the distinctions Borron wished to draw, he had to concede that the Métis travelled to sites where white fish could be taken in the fall and "almost every family re[pai]red to 'the Sugar Bushes' in the month of March - and made large quantities of maple sugar - not infrequently I believe as much as some five hundred to a thousand pounds were made by a single family . . . and the greater portion . . . sold to traders." Borron had to concede some similarities to "tribal Indians": "Of course, these Half-breeds fished and hunted, and even trapped occasionally [but] as white men would under like circumstances, and said like surroundings." When they went trapping, however, "they rarely or never took their families with them" and this "was not their sole dependence - as it was in the case of the Indians who lived a normal or tribal life - as a means of obtaining food and other necessaries of life."[99]

Borron's attempt to distinguish the Métis from the Indian had to confront the reality of the "Semi-Civilized Indians." These "semi-civilized Indians liv[ed] not only on Manitoulin Island--but on the surrendered territory embraced" in the Robinson Treaties. Borron knew that "these christian[sic] and semi-civilized Indians had abandoned in a great measure, not only their old superstitions and practices, but their former (tribal) mode of life." In fact, "they had adopted and were pursuing a mode of life

similar, in all important respects, to that of the half-breeds so fully described in this report." These Indians "lived in houses[,] cultivated small patches of land, sometimes called gardens, and resided where they could subsist otherwise than by hunting, trapping and fishing only - and at the same time, where they could enjoy the benefits of the teachings and ministrations of their Missionaries, and the blessings of civilization." Borron suggested that "the majority of these semi-civilized Indians had 'settled' - so to speak[-]at Garden River, Sault Ste. Marie and Fort William . . . where also for like reasons most of the Half-breeds resided." He denied "that the Half-breeds were living on the reservations with the Indians when the Robinson Treaties were made"; it "might with much greater propriety be contended that the Indians were living with the half-breeds and adopting their comparatively civilized mode of life." Of course, in 1850, "these semi-civilized Indians bore . . . a small proportion to the total number of Indians included in the treaties - and the life led by them was not the normal or tribal life of the Indians generally."[100] The ultimate problem remained: most of these "semi-civilized Indians" were still "Treaty-Indians" and one could hardly distinguish them from the Métis. If the chiefs, principal men, and members of the First Nations regarded the Métis as members of their communities, what business did Stipendiary Magistrate Borron have trying to exclude them or tear them out of the Aboriginal community?

III

The period of struggle between Ontario, or at least one of the advisors of the Ontario government, and the Dominion government and its Department of Indian Affairs largely came to an end on 14 February 1895 when the Board of Arbitrators handed down their decision. As regards the "Burden of Proof," the Board ruled that "with reference to the period after Confederation: Neither Ontario nor Quebec shall be in any way affected or precluded by the action of the Parliament or Government of Canada, or of any of its officers, either in prescribing a definition of who are Indians or in adding to the lists the name of any 'individual' as an Indian of a tribe or band entitled to the benefit of either treaty." However, "the burden of showing that the names of any Indian so added since the Union to such lists were rightly added shall be on the Government of Canada." This talk of adding, rather than removing, names could not be of any comfort to Borron. In addition, when ruling on the matter of "Indians and Persons entitled to the Benefit of such Treaties, Respectively," the Board provided distress. Although it declared that "each of the persons hereinafter described, shall, if he or she is a British subject, resident in Canada,and follows the tribal life, be deemed and taken to be an Indian within the meaning of such treaties, and entitled to the benefit thereof," it also defined these persons as including "any person intermarried with any such member of any such tribe or band, and any lawful descendant of Indian blood of any person so intermarried with any such member of any such tribe or band" and "any person adopted and acknowledged prior to 1893 by any such tribe or band, and any lawful descendant of Indian blood of any person so adopted and acknowledged as a member of any such tribe or band." These were inclusive rather than exclusionary rulings, even though the Board concluded that "descendants of Indian blood shall

mean persons of at least one-fourth Indian blood."[101]

Ontario's dissatisfaction with the ruling led it to appeal the Arbitrators' decision to the courts, but the decision of the Supreme Court of Canada gave that province (and Borron) no grounds for happiness either. The Supreme Court followed Chancellor Boyd's arbitration award, which declared that "it is not desirable to define with minuteness who are Indians entitled to share, in advance of any particular case which arises for decision." Boyd read W.B. Robinson's 1850 report quite differently than Borron did and suggested "that half-breeds were then embraced in and numbered with the tribe in the approximate totals given." Boyd had also noted that "the recognition of these half-breeds as members of Indian tribes by the government appears to be manifested in contemporaneous and subsequent statutes." The 1850 act discussed earlier in this paper "permitted none but Indians and those who may be intermarried with Indians to reside upon Indian lands (unless under special license from the government officer" but the act also seemed "to contemplate as Indians those of pure or mixed blood and those intermarried with and living among Indians (no distinction being made to sex)." And the act of 1857 (similarly discussed above) gave "a definition of Indians as meaning persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian bands, residing upon unsurrendered lands, or upon lands specially reserved for tribal use in common, and who shall themselves reside upon such lands; that is, one of other blood married to one of Indian blood, acknowledged as a member of the tribe and living on the tribal land with the tribe (whether man or woman) is accounted a member of that tribe." In concluding that "the descendants of such marriage would be Indians as long as the tribal relation and residence lasted," Boyd was recognizing the primacy of the tribe and rejecting the common law maxim partus sequitur patrem that Borron had advocated.[102]

The original award and the decision on appeal elicited one last comment from Borron, who wrote to the Ontario Counsel, A Irving, Q.C., on 17 May 1895. He thought "the Award, itself, essentially just and right": "the claims of the bona fide Indians, as set forth in sections 1, 2, 3 & 9 of the Award, I have always considered well founded as against either the Provinces or the Dominion." He consequently felt "at one with His Honour Chancellor Boyd in holding - that all the promises made to the Indians in the Robinson Treaties, should be interpreted in a liberal spirit, that the Treaty stipulations should be carried out with the utmost plenitude of good faith; . . . but in regard to the right of Half Breeds and others to participate in Annuities promised only to bona fide Indians having claims to the ceded territory, [he] adhere[d] to the opinions expressed in [his] previous reports." The Honourable Chancellor's rule would "include among Indians those of other blood, who are not only married to Indians, but were adopted by the tribe as members and as such lived in tribal relation with the other members at their common place of residence[;] if all these conditions did not exist (as to the males anyway) [he would] say the person of other blood and his descendants was and were not, included in those entitled under treaty." This rule both recognized the primary role of the tribe and its leaders and used the tribal principle in terms of the social unit and

its governance rather than the "way of life" that Borron had advocated. The latter could only repeat himself and protest the dire consequences of such a liberal view. Borron could conceive "that the adoption as members of persons of other blood or of non-treaty Indians, by the chiefs and tribes specially interested [might entitle] such non-treaty persons to a share of all that really belongs to the band or tribe - the land, the revenues derived from the land, and even to a share of the Annuities, payable to such bona fide members of the band as are entitled thereto under the Treaties." However, he could not "understand how or why the adoption by these tribes or bands, of persons having no previous claims whatever on the Government, should forthwith entitle them, whether white men, half breeds or Indians, to more than this."[103]

