

WITHOUT PREJUDICE: DRAFT, FOR DISCUSSION

ROBINSON TREATY MÉTIS

HISTORICAL REPORT

PREPARED BY: ALISON E. GALE
FOR: CLAIMS RESEARCH AND ASSESSMENT DIRECTORATE
DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN
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THE MÉTIS OF THE ROBINSON-SUPERIOR TREATY
HISTORICAL REPORT

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THE MÉTIS OF THE ROBINSON-SUPERIOR TREATY

HISTORICAL REPORT

Introduction

From the beginning of the nineteenth century¹, and following the making of the Robinson Treaties in 1850, a community of people of Métis heritage have lived in the Thunder Bay area, then known as Prince Arthur's Landing (later Port Arthur). Their settlement at Fort William is recognized as one of the two first Métis settlements in Canada.² In 1853, the Métis had been invited by the Jesuits to settle along the river, opposite the Fort William Mission, "where they gave rise to the village of Westport".³ J. C. Hamilton reported in 1876 that a group of Métis houses were to be found at McVicar's Creek, at the east end of Prince Arthur's Landing.⁴

These Métis are the descendants of the original employees of the North West Company and the Hudson's Bay Company working at Fort William⁵, as well as other posts. These people are referred to as "the first permanent settlers of the Thunder Bay region".⁶ They are also referred to as a group of those choosing "to remain associated with the district as a whole"⁷, who travelled between the various posts of the area to work. Many of the Métis men remained for long periods of time at one post, where their families were inevitably raised, and whose children intermarried.⁸

I. The Pre-Treaty Era

1. On August 4, 1849, A. Vidal and T. Anderson were appointed by Order-in-Council to investigate the claims and to determine the expectations of the Native people of Lakes Huron and Superior regarding the surrender of their lands. The order reads as follows:

¹ See Arthur, E. Thunder Bay District, 1821-1892. Toronto: University of Toronto Press, 1973. P. xlv. See also Arthur, E. "The de Larondes of Lake Nipigon," in Thunder Bay Historical Museum Society Papers and Records, Vol. IX 1981. Pp. 31-48.

² Lorimer, . The Birth of the Métis Nation. P. 28.

³ Tronrud, T. J. and A. E. Epp, eds. Thunder Bay: From Rivalry to Unity. Thunder Bay: The Thunder Bay Historical Museum Society, Inc., 1995. P. 181.

⁴ See Hamilton, J. C. The Prairie Provinces. Pp. 5-6.

⁵ See Campbell, G. The Final Adventure: Old Fort William. P. 11

⁶ Ibid. P. 12.

⁷ See Arthur, E, p. xliii.

⁸ Ibid., xliiv-xlv.

Extract from a Report of a Committee of the Honorable [sic] the Executive Council on LAND APPLICATIONS, dated the 3d August 1849 approved by His Excellency the Governor General in Council on the 4th of the same month.

On the Report of the Commissioner of Crown Lands, dated 28th July 1849, 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.

The Committee recommend that Mr Alexander Vidal of Port Sarnia Deputy Provincial Surveyor be deputed on the part of the Government jointly with Mr Anderson Superintendent of Indian Affairs to investigate and ascertain the expectations of the Indians with a view to the final action of the Government upon the same and to proceed at as early a period as possible this year to Lakes Huron and Superior to meet the Indians on their grounds and report fully upon their claims to the executive Government with as little delay as possible.

[Doc. No. 1]

2. N. Fremiot, of the Jesuit Fathers, wrote a letter to his superiors on October 18, 1849, reporting on the meeting held at Fort William with Commissioners Anderson and Vidal. Part of his letter, which is excerpted below, pertains to the Métis who were present at the meeting:

...

23. I was present at the meetings merely as a spectator, and I accepted Mr. Mackenzie's invitation to dinner with the gentlemen. I was thus an eyewitness and can trace for you faithfully the character of the meeting. Mr. Vidal was stationed in an arm chair in the centre of the room and wrote down everything that was said. Captain Anderson sat on his right. He speaks English, French and Ojibway, while his colleagues speak only English. It was he who put the government questions to the Indians and translated their replies. Behind him sat one of his oarsmen, Peter Bell a young man from Sault Ste. Marie, whom he questioned about the meaning of an Indian phrase whenever he was in doubt. Mr. Sommerville sat on Mr. Vidal's left with his desk a little to one side and scarcely seemed to be aware of what went on in the meeting.

24. Opposite these two gentlemen sat our two chiefs. Joseph, Peau de Chat, took the foremost position. He was dressed like the white men, as were most of the Indians. He is a man of about 40, Tall and well built, with a vibrant, sonorous voice. His eloquent enthusiasm and vehement impetuosity have caused the Indians to elect him as their chief. All that he lacks is a spirit somewhat more imbued with Christian virtues. The other chief is an old man in his seventies whom they call the Illinois. He is quite clearly one of those "fur chiefs" established in power by the Hudson Bay Company. Each year he receives two outfits, and one of these is always red, with gold braid and metal buttons. That is why he has been given the name Miskouakkonaye--Red Coat. A few years ago, he, with several members of his family, was plunged into the river by a Baptist minister at Sault Ste. Marie--but that seems to have been his only contact with religion. This old man--whom the Indians agree to recognize as a

chief but who has not the principal authority--today wore, as you might guess, his full regalia. Mr. Sommerville spent the first part of the meeting making sketches of this ridiculous costume, further enhanced by an enormous pipe which he rested against his thigh, while propping it up with one hand. That poor pipe! What evils conspired against the lighting of it! For more than a quarter of an hour he kept fumbling with his tinder-box, to the silent amusement of the company. Behind the chiefs, all around the room, the Indians sat on the floor, their backs to the wall.

25. The meeting began with a roll call from the list prepared the evening before by Mr. Mackenzie. The metis were passed by in silence, for they have not the right to speak at such gatherings. Is this wise? Do some people fear that they, better informed that [sic] the Indians themselves, might be in a better position to defend their rights?

26. Then begins the long series of questions which the gentlemen wish to address to the Indians on behalf of the government. Where do you come from? What is your name? Are these your chiefs? Which is the principal one? ("Josep Peau de Chat" replied the Indians). What is the shape and extent of your land? To what use can it be put? Do you wish to sell your lands? What price do you want for them?

"Besides a reserve on both banks of the river where we are living, we ask for 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. Besides, we ask the Government to pay the expenses of a school master, a doctor, a blacksmith, a carpenter, and instructor in agriculture, and a magistrate."

27. Before closing the first day's session, Captain Anderson spoke to the Indians. "There are two things there that give me no pleasure and that will also, I think, be displeasing to our Father who is in Montreal (Lord Elgin). The first one is that he has not ratified your selection of first chief. The second is that you ask too high a price for your lands. Look at what the United States is doing on the other side of the Lake! The Indians there are only given payments for twenty-five years and, at that, they are to receive less each year than you ask. As for you, you want payment until the end of the world! and thirty dollars a head! Besides, once the term for payment expires, the American Government is going to push the Indians beyond the Mississippi; you, on the other hand, will remain here for ever, in peaceful possession of your land. Finally, the money you receive-- would it not do more harm than good? Think of what has happened at La Pointe. The Indians gave up their money, even their blankets, for a glass of water mixed with a little whiskey. The same thing would happen here. It would be far more to your advantage to get clothing for yourself instead of money payments. Reflect on these two points overnight and if, tomorrow, you still cling to the same views, they will be duly recorded. Now, it is as friends that we give you advice, for we do not think that the Great Chief who is at Montreal will accord you everything you are asking."

...

31. When we reassembled, Red Coat, the old chief, addressed the meeting for the first time. He began thus: "My Father, I do not quite know what to say; there is very little spirit left in me. Like you, I have become old." After this winning introduction, this Nestor of the wilderness traced his origins back--to the flood, I believe, or perhaps earlier--and then moving down through history step to step, he finally reached the appearance of the white man in these parts and the marvellous things that the Indians saw for the first time.