Since the Province of Ontario was obligated to pay the cost of the annuities, Borron continued to insist that a revision of the list of annuitants was necessary. After all, it was manifest "that from the very first, these pay lists . . . contained the names, not only of the Indians entitled to share in the fixed annuities, but of Indians and half breeds who were not entitle[d] of right, to annuities, but have, nevertheless, been permitted, at the request of the Chiefs or principal men of the tribes, to receive a share of their annuity money." Borron insisted that "the fact, that the names of such half breeds and Indians appear in the pay lists year after year does not prove that they were, or are, treaty Indians, and therefore entitled under the augmentation clause in the Robinson Treaties, in their own right to claim and receive from the Government the sum of $4.00 each yearly." His conclusion was that, "under the exceptional circumstances in which the Province is placed, . . . those acting for or on behalf of the Province, when these lists are revised, should have the right to challenge for reasonable cause the names of all those individuals whose claims to be regarded as treaty Indians are believed by them to be doubtful or unfounded."[104]

It was not until three years later that the investigation of annuity entitlements in the Robinson Treaty area was completed by J.A. Macrae, Inspector of Indian Agencies and Reserves. His report, dated 9 February 1898, spelled out the context: "Since the Department laid upon me the duty of endeavouring to discriminate between persons entitled and persons not entitled to the Robinson Superior Annuity and after I had done so and my reports were for the most part made, the Arbitrators between the Dominion and the Provinces pronounced an opinion as to what persons were entitled to both of the Robinson Annuities for the purpose of ascertaining Provincial liability." This opinion set aside "the action of the Parliament or Government of Canada or of any of its officers either in prescribing a definition of who are Indians or in adding to the lists the name of any individual as an Indian of a tribe or band entitled to the benefit of either annuity." It also restricted "the term 'Indian blood', and accord[ed] a recognition to adoption and acknowledgement prior to 1893 such as, at least between 1876 and 1893, the Dominion has I think not accorded." Macrae understood "the opinion of the arbitrators [to be] that individuals were entitled to enjoy the annuities who after 1850 by adoption or acknowledgement became members of tribes that were parties to the treaty." He went on to suggest that, "if that view [were] accepted by the Dominion it

follow[ed] . . . that individuals [would] no less be entitled to enjoy annuities who by statute of the Dominion became members of the same tribes." This would mean that "other rights than those recognized in the arbitration, and which [had] been created by Dominion legislation may be held to exist and to be worthy of respect." Given the various possibilities Macrae was opening, it was more than just "convenient to . . . classify the persons who have seemed . . . entitled to the annuity, in order that less trouble may be met in instituting a comparison between the construction of individual rights leaving Dominion legislation out of account (to ascertain Provincial liabilities) and a construction of the same rights when Dominion legislation is taken into account (to ascertain Dominion liabilities)."[105]

Macrae turned initially to the Indian Act of 1876 to define the classes of persons entitled to annuities. The first group were "persons of Indian blood who belonged to the bands or tribes of chiefs who were parties to the treaty; and the lawful descendants of such persons." The second consisted of "persons of Indian blood who occupied and used the surrendered tract as Indians, and who belonged to bands or tribes other than those whose chiefs were parties to the Treaty[;] and the lawful descendants of such persons." The third were "persons not of Indian blood who were intermarried with Indians of the surrendered tract, who themselves occupied and used that tract, as Indians, prior to the Treaty, and were attached by residence and common interest to any Indian society or community within that tract; and the lawful descendants of such persons." The fourth included "persons who were classed as Indians by the Treaty Commissioner and were treated as such; and the lawful descendants of such persons." About these four groups Macrae had no doubts. A fifth consisted of "persons who intermarried with Indians of the surrendered tract and became attached by residence and common interest to any Indian society or community within the tract between the dates of the treaty and of the statute of 1859 which defined the term 'Indian'[;] and the lawful descendants of such persons." The sixth were "persons who by the enactment of 1859 became Indians; and the lawful descendants of such persons." Macrae observed that he "had some doubt about the two last classes, but in all cases [gave] the benefit of that doubt to the annuitants and [had] not recommended that their pay should be stopped." He went on to say, however, "that persons who had no title of occupancy in 1850 and were certainly in no legal sense Indians at that time could only become entitled at a subsequent date to those perpetual annuities . . . by favour of the Parliament or Government of the Dominion; for the title of occupancy which sprang from immemorial tribal use of [the] surrendered tract having been extinguished was not in existence to devolve upon anyone, and, I think, therefore that if Government concedes to those who clearly obtained the status [of] Indians under its laws, passed after the date of the treaty, a right to receive the annuity it goes very far in the way of grace and grants as a privilege what hardly seems to me a right in either equity or law."[106]

At the end of this list of those entitled to annuities, Macrae unveiled the guillotine. As he observed, there was no prescriptive right to annuities "when it

becomes evident that first payments were made wrongfully or in error." Consequently, it seemed "perfectly fair to exercise a good deal of discretion in determining who are Indians, if, the Indian status being determined, there is to be no discrimination as to what persons holding that status are to be held entitled to the annuity, and all are to be paid alike."[107] Borron would surely have nodded in agreement, even if the third of Macrae's six groups did not distinguish between person Intermarried with Indians, as to whether they were male or female. The schedule Macrae attached to his report indicated recommendations to "cut out" a total of one hundred and eighty-one persons; these included seventy-eight members of twenty-eight families in the Fort William band, sixty-two members of nineteen families in the Red Rock band, six members of two families in the Nipigon band, eleven members of two families in the Pays Plat band, twenty-two members of five families in the Long Lake band, and two members of one family in the Pic band.[108] Of the Fort William band, where most of those cut out were of U.S. origin, Macrae added in a memorandum that "it is proper to remember that this reserve embraced to a great extent, if not entirely, the early settlement of Fort William" and that "to this day at the mission are white men who have never in any way beenregarded[sic] as Indians or as having any Indian rights."[109]

The cuts that Macrae recommended in the Red Rock band involved the kinds of families that E.B. Borron had in mind when he refused to accept the children of white men as Indians. Over half of the sixty-two persons Macrae recommended for removal from the pay list were represented by thirty-two members of the Bouchard family. As Macrae described this family, "their father was a Frenchman named Louis Bouchard, their mother an Indian-sister of Chief Manitoshainse who subscribed the Robinson Treaty." Although he was married to a chief's daughter, "the evidence shows that Louis Bouchard was a permanent employee of the Hudsons[sic] Bay Company, a woodcutter, cattle tender, and outside labourer." As such, "from 1859 to 1873 he was employed at Nepigon[sic] House [and] it is quite clear that he did not become an Indian when by residence and acknowledgement he might have done so." In fact, "at least until after 1872 he did not enter into any communal relationship with the Indians," other than being the son-in-law of a chief. Macrae noted that Bouchard himself had never been an annuitant and concluded that "he was never an acknowledged Indian, . . . he never had the status of an Indian or the right to the annuity." Macrae was clearly applying the patriarchal principle that Borron had advocated. Since most of Louis Bouchard's sons had married Indian women, however, it was only the sons and their children whom Macrae recommended for removal from the list. Their Indian wives were clearly entitled to annuities.[110] Despite Macrae's recommendations, however, the 1898 pay list for the Red Rock band does not indicate that any deletions actually occurred. One hundred and ninety-eight persons were paid the annuity there that year.[111]