"But it was not you, the English, who came first; we hardly know you--it was those we call Ouemitiloje, the French, who visited us first".

As for the peroration of this discourse, I must admit that it has slipped my memory; I can only recapture isolated fragments of it. It was late and the Indians who were beginning to be very hungry were bored with a speech of such epic dimensions. One of the sons-in-law of the orator went up to him and told him he had spoken long enough. "Patience" replied Red Coat. "I do not want to ruin any of my effects".

Finally another son-in-law who was seated beside him and who sometimes had kindly helped him out when memory failed him, whispered quietly in his ear that he had spoken very well and at once the suggestible speaker, having pronounced his ritualistic conclusion "That is all I have to say", sat down and was silent.

32. Then Captain Anderson arose in his turn, and gave his closing speech. He praised the Indians for their caution and their skill during the present deliberations. "The Indians at Nipigong [sic], he added, those from the Pic and from Michipikoton [sic] will be interrogated in a similar way: the governor will look at yours and their responses, and will settle everything in his wisdom. You will probably receive news this winter, and, in the spring, some new representatives will bring the Treaty in proper order". And he strongly exhorted the Indians to accept the civilization of the white man, to devote themselves to agriculture, to education. In a short time, your forests will be without game; there will be no other resource for the Indian than agriculture. "Listen to your priests, do not wrong the traders in your midst, for the Great Spirit sees all; but especially meditate often on eternal life."

After this edifying conclusion, everyone shook hands in farewell and left the best of friends.

33. The following morning, before the departure of these gentlemen, our Indians went again to greet them. It was repeated to them that they would not receive everything they had asked for: "Well then, they said, cross out the doctor, the carpenter, the blacksmith, the farmer and the superintendent; we will only keep our school master." I only came to hear of this concession, and I was as surprised as I was disappointed at it. I believe that it is a pure loss. The Indians thought, by this, that they would obtain their 30 pounds a head, in money. But Mr. Anderson had already told me specifically that they would not get this amount and certainly not in cash.

34. I drew the Captain's attention to the fact that, if we forced the Indians to collect their payment far from here, for example at the Sault, it would make it impossible for them to cultivate much. "They will be paid [453] here, he told me".

35. Such is, my Reverend Father, the account of this memorable event for our mission. There are our poor Indians about to receive, not a fortune that will allow them to dispense with working such as some happily imagined it, but a small bit of assistance which, at least, will help to clothe them. As here, the difficulty is not in living, but in clothing oneself. Agriculture and fishing will provide enough food; but clothing, it costs a lot to procure, for the reason that the Hudson's Bay Company has had up until now a monopoly on the furs, and in consequence, on the trade.

...

3. Vidal and Anderson's report to the Governor General in Council, which is dated December 5, 1849, outlines their travels and the meetings they had with the Chiefs. In this report, the Commissioners mention "halfbreeds":

...
 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.
 ...

[Doc. No. 3]

4. Following their report, Anderson had apparently requested information on the First Nations the Commission had been unable to visit. On January 7, 1850, J. Anderson, of Lake Nipigon, wrote him a letter providing information regarding the aboriginal population living at Lake Nipigon. He indicated that there were a few people whom he did not include and whom he assumed had been counted in the Lake Superior census. His letter reads in part as follows:

Your favour of 4th October last reached me Yesterday Evening - and I hasten to furnish you with the information you request - at least as far as lies in my power.

1stly The Total number of men, women and children on the 1st June at Lake Nipigon were [as follows]

Married		Single Adults		Children		Total		
Total								
Males	Females	Males	Females	Males	Females	Males	Females	Males & Females

59	82	37	34	72	73	168	189	357
----	----	----	----	----	----	-----	-----	-----

Population increasing

There is also a Nipigon Woman married to a Canadian Servant who has Four Boys and One Girl - A single Indian Servant belonging to the Michipicoton Tribe - 2 Fort William Indians, servants, with their wives and 2 boys & 1 Girl also a half breed and his wife both born on Lake Superior - suppose the above Indians have been included in the Censuses of their respective tribes. Some Deaths and Births have occurred since then and a corrected census shall be sent to Fort William next spring for your use.
 ...

[Doc. No. 4]

35. On January 11, 1850, R. Bruce, Superintendent General of Indian Affairs, wrote to W. B. Robinson providing him with instructions for the meeting to take place during the upcoming summer with the First Nations of Lakes Superior and Huron.

His letter reads as follows:

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.

Having reference to the proceedings already taken with a view to adjusting the claims of the Indians and also to a late report on the subject from the Commissioner of Crown Lands, 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 Comr. of Crown Lands, and further to authorize you on the part of the Government to negotiate [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.

It is His Excellency's desire that you should communicate to the Indians the fact of your appointment and that it is your intention to proceed to Lakes Superior at such time as may be found most convenient for meeting the Chiefs 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.

You will also warn the Indians against listening to the counsels of any one who may advise them to resort to criminal proceedings which will not only render the parties participating in them amenable to the laws of the Province but likewise entail expenses which will necessarily diminish [sic] the fund from which alone the means of affording compensation can be obtained.

[Doc. No. 5]

6. A report of the Executive Council, dated April 16, 1850, indicates that Robinson was to be informed of several items regarding the terms of the upcoming treaties, including the amount and method of distributing the money, the distribution of presents, the amount of territory to be included and the provision of an advance for Robinson's expenses:

Extract of a Report of a Committee of the Honorable [sic] the Executive Council on MATTERS OF STATE, dated the 16th April 1850 - approved by His Excellency the Governor General in Council on the same day.

The Committee of the Executive Council have had under consideration, on Your Excellency's reference, a letter from the Honorable [sic] James H. Price, Commissioner of Crown Lands, in which is stated that the Honorable [sic] Mr. Robinson, the Commissioner appointed to treat with the Indians on Lakes Superior and Huron for the surrender of their rights to the territory on the North Shores of those Lakes, desires information on certain points mentioned by the Commissioner. And the Committee of Council are respectfully of opinion that Mr. Robinson should be informed that the amount of money actually circulatable for the purpose of the negotiation is about £7500, that it is not considered expedient that any portion of the compensation money should be paid in presents; that the most desirable mode of compensation would be by perpetual annuities, and that any sum paid in cash which ought not to exceed £5000, and which the Committee of Council, in view of the interests of the Indians think should be as small as possible, would be considered as a deduction from the Capital sum of which the Annuities would be the interest; that 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 Committee of Council are of opinion that Mr. Robinson should endeavour 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 - And that in case that be unattainable that he should obtain a cession of the territory as many miles inland from the coast as possible, and if it should be found impracticable to obtain a cession of the entire coast in the terms prescribed that Mr. Robinson should negotiate for the North Eastern coast of Lake Huron and such portion of Lake Superior Coast as embraces the location at Mica Bay and Michipicoton where the Quebec Mining Company have commenced operations. With reference to that branch of Mr. Robinson's enquiry which relates to the mode of distributing presents, 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. The Committee of Council are of opinion that the Commissioner of Crown Lands should be authorized to make such advance to Mr. Robinson on account of his expenses as he may think reasonable, and that he should communicate the substance of this Minute to Mr. Robinson.

[Doc. No. 6]

7. A short time later, an unidentified sent in a census to the Indian Department of the aboriginal population at Lake Nipigon. The census listed the families, including the LaGuardes, and also divided the people into the clans of Moose, Barbotte, Loon, Eagle, Bear, Kingfisher, Lynx, Beaver, Carp and Halfbreed (1 female). The LaGuardes were listed under the Loon clan. The "Company Servants-Indian & halfbreed" were listed separately as composing 17. A note at the bottom of the page

indicates that “* Indians marked thus [have?] a right to share in the proceeds of the sale of the Fort William Lands, on the Grounds of being descended from Indians of the Grand Portage - or on the [part?] of their wives being descendants of those Indians” [See Doc. No. 7].