Macrae continued his examination of the pay lists in the Sault Ste. Marie and Manitowaning Agencies and found more persons he would exclude. In the former agency, he regarded two hundred and eighty-two persons as having doubtful claims

and recommended "that 147 be declared to have non-transmissible title to the annuity and that the pay of 135 be stopped." These were "in addition to 49 stopped this summer." Macrae pointed to "great difficulty in determining who are entitled to the annuity, owing to the difficulty of fixing a line between the half-breeds and Indians entitled." Macrae pointed to the history of the community: "it was natural that at a point like Sault Ste. Marie, which was on the great highway from the marts of Montreal to the trading establishments of the West; which point was then also the centre of a fur-bearing country and one at which a living could very easily be made by hunting and fishing, the courier du bois[sic] and voyageurs, - both white and of Indian blood, - fur traders, and Indians, should establish a settlement." Macrae saw "the real Indian portion of the community belonging to this settlement [as] non-resident . . . the members of that portion found their living on their hunting and fishing grounds and lived a nomadic life, but the half-breeds and whites settled permanently at the Rapids of Sault Ste. Marie and at Garden River." After "the abandonment of the British posts in territory which passed to the [United] States . . . people of a similar class to those who were settled at the Sault moved to that place and helped to swell the numbers of the settlement there." Despite all of this migration, Macrae found that "the line of demarcation between the Indians who commenced to settle at Garden River, where their Reserve was, and the half-breeds was and is still perfectly clear to the Indians' mind and they only account such persons of the Garden River community as being Indians who have intermarried with, and been adopted by themselves." Macrae enclosed a list of "names . . . given to [him] by Chiefs Pequatchinini and Jarvis Ogiston in 1898 [who] substantially agreed in terming the persons named 'not Indians', though in some cases they disagreed as to the amount of Indian blood possessed by them."[112]

Macrae believed that the Sault Ste. Marie Agency had been conducted more carefully when it was run from the Manitowaning Superintendency on Manitoulin Island. After Captain Joseph Wilson and Mr. Van Abbott took charge, "these gentlemen readily accorded the right to the annuity to persons who had never been deemed entitled[;] as late as 1892 . . . there was so little understanding of the principles that should have guided determination as to who should be put on the lists that a man was added for the simple reason that he had married an Indian woman."[113] Macrae may have been too critical. When he turned his attention to the Manitowaning Superintendency, he found many persons claiming an annuity and observed that "most of the persons now claiming annuity have been led to believe that they have a right to it because since 1896 so many to whom such a right has always been denied by our Superintendents, and whose claims rest upon just such grounds as do the claims of the present claimants, have been granted the annuity." He admitted "that many other persons who have not yet applied [may] have equally good claims and will yet be heard from." This impression of a reversal of principles created aspirations among those previously denied the annuity, and it forced Macrae to search for the principles that had governed the grant of annuities in the past. This was necessary because of the fact that "if late rulings (which term [he used] to express rulings given

since the Act of 1869 and 1876 passed, as no complete rule seems to have existed) be applied to test rights which antedate tham it is found at once that many persons are upon the pay lists who have no right to be, that many are not on who should be, and that it is difficult to understand the lists at all."[114]

Macrae assured the Department that, despite this appearance of confusion, some "well understood rule did exist before the late rulings were given." That this rule "was different from those late rulings, became apparent to [him] the moment many uniform acknowledgements, and denials, of titles to the annuity were observed which, judged from [the] present standpoint, seemed wrong." He had enquired and "elicited the information that such a rule had existed and that though apparently not understood by those in office at Manitowaning now it was well known to, and well understood by, the Indians and past Superintendents and that it squared with and satisfactorily explained many of the cases of payment, and refusals of payment, which seemed at first sight wrong." Thus, "it became clear for instance why in some cases the children of men who did not themselves receive the annuity were paid, whilst in others there was refusal to pay the wives and children of men who received the annuity." Macrae had concluded that "the chief principle which determined the line of descent of right to the annuity" was the maxim partus sequiter patrem or "right descended in the male line." This was, of course, in keeping with the acts of 1869 and 1876. However, there was an exception to this rule at Manitowaning "in favour of the immediate offspring of what may be termed 'treaty' (or annuity receiving) women by 'non-treaty' (or not annuity receiving) men." Macrae believed that "these children as a matter of indulgence, and probably to ease a transition from the Indian maxim - which was 'partus sequiter ventrem' - were treated in accordance with that maxim." However, "they had a life enjoyment only of the annuity; the right of participation accorded to them was nontransmissible, and this was well recognized by all."[115] These last words were surely the comforting conclusion the Departmental inspector wished to draw about the impact of changing the very basis of inheritance in Aboriginal society.

Real administrative problems had been created in the Manitowaning Superintendency by these rule changes. Macrae observed that "the fact that some members of families have been paid while other members of the same family have not, seems to be attributable to the change made in the rule . . . when by the legislation of 1869 it was provided that an Indian woman marrying other than an Indian should cease to be an Indian, and that the children issue of such marriage should not be considered Indians." As a result, it "became clear that certain persons were not Indians and as the annuity was for Indians ("chiefs and their tribes") many were refused who would otherwisw[sic] have been granted annuity under the exception to the rule which has just been described." This had "the result that certain members of non-treaty men's families by 'treaty' wives were refused payment though other members of the same families were being paid." Macrae thought that it would "be quite wrong to conclude by applying rulings of comparatively late date, to rules framed now, to circumstances which precede them and then conclude that because a man has at any time since

treaty been held entitled to annuity his wife and children are consequently entitled; for it will be seen that if titles which were recognized before such late rulings were not to be tested by them the title of all persons who were born of 'treaty' women by 'non-treaty' men would be found bad and both they and their children be discovered to be without rights to annuity." Macrae concluded "that the old rule must still be fully respected and the nontransmissibility of the title of certain male annuitants must continue to be affirmed, as on the one hand [he] could not suggest taking away an enjoyment of the annuity which was freely conferred, and on the other hand [he was] strongly averse, and [thought] it would be wrong, to create at this late date rights of transmission to wife and child which [had] never been recognized nor until a couple of years ago ever claimed, and then only when official action caused claims to arise." The matrilineal principle should continue to be respected in the Manitowaning Superintendency![116]

The most remarkable assertion in Macrae's report on the Manitowaning Superintendency was "that in revising the pay list at this date the Department neither can be, nor ought to be, governed by the definition of persons entitled to the annuity given by the Arbitrators between the Dominion and the Provinces." That was "because the terms 'tribal life' and 'members of any tribe or band' were too vague to be applied to construe rights under existing conditions and there are many widely divergent views as to what these terms mean." Macrae pointed out that "the Dominion has two sets of obligations, to one set of which only (the first) the definition under any circumstances could possibly be applied." The first involved the "obligations to certain individuals which devolved upon the Dominion when at Confederation it assumed the liabilities of the old Province of Canada under the Treaties." The second involved "obligations to certain individuals which the Dominion has created for itself since Confederation and which it cannot properly escape." Macrae pointed out the problems the Arbitrators had created in responding to the Ontario argument: "if a wide construction is to be put upon the terms 'tribal life' and 'members of any tribe or band' . . . the arbitrators' definition of persons entitled to the annuity will embrace many persons who by law and by past rulings of this Department - which have been very consistently adhered to - are not, and have not been, regarded as Indians or annuitants, whilst, on the other hand, if a narrow construction be put upon the same terms numbers whose right to the annuity has been recognized without question, and who have been considered Indians by the Dominion, would become disentitled to the annuity." Macrae expressed his strong dissent from the view that "the Arbitrators' definition [should] be regarded as a sort of charter by which right to the annuity should be determined and, consequently, the present revision of the pay lists should be conducted."[117]