8. On August 12, 1850, R. Bruce wrote a letter to W. Bl. Robinson in which he indicated that he had been authorized to treat with the Native people on Lakes Superior and Huron for the surrender of their territory. Bruce indicated that he was to follow the terms set out in the Minute of the Executive Council of April 16, 1850. His letter has been extracted below:

Having reference to my letter of the 11th January last I am directed by His Excellency the Governor General hereby to authorize you to treat with the Indians on Lakes Superior & Huron, for the Surrender of their claims to the territory on the Northern Shores of those Lakes. With respect to the terms of the said treaty you will be guided by the approved Minute of the Hon. the Executive Council dated the 16th April 1850. and such further instructions as you may receive from the Secretary of the Province.

[Doc. No. 8]

9. J. Swanston, Postmaster at Michipicoten, wrote to George Simpson, Governor of the Hudson's Bay Company at Lachine, on August 21, 1850. In this letter, Swanston makes reference to “halfbreeds”:

Your much esteemed favor [sic] of the 24th ulto from the Sault St Marys, together with accompanying power of attorney and receipt to be signed by Edward Heron, was handed to me on the 5th Inst by Mr. Collector Wilson in regard to the forms I shall use by best [indications?] in trying to to secure something for Chastellain, but at present I am not certain whether the Government will acknowledge the rights and claims of the half breeds, 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 and Neh bai ni co ching, whose lands are situated on American Territory.

As soon as Edward Heron reaches this, I will get him to sign the receipt, after which I will transmit it to you by the first opportunity that may offer afterwards.

With regard to the goods sent here for our sale shop from the Sault, I have returned none of them as yet, as it is probable that the whole may be required, should the Indians of this place, be paid this summer the first Instalment for their lands, as nearly the whole of their funds will be brought hither, as I cannot [procure?] upon more than 6 or 8 of our hunters

to go down to the Sault, but after my return from then if I find we have any stock on hand, not likely to be disposed of this season, a portion of them, shall be forwarded as you advise, in the meantime I hope you will under the circumstances approve of my having temporarily deviated from your instructions. ...

...

The servant retiring this summer from the service of the Honble Company in this district are three, namely 1 Sloop 1 Bowman and 1 Middleman, the former will be forthcoming from Moose factory after Shiptime, and the two latter has [sic] been replaced by [my?] engaging for a period of 3 Year [sic], a free halfbreed and an Indian, both of whom will make efficient Servants the other servants whose contracts expired this summer, we have also secured for another term, but in a couple of instances was obliged to give a trifling gratuity in provisions, say 1/2 Bbl Flour and 20[lb?] Pork, but as these individuals were our more efficient servants, I think my deviation from general rules will meet with your approbation. Joseph Boucher we also secured for another term as canoe maker &c &c at a salary of L27.10 and 1 barrel flour p annum, and as he is a very serviceable man at Fort William, we may consider ourselves fortunate in securing him for another period of two years.

As the period for the arrival of the Hon. W. B. Robinson at the Sault St Marys is fast approaching, I purpose starting for that place tomorrow, with the few Indians I can muster to attend the meeting, after my return hither, I shall do myself the pleasure of communicating to you, the terms agreed upon for the cession of the Indians lands to the Government. I have so arranged matters that Actg Postmaster Alexr Robertson will have no difficulty in attending to the affairs of the place during my short absence.

...

[Doc. No. 9]

II. The Signing of the Treaty and the First Paylists

10. Treaty No. 60, known as the Robinson-Superior Treaty was signed on September 7, 1850, by W. B. Robinson, and J. Peau de Chat, J. Ininway, Mishe-muckqua, Totomenai, Chiefs, and J. Wasseba, Ahmutchewagaton, M. Shebageshick, Manitoshanise, and Chigenaus, Principal Men, "Ojibway Indians". The treaty reads as follows:

This Agreement, made and entered into on the seventh day of September in the year of Our Lord one thousand eight hundred and fifty, at Sault Ste. Marie, in the Province of Canada, between the Honorable [sic] William Benjamin Robinson, of the one part, on behalf of Her Majesty the Queen, and Joseph Peau de Chat, John Ininway, Mishe-muckqua, Totomenai, Chiefs and Jacob Wasseba, Ahmutchewagaton, Michel Shebageshick, Manitoshanise, and Chigenaus, Principal Men of the Ojibway Indians inhabiting 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. And also the islands in the said lake within the boundaries of the British possessions therein, of

the other part, Witnesseth: that 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's Posts of Michipicoton and Fort William; they, the said Chiefs and Principal Men do freely, fully and voluntarily surrender, cede, grant and convey unto Her Majesty, Her heirs and successors forever, all their right, title and interest in the whole of the territory above described, save and except 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. And should the said Chiefs and their respective tribes at any time desire to dispose of any mineral or other valuable productions upon the said reservations the same will be at their request sold by order of the Superintendent General of the Indian Department for the time being, for their sole use and benefit and to the best advantage. And the said William Benjamin Robinson, of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees to make the payments as before mentioned; and further allow the said 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 heretofore 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. The parties of the second part further promise and agree that they will not sell, lease or otherwise dispose of any portion of their reservations without the consent of the Superintendent General of Indian Affairs being first had and obtained; nor will they at any time hinder or prevent persons from exploring or searching for minerals or other valuable productions in any part of the territory hereby ceded to Her Majesty as before mentioned. The parties of the second part also agree 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. 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; and provided, further, that the number of Indians entitled to the benefit of this Treaty shall amount to two-thirds of their full benefit thereof, and should their numbers at any future period not amount to two-thirds of twelve hundred and forty, the annuity shall be diminished in proportion to their actual numbers.

Schedule of Reservations made by the above named and subscribing Chiefs and Principal Men:-

First.- Joseph Peau de Chat and his tribe, the reserve to commence about two miles from Fort William (inland) on the right bank of the River Kiministiquia; 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.

Second.- Four miles square at Gros Cap, being a valley near the Honorable [sic] Hudson's Bay Company's post of Michipicoton for Totomenai and his tribe.

Third.- Four miles square on Gull River, near Lake Nipigon, on both sides of said river, for the Chief Mishemuckqua.

[Signed,] sealed and delivered at Sault Ste. Marie the day and year first above written in presence of:

George Ironside,
S.I. Affairs
Arthur P. Cooper,

W. B. Robinson [L.S.]
Joseph Peau de Chat X [L.S.]
John Ininwayu, X [L.S.]

[Doc. No. 10]

11. On September 23, 1850, Robinson wrote to Simpson thanking him for the assistance of his employees in the recent making of the treaty on Lake Superior. He also requested that the company pay the Native people their annuities in the future.

His letter has been excerpted below:

I recd your letter today & am glad to find you are at hom as I fully intended writing this very Evening, to say how much I was indebted to your Mr. Swanston & Mr McKenzie for their judicious assistance ever since I took the Indian quarrels in hand. They furnished me with a very perfect census of the Indain population of Lake Superior; & Mr Swanston arrived in good time to keep Messrs. Peau de Chat & Co in good order. Mr. Buchanan also gave me every assistance in his power & I fear he found me a troublesome customer, as we used your upper ware House for a council chamber besides making very free with all the house that the Military have left him in possession of.

...

By the way, before I forget it, can the Govt not make some arrangement with your Hon: Company to pay the annuity of £500 every year to the Indiasn on Lake Superior? It will cost a good deal to send a Gentn up with it every year - it is to be paid by th first of Augt in each year, & if you were authorised to pay it & draw ont he Govt fo the Ant: it would save much trouble & expense. If you allow me to suggest it, I will do so - for I fear in the multitude of their political affairs the pooer Indians may be again forgotten -& the next thing we hear will be complaints of a breach of faith, & tho' innocent of the affair I shall be blamed.

Our best respects to Lady Simpson & family.

[Doc. No. 11]

12. Robinson authored an official report, dated September 24, 1850, which he sent to Bruce. In it, he makes mention of "halfbreeds" with regard to population, as well as regarding a request from the Chiefs at Sault Ste. Marie for land. The Treaty Commissioner appears to make a distinction between the "halfbreeds" who were included in the Treaties and those who were not and for whom the Chiefs