Macrae was well aware of the significance of the pay lists, which provided the basis of band membership and entitlement. As he pointed out, "with [a] few special exceptions the pay lists determine who are members of the bands of the surrendered tract entitled to enjoy the bands' rights, e.g.[,] residence on reserves, participation in band funds, etc., and are looked to for such determination by the Superintendents and

Indians and persons allied to them who all consider that those entitled to annuity are Indians, entitled equally to other rights of the bands [which] often exceed in value the right to the annuity." If the arbitration decision disrupted the lists, "they could no longer be appealed to in order to ascertain who were members of a band as such an appeal would lead on one side to band fights as well as annuity being granted to those who now make no claim to them, and, on the other side to depriving persons of rights which now are, and always have been conceded them, and whose vested interest in the reserves, etc., are in the aggregate, large." Allowing this to happen was unthinkable. "The pay lists would no longer represent the Indians. Persons who have been paid, though perhaps not within the definitions, and who have their homes on the reserves would be disturbed and whitemen[sic] and half-breeds married to Indian women and who are not legally Indians would become annuitants." The application of the new definition would disrupt these Aboriginal communities. As he concluded and "as the Department of Justice pointed out there might be - there [were], in fact, many considerations that have to be weighed by this Department in deciding upon the persons entitled to annuity, and this should at least be done before the staus quo of 1895 is disturbed, - if it has to be disturbed at all."[118]

It was in the spirit of this conservative principle, as Macrae reported on 18 February 1899, that he had "conceived it to be wise not to suspend payments to all persons whose rights to the annuity appeared only to be open to question." He conceded that it had been "the intention that this should be done, but, when [he] found that to do it would inevitably cause turmoil and trouble, [he] assumed the responsibilty of acting upon [his] own discretion." When he found annuitants "who have no right or doubtful right and their descendants three courses for a correction of the lists seem[ed] to be open[:] they may be struck off the list at once; they may be permitted, as a pure act of grace, to continue to rceive the annuity for life on the understanding that their title is strictly non-transmissible; or they may be either struck off or left on for life according to the conditions under which they live and as kind and fair policy dictates." Macrae declared that he "lean[ed] strongly towards the last of these three courses and . . . adopted it in making [his] recommendations in the accompanying reports." Either of the last two policies would see the lists "purged of those wrongfully upon them by efflux of time." He concluded that "the course recommended in this letter has, it is believed, the merit of being kind as well as not being without justice to all concerned and the further merit that following it will not be fraught with much difficulty; nor is it one likely to cause too much commotion among the present annuitants as its justice and moderation will be understood by them."[119] What Macrae could not anticipate was a genuine Charter coming into force late in the following century under which his humanity would still be regarded as imposing gender discrimination on succeeding generations.

Long before the Charter of Rights and Freedoms became the fundamental law of Canada, however, the Department of Indian Affairs had been forced to respond to the complaints of those with nontransmissible rights (or those who, as a consequence, inherited no right to annuities). F.H. Paget, Accountant of the Department, wrote to D.C.

Scott, Deputy Superintendent General of Indian Affairs, on 29 August 1916 to note that "the ever recurring complaint of the Indians, whose names are on the non-transmissible list in the Port Arthur Agency and who are not paid for their children born since 1985, was made at the recent payment of the Robinson Treaty Annuities that I attended last month." He reported that "this was the fourth occasion since 1911 that [he had] been present when these payments were made and each time the Indians [had] complained, grievously, of the payment having been withheld from them for these children." He had "therefore decided at the recent payments to represent to the Department the Indians' complaints and so informed them." His argument to his superiors was that, "besides causing general discontent amongst the Indians, the non-payment of these children [was] causing confusion in connection with the pay-lists[sic] at the present time and [was] bound to increase from year to year." Specifically, "children who [had] not been paid since 1895 [had] grown up, many of them without the knowledge that their parents were not paid for them, and they [were] marrying others who [had] been paid and [would] continue to be paid, but payment [was] not made to the Father or his children because his name [was] not on any list and thus [one had] the name of the Mother of a family on the pay-list although they [were] all living on the reserve in the same way as other Indians." Paget consequently said that "it would be good policy for the Department to pay these people in future, but not to pay any arrears, and [he recommended] this strongly to the consideration of the Department."[120]

The question of paying the Robinson Treaty annuity to persons who had been on the nontransmissible list for up to twenty years thus faced the Department again. On 27 September 1916, Scott informed Paget that the Minister had approved this change, which Paget had sought from "the officials of the Department, who are at presesnt in charge of affairs, as they are thoroughly conversant with every phase of it." Scott had "discussed the matter of nontransmissible title with the Minister very exhaustively yesterday, and he agreed that we should not continue it, but should treat children of Indians now on the nontransmissible list as having a right to the Robinson Treaty annuity as a matter of policy." Of course, "the Minister was . . . somewhat anxious about the expenditure which might be entailed, and he would like to have the agents send statements of the actual number to be placed on the list even though it should take a year to prepare." While this was being done, they would "not take any definite action in informing the agents of the proposed change."[121] Thus the administration of Indian Affairs was affected one more time by politics rather than law. Whether Canada's being in the midst of the Great War and enjoying the military service of many Aboriginal men motivated this policy change remains unclear.

CONCLUSION

This study of the negotiation and administration of the Robinson Superior and Robinson Huron Treaties reveals a great deal about how Indian Affairs developed during (and beyond) the second half of the nineteenth century. Although the

responsibility for relations with the Aboriginal people was only gradually accepted by the Canadian government, it is worth recognizing that the first "Responsible Government" ministry acted decisively in authorizing W.B. Robinson to negotiate with the First Nations of Lake Huron and Lake Superior in 1850. The fact that mineral prospecting and mine development had already begun in this area and had aroused the protests of the First Nations was surely responsible for the Canadian action. At the same time, it should be noted that the Canadian government recognized Aboriginal title to the land when it conceded that the government was not entitled to the money it had gained from sale of mining lands along Lake Superior. Instead, it used these funds to begin the payment of the treaty annuity to the members of the First Nations. There was undoubted paternalism in the decision to pay an annuity rather than to turn all of the money over to the First Nations, but the Canadian government had recognized Aboriginal title to the land and extinguished this title by negotiation of the treaties. Although Stipendiary Magistrate Borron was critical later of the forceful action in which "Indians" and "Half-breeds" joined the Macdonnells in closing a mining operation, it was significant that the Chief Justice of the Court of Queen's Bench, J.B. Robinson, had declined to find the chiefs guilty of insurrection and that his brother, W.B. Robinson, spoke on behalf of the chiefs while they were under arrest in Toronto. This connection also helped to smooth the way to W.B. Robinson's later negotiation of the treaties.

The annuity itself remained linked to the value of the land being surrendered. The British military establishment in North America gave gifts to the leaders of the First Nations in order to maintain their alliance, a practice that dated back to the French regime. The Canadian government instructed Robinson to avoid any hint of connection to such giving of gifts, for which the Military Secretary to the Governor was responsible. Robinson acted on the authority he had been given to establish an annuity that reflected the current value of the land. Although he described their land as barren, compared to Ohio and Michigan to the south, he knew (as the chiefs also did) that it had generated revenues from mining companies and he used that money to provide some income for the members of the First Nations. Even more significantly, he promised an increase in the annuity as (or if) the land became more valuable. The fact that E.B. Borron, Member of Parliament, believed that an increase was justified by 1870 and that the Dominion government increased the annuity half-a-dozen years later demonstrates that Robinson's promise had been kept. The drawn-out process by which the government of Ontario, the immediate beneficiary of this increased land value, was brought to make a contribution to the capital cost of the annuity probably discouraged any further action to increase the annuities. The increasing value of the Robinson Treaty territories would surely have justified still more increases in annuities, even though Robinson had spoken in proper constitutional terms of "such further sum as Her Majesty may be graciously pleased to order."

The fact that the recipients of the annuity included significant numbers of people whom we now call Métis constitutes one of the most interesting aspects of this

discsussion. The fur trade "produced" many men and women whose fathers were European and mothers, Aboriginal. With the heritage of both continents, speaking quite possibly three (or more) languages, familiar with the ways of both Aboriginal and EuroCanadian societies, these mixed-bood people were able to assist in the development of relations between the First Nations and the Canadian government. Their role in encouraging the treaty-making process has sometimes been acknowledged. Their right to benefit from the negotiations that resulted has clearly been more difficult to accept. Robinson left the decision up to the leaders of the First Nations but reacted negatively to any suggestion that he might advance the settlement hopes of individual families. He was skeptical about the right of the Métis to share in the annuity but accepted the right of the First Nations leaders to include them among the recipients of government payments. Perhaps the most surprising fact brought to light in this paper is that both the Hudson's Bay Company Postmasters and the Indian Agents continued the practice (presumably begun by the chiefs in Sault Ste. Marie) of paying the annuity to Métis families. The fact that even an inspector sent out "to clean up the lists" could not remove them entirely and that the Minister of Indian Affairs was persuaded during the Great War to extend the old right again at Fort William is quite astonishing.

The extensive debate about Métis entitlement into which E.B. Borron entered as advisor to Ontario Attorney-General (and Premier) Oliver Mowat provides further insight. Borron's patriarchal view that descent was through the male line and that Métis children with fathers of European origin could not enjoy any Aboriginal rights was clearly in conflict with the view of both the Canadian government and the Ontario premier. The Canadian assertion that mixed-blood persons were Indians under Ontario law linked the two jurisdictions, and Mowat's rejection of Borron's arguments indicated that the chief law officer of the province did not plan to change the law. Whether Mowat was aware of the matrinineal descent patterns among Aboriginal people which Borron wished to deny is not clear from the sources. What is clear is that Borron's various attempts to deny that the Métis were Aboriginal had clearly failed. This nineteenth-century failure increases interest in the history of such exclusions in the twentieth century. Aboriginal women who married EuroCanadian men were denied status under the Indian Act during the twentieth century whereas their brothers who married EuroCanadian women gave the latter status under the Act. This gender bias was recognized as such in the 1980s, first internationally and then by the Canadian Parliament which passed a half-measure of rectification in Bill C-31. The nineteenth-century attempt to initiate such gender bias in the Robinson Huron Treaty area seems to have created confusion and left an Indian Affairs inspector convinced of the foolishness of the attempt.

Among the most interesting aspects of Borron's argument for Métis exclusion was his sociological analysis (if one may be somewhat anachronistic in describing his discussion of "tribal life," "semi-civilized Indians," and the life of the Métis in such terms). The attempt to describe the quintessential existence of the Aboriginal people of

northern Ontario provided benchmarks for tribal life. Unfortunately, members of the First Nations communities could change their way of life in various ways without losing their status under the Indian Act. They could live in the style of their Métis compatriots and still remain Indians. Borron knew too little Aboriginal history to realize that the hunting life he was describing was only one of the Aboriginal economies and the people who had settled at Garden River or on Manitoulin Island had been growing corn and other Aboriginal crops for centuries. Consequently, his attempt to deny that the Métis who lived on the basis of a mixed economy of farming, fishing, fur trapping, hunting, etc., could be part of Aboriginal society was misguided. Since he had already lost the political battle on several fronts, with the first ations themselves, Indian Affairs officials, and the Attorney-General of Ontario all including the Métis among the Aboriginal people, his attempt to use life-style represented a desperate last expedient. The terms he used might resonate with people who distinguished their own civilization from the life of all of the Aboriginal people but it did not convince the Ontario Attorney-General and Premier.

Perhaps the most provocative observation on the Métis made by any one at the time was that of Hudson's Bay Company Postmaster John Swanston when he observed of the Mé that "many of them have mush juster claims then[sic] the Indians, they having been born and brought up on these lands, which is not the case with many of the Indians, particularly the Sault Chiefs Shin gwa konse[sic] and Neh bai ni co ching[sic], whose lands are situated on American Territory. " Swanston's assertion that the Métis were indigenous, having been born on these lands of Aboriginal mothers whose ancestry was ancient in these territories, is an argument that may still be cited now. The Métis were generally recognized as Aboriginal people in the nineteenth century but appear to have been excluded in the twentieth century. One factor in this change of attitude may have been the fact that some of the Métis chose not to live on the reserves established under the authority of the Robinson Treaties and the Indian Act. The fact that many status Indians also came to live off the reserve but remained entitled to the annuity and other benefits indicates that residence on a reserve is not a prerequisite of Indian status. Given this precedent, the Métis claim to status could hardly be made dependent on reserve residence either. The Métis assertion of other rights of the Aboriginal peoples, such as the subsistence right to hunt and fish, should therefore receive the respectful attention of both the Department of Indian Affairs and the relevant provincial ministries.

ENDNOTES

1. Cf. The account given by W. Robert Wightman and Nancy M. Wightman, The Land Between: Northern Ontario Resource Development, 1800 to the 1990s (Toronto, Buffalo, and London: University of Toronto Press, 1997), 23-24.

2.Ibid., 18-19. See also Morris Zaslow, Reading the Rocks: The Story of the Geological Survey of Canada 1842-1972 (Ottawa: The Macmillan Company of Canada Limited in association with the Department of Energy, Mines and Resources and Information Canada, 1975), 50.

3.Wightman and Wightman, The Land Between, 19-20 and 23-25.

4.See the full text in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Derek G. Smith (Carleton Library No. 87; Toronto: McClelland and Stewart Limited, 1975), 3.

5.Wightman and Wightman, The Land Between, 25. Macdonell's own view is mentioned in Nancy M. And W. Robert Wightman, "The Mica Bay Affair: Conflict on the Uppe-Lakes Mining Frontier, 1840-1850," Ontario History 83, no. 3 (September 1991): 200.

6.Order-in-Council of the Executive Council of the Province of Canada. NAC RG10, Vol. 266, pp. 163118-20 (Microfilm Reel C-12652).

7.The original letter is reprinted in L. Cadieux, ed., Lettres de Nouvelles Missions du Canada, 1843-1852 (Montreal: Les Editions Bellarmin, 1973), 593-97.

8.Cf. Whiteman and Whiteman, "The Mica Bay Affair: Conflict on the Upper-Lakes Mining Frontier, 1840-1850," especially 200-03. The Whitemans mistakenly refer to John Beverley Robinson as Attorney General, the position Robert Baldwin held in 1850. Cf. The Dictionary of Canadian Biography IX 1861 to 1870 (Toronto: University of Toronto Press, 1976), 677, for Robinson's position. See also Whiteman and Whiteman, The Land Between, 25-26.

9.E.B. Borron, Report concerning the right of "half-breeds" to participate in the benefits of the Robinson Treaties, from the Province's point of view. PAO F1027-1-2 MU 1465 File 27/32/8(2) MS 1780.

10.Cf. Cadieux, ed., Lettres des Nouvelles Missions du Canada, 1843-1852, 594.

11.A. Vidal and T.G. Anderson, Commissioners, to Governor General in Council, Report on their investigation of the claims of the Indians in the territory bordering Lakes Huron and Superior, 5 December 1849. NAC RG 10 Vol.266, pp. 163121-55 (Reel C-12652).

12.R. Bruce, Superintendent General of Indian Affairs, to W.B. Robinson, 11 January 1850. NAC RG 10 Vol. 266 pp. 163160-62 (Reel C-12652).

13.Clerk of the Executive Council to R. Bruce, Superintendent General of Indian Affairs, 16 April 1850. NAC RG 10 Vol. 266 pp. 1631633-66 (Reel C-12652). The authorization was passed on by letter on 12 August 1850; cf. R. Bruce, Superintendent General of Indian Affairs, to W.B. Robinson, above date. NAC RG 10 Vol. 514 Folio 31 (Reel C-13345).

14.J. Swanston, Postmaster, Michipicoten, to G. Simpson, Governor, Hudson's Bay Company, Lachine; PAM HBCA D.5/28 fos. 465-66 (Reel 3M92).

15.13 and 14 Victoria (1850) Cap. 74 (Province of Canada). An Act for the Protection of Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury (passed 10 August 1850). Reprinted in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 40-41.

16.W.B. Robinson to R. Bruce, Superintendent General of Indian Affairs, Report outlining his negotiations with the Chiefs of Lakes Superior and Huron, 24 September 1850. NAC RG 10 Vol. 191 Nos. 5401-5500 No. 5451 (Reel C-11513). The report was also reprinted in Alexander Morris, The Treaties of Canada with the Indians of Manitoba and the North-West Territories, including the negotiations on which they were based, and other information relating thereto (Toronto: Belfords, Clarke & Co., Publishers, 1880), 17-21. The quotations appear on p. 19.

17.Robinson to Bruce, Report, 24 September 1850.

18.Ibid.

19.Ibid.

20.Ibid. The reserves were listed in the treaties; see the text of the treaties in Morris, The Treaties of Canada with the Indians . . ., 306-08 and 304 respectively.

21.Robinson to Bruce, Report, 24 September 1850.

22.Treaty No. 60 between W.B. Robinson and J. Peau de Chat, J. Ininway, Mishe-muckqua, Totemenai, Chiefs, and J. Wasseba, Ahmutchewagaton, M. Shebageshick, Manitoshanise, and Chigenaus, Principal Men, Ojibway Indians, 9 September 1850. NAC RG 10 VOL. 1844 IT 147 (Reel T-9938). The treaty is also available in typed form in NAC RG 10 Vol. 1963 File 5045-2 (Reel C-11122) and was published by Morris, The Treaties of Canada with the Indians . . ., 302-04.

23.Ibid.

24.Clerk, Executive Council, Province of Canada, to the Provincial Secretary, 12 November 1850. NAC RG 10 Vol. 191 Nos. 5401-5500 Pp. 111695 (Reel C-11513).

25.W.B. Robinson to Governor G. Simpson, Hudson's Bay Company, 23 September 1850. PAM HBCA D.5/28 fos. 659-60 (Reel 3M92).

26.G. Simpson, Governor, Hudson's Bay Company, Lachine, to W.B. Robinson, Toronto, 15 October 1850. NAC RG 10 Vol. 187 Nos. 5001-5100 Pp. 169390-91 (Reel C11512).

27.D. Finlayson, Agent, Hudson's Bay Company, Lachine, to R. Bruce, Superintendent General of Indian Affairs, 16 June 1851. NAC RG 10 Vol. 189 Nos. 5201-5300 Pp. 110219-21 (Reel C-11512).

28.G. Simpson, Governor, Hudson's Bay Company, to J. Swanston, Postmaster, Michipicoten, 30 June 1851. PAM HBCA D.4/43 fos. 110B-11 (Reel 3M14).

29.Robinson and Peau de Chat et al., Treaty No. 60.

30.A. Macdonell, Toronto, to Mr. Cameron, letter, 9 April 1852. NAC RG 10 Vol. 266 Pp. 163055-61 (Reel C-12652).

31.Ibid.

32.Ibid.

33.G. Simpson, Governor, Hudson's Bay Company, Lachine, to J. McKenzie, Postmaster, Michipicoten, 30 June 1852. PAM HBCA D.4/45 fos. 44-44D (Reel 3M14).

34.F. Ermatinger, Hudson's Bay Company, Annuity Paylist[sic], Fort William, ca 3 August 1852. PAM HBCA B129/d/7 fos. 5-6D "Michipicoten Account Book 1851-57."

35.F. Ermatinger, Hudson's Bay Company, Fort William, pay list, 3 August 1852. NAC RG 10 Vol. 9497 [p. 26] (Reel C-7167).

36.J. MacKenzie, Hudson's Bay Company, Michipicoten, pay list, ca. 30 September 1852. PAM HBCA B129/d/7 fos. 2-2D "Michipicoten Account Book."

37.J. MacKenzie, Hudson's Bay Company, Michipicoten, pay list, 3 August 1852. NAC RG 10 Vol. 9497 [p.38] (Reel C-7167).

38.J. MacKenzie, Hudson's Bay Company, Michipicoton, ca. 30 September 1853. PAM HBCA B129/d/7 fos. 2-2d "Michipicoten Account Book 1851-57." J. MacKenzie, Hudson's Bay Company, Michipicoton, ca. 30 September 1854. PAM HBCA B129/d/7 fo. 19 "Michipicoten[sic] Account Book 1851-57."

39.J. MacKenzie, Hudson's Bay Company, Michipicoten, ca. 30 September 1855. PAM HBCA B129/d/7 fos. 22-22D "Michipicoten[sic] Account Book 1851-57." J. MacKenzie, Hudson's Bay Company, Michipicoton, ca 30 September 1856. PAM HBCA B129/d/7 fos. 30D-34d "Michipicoten[sic] Account Book 1851-57."

40.R.T. Pennefather, Special Commissioner. "Report of the Special Commissioners appointed on the 8th of September, 1856, to Investigate Indian Affairs in Canada." Journal of the Legislative Assembly of the Province of Canada Appendix No. 21A 1858 (Toronto: Stewart Derbishire and George Desbarats, 1858), 67-75.

41.De La Ronde and F. Ermatinger, respectively Hudson's Bay Company servants at Fort Nipigon and Fort William, ca. 31 August 1855. PAM HBCA B129/d/7 fos. 27d-28d and fos. 25d-26d "Michipicoten[sic] Account Book 1851-57."

42.Pennefather, "Report of the Special Commissioners appointed . . . to Investigate Indian Affairs in Canada," 73.

43.An Act for the Protection of Indians in Upper Canada from Imposition, and the Property Occupied or Enjoyed by them from Trespass and Injury; cf. Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 42 and 44.

44.13 and 14 Victoria (1850) Cap. 42 (Province of Canada). An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada (passed 10 August 1850), Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 38-40.

45.Ibid., 40.

46.14 and 15 Victoria (1851) Cap. 59 (Province of Canada) An Act to Repeal in Part and to Amend an Act, Intituled[sic], An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada (passed 30 August 1851), Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 48.

47.20 Victoria (1857) Cap. 26 (Province of Canada). An Act to Encourage the Gradual Civilization of the Indian Tribes in this Province, and to Amend the Laws Respecting Indians (assented to 10 June 1857), Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 50-51. A misprint has been corrected in the last quotation, where "habilities" appears instead of "liabilities."

48.Ibid., 51-54.

49.23 Victoria (1860) Cap. 14 (Province of Canada). An Act Respecting Indians and Indian Lands, in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 54-58.

50.Cf. the excerpt from 30 Victoria (1867) Cap. 3 (United Kingdom). An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes Connected therewith (The British North America Act, 1867) (assented to 29 March 1867), in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 63.

51.J. Bissett, Hudson's Bay Company, Montreal, to W. Sprague, Deputy Superintendent of Indian Affairs, 28 June 1872. NAC RG 10 Vol. 1866 File 487 (Reel C-11104).

52.Indian Agent, Census of Lake Nipigon District, 6 August 1874. NAC RG 10 Vol. 9501 pp. 169-71 (Reel C-7167).

53.Cf. J. MacKenzie, Hudson's Bay Company, Michipicoten, Paylist, 3 August 1852, for the initial rate (NAC RG 10 Vol. 9497 [p. 38] [Reel C-7167]) and E.B. Borron, Stipendiary Magistrate, Toronto, to Oliver Mowat, Attorney General and Premier, 31 December 1892, for a reference to "1875 when the Annuities were augmented from one dollar to four dollars a head" (PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08). The latter document included the further observation that "the statement referred to above shows that the Annuity of the Lake Huron Indians had fallen to one dollar and ten cents each in the Year 1856; and that in 1874, the Year before the permanent augmentation clause came into effect, it had fallen still lower, or to ninty[sic]-two cents a head."

54.E.B. Borron, M.P., Sault Ste. Marie, to David Laird, Minister of the Interior and Superintendent General of Indian Affairs, 28 November 1874. NAC RG 10 Vol 1963 File 5045-1 (Reel C-12777).

55.E.B. Borron, M.P. Sault Ste. Marie, to David Laird, Minister of the Interior and Superintendent General of Indian Affairs, 1 April 1875. NAC RG 10 Vol. 1963 File 5045-1 (Reel C-12777).

56.Ibid.

57.Indian Agent, Michipicoten, Pay Sheet of Tootoominai's band at Gros Cap, 1876. NAC RG 10 Vol. 1999 File 7294 (Reel C-11131).

58.Amos Wright, Indian Agent, Pay Sheets for Fort William Band, Lake Superior, and the Ojibways at Nipigon, Lake Superior, 1876. NAC RG 10 Vol. 1999 File 7294 (Reel C-11131).

59.Amos Wright, Indian Agent, Prince Arthur's Landing, to J.S. Dennis, Deputy Minister, Department of the Interior, 16 July 1879. NAC RG 10 Vol. 2000 File 14455

(Reel C-11155).

60.A. Wright, Indian Agent, Pay List for the Michipicoten Band, August 1879. NAC RG 10 Vol. 9501 pp. 73-77 (Reel C-7167).

61.32 and 33 Victoria (1869) Cap. 6 (Canada). An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs, and to Extend the Provisions of the Act 31 Victoria Cap 42 (assented to 22 June 1869), in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 75.

62.31 Victoria (1868) Cap. 42 (Canada). 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 (assented to 22 May 1868), in Canadian Indians and the Law: Selected Documents, 1663-1972, ed. Smith, 67.

63.L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to A. Wright, Indian Agent, Prince Arthur's Landing, 1 August 1879. NAC RG 10 Vol. 2090 File 14455 (Reel C-11155).

64.A. Wright, Indian Agent, Pay List for Lake Nipigon, ca. 31 August 1879. NAC RG 10 Vol. 9501 pp. 173-85 (Reel CC-7167).

65.E.B. Borron, M.P., Sault Ste. Marie, to A. Laird, Minister of the Interior, 1 April 1875. NAC RG 10 Vol. 1963 File 5045-1 (Reel C-12777).

66.J.P. Donnelly, Indian Agent, Port Arthur, to [E. Dewdney], Superintendent General of Indian Affairs, Ottawa, 28 May 1889. NAC RG 10 Vol. 2465 File 96244 (Reel C-12784).

67.J.P. Donnelly, Indian Agent, Port Arthur, to L. Vankoughnet, [Deputy Superintendent General of Indian Affairs], 28 May 1889. NAC RG 10 Vol. 2465 File 96244 (Reel C-12784).

68.Ibid.

69.[E. Dewdney, Superintendent General of Indian Affairs?] to J.P. Donnelly, Indian Agent, Port Arthur, 7 June 1889. NAC RG 10 Vol. 2465 File 96244 (Reel C-12784).

70.J.P. Donnelly, Indian Agent, Port Arthur, to Superintendent General of Indian Affairs, 17 June 1889. NAC RG 10Vol. 2465 File 96244 (Reel C-12784).

71.J.P. Donnelly, Indian Agent, Lake Nipigon pay list, ca. 31 August 1889. NAC RG 10 Vol. 9501 pp. 224-30 (Reel C-7167).

72.Cf. J.P. Donnelly, Indian Agent, Lake Nipigon, Pay Lists, ca. 31 August 1890 and 31 August 1891. NAC RG 10 Vol. 9501 pp. 232-40 and 242-52 (Reel C-7167).

73.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General, Toronto, 26 May 1891. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08 (1).

74.Ibid.

75.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General, Toronto, 31 December 1891. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08.

76.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General of Ontario, Report on his review of the claims of the Indians under the Robinson Treaties, 31 December 1891. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08.

77.Ibid.

78.Ibid.

79.Ibid.

80.Ibid.

81.Ibid.

82.Ibid.

83.Ibid.

84.Ibid.

85.Ibid.

86.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General of Ontario, 20 January 1892. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08.

87.Ibid.

88.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General of Ontario, 11 October 1892. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08.

89.E.B. Borron, Stipendiary Magistrate, Toronto, Report, 31 December 1892. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08 (2).

90.Ibid.

91.Ibid.

92.Ibid.

93.E.B. Borron, Stipendiary Magistrate, Toronto, to [O. Mowat, Attorney General of Ontario?], 11 February 1893. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08.

94.E.B. Borron, Stipendiary Magistrate, Toronto, Report on his revision of the Robinson Treaty pay lists for 1890-1891, ca. 11 February 1893. PAO F1027-1-2 MU 1465 Box27 Item 27/32/08.

95.E.B. Borron, Stipendiary Magistrate, Toronto, to O. Mowat, Attorney General of Ontario, Report regarding the claims of the Dominion government for a refund of annuities paid under the Robinson Treaties and for arrears of annuities, ca. 7 March 1893. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08 (2). See also Borron's memorandum reviewing the Dominion case written on 15 March 1893. PAO F11027-1-2 MU 1465 Box 27 Item 27/32/08 (2).

96.Conference of Dominion, Ontario, and Quebec officials regarding the payment of the annuities under the Robinson Treaties, 21 October 1894. PAO F1027 MU 1509 Item71/15 "1893. Arbitration. Interest Question. Exhibits" pp. 93-106.

97.E.B.Borron, Stipendiary Magistrate, Toronto, to A. Irving, Q.C., Toronto, letter forwarding documents regarding the claims of the Robinson Treaty Indians for his use before the Board of Arbitration, 21 October 1894. PAO F1027-1-2 MU 1465 Box 27 Item 27/32/08 (2).

98.E.B. Borron, Stipendiary Magistrate and Commissioner, Toronto, Report concerning the right of "halfbreeds" to participate in the benefits of the Robinson Treaties, from the Province's point of view, 27 October 1894. PAO F1027-1-2 MU 1465 File 27/32/8 (2) MS 1780.

99.Ibid.

100.Ibid.

101.Board of Arbitrators, Award regarding the increased annuities clause in the Robinson Treaties and which government is responsible for payment, 14 February 1895. PAO F 1027 MU 1509 Item 71/15 "Awards of the Arbitrators (1900)."

102.Province of Ontario, Appellant, and Dominion of Canada and Province of Quebec, Respondents, Decision of appeal from the award in the arbitration between the

provinces and Canada, in which it was decided that Ontario has the burden of paying the increased annuities in the Robinson Treaties., 15 May 1895. Supreme Court of Canada Vol. XXV pp. 434-550 (DIA, CHRC, Call No. P-95).

103.E.B. Borron, Stipendiary Magistrate, Toronto, to A. Irving, Q.C., Toronto, Memorandum concerning the award of the Arbitrators arising out of the issue of the annuities under the Robinson Treaties, 17 May 1895. PAO F1027-1-2 MU 14665 Box 27 Item 27/323/06.

104.Ibid.

105.J.A. Macrae, Inspector of Indian Agencies and Reserves, Department of Indian Affairs, to Secretary, Department of Indian Affairs, Report on who is eligible to receive Robinson Treaty annuities in the Port Arthur Agency, 2 September 1898. DIA Genealogical Research Unit Book entitled "Reports on Robinson Annuities 1898-1899" [NAC RG 10 Acc. 1994-95/088, Box 23].

106.Ibid.

107.Ibid.

108.J.A. Macrae, Inspector of Indian Agencies and Reserves, Department of Indian Affairs, to Secretary, Department of Indian Affairs, Schedule listing people in the Fort William, Red Rock, Nipigon, Pays Plat, Long Lake and Pic Bands who are to be "cut out," left on or whose title is doubtful. 9 February 1898. DIA Genealogical Research Unit Book entitled "Reports on Robinson Annuities 1898-1899" [NAC RG 10 Acc. 1994-95/088, Box 23].

109.J.A. Macrae, Inspector of Indian Agencies and Reserves, Department of Indian Affairs, to Secretary, Department of Indian Affairs, Memorandum Concerning certain persons in the Port Arthur Agency who received "Robinson" Annuity recently but who from information after the payments of 1897 it is believed have no right to continue to receive that annuity, 9 February 1898. DIA Genealogical Research Unit Book entitled "Reports on Robinson Annuities 1898-1899" [NAC RG 10 Acc. 1994-95/088, Box 23].

110.Ibid.

111.J.F. Hodder and W.H. Arnold, Indian Agents, Port Arthur, Pay list for the Red Rock band, 6 July 1898.NAC RG 10 Vol, 9510 Robinson Treaty Annuity Paylists Port Arthur Agency, 1896-1904 [DIA Genealogical Research Unit]

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Robinson Annuities 1898-1899" [NAC RG 10 Acc. 1994-95/088, Box 23].

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119.J.A. Macrae, Inspector of Indian Agencies and Reserves, Department of Indian Affairs, to Superintendent General of Indian Affairs, Report on his investigation of halfbreed claims under the Robinson Treaties, 18 February 1899. DIA Genealogical Research Unit Book entitled "Reports on Robinson Annuities 1898-1899 [NAC RG 10 Acc. 1994-95/088, Box 23].

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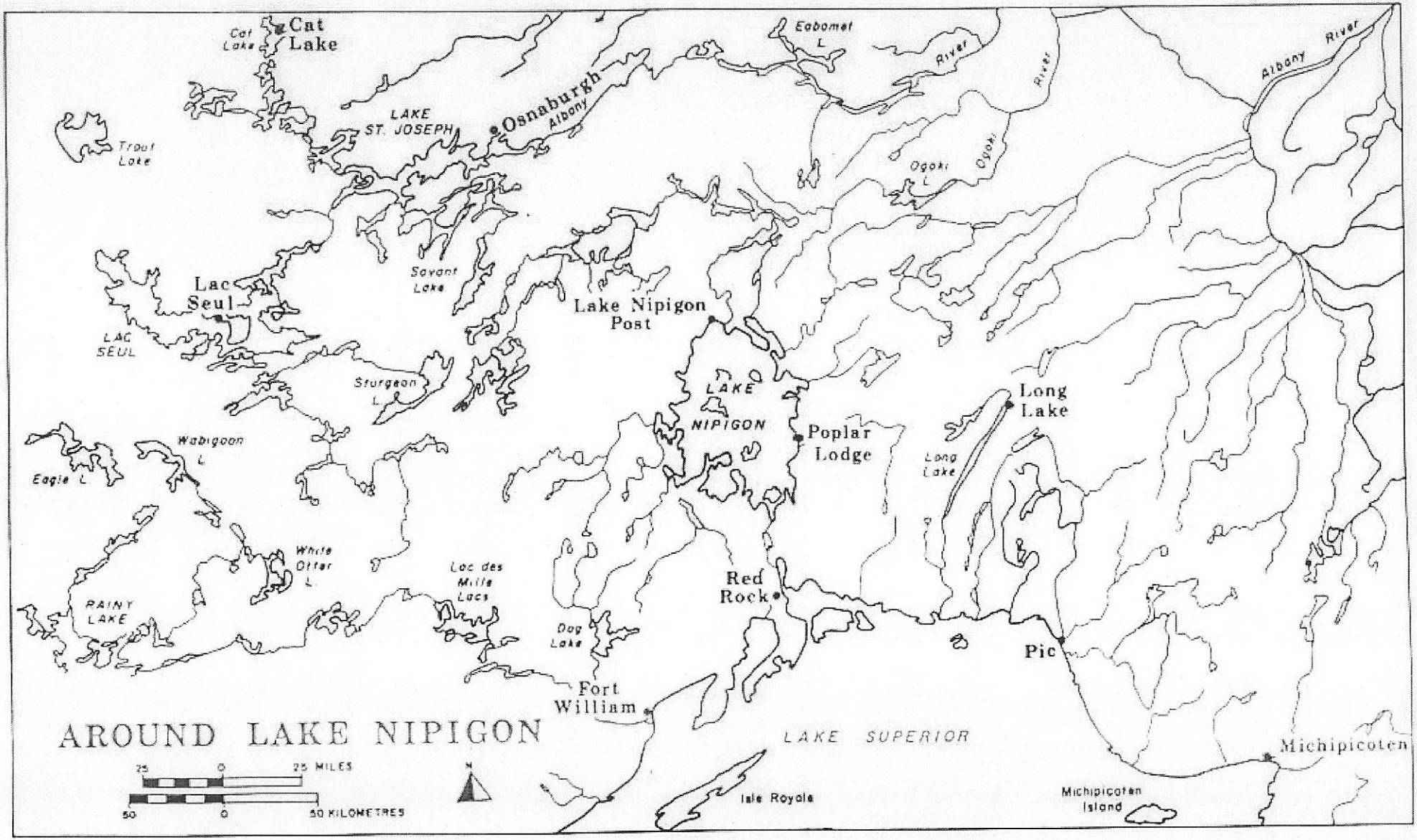

Postings of de Laronde's with the Hudson's Bay Company in Northwestern Ontario, 1821 - 1888.
Map by Iain Hastie, Lakehead University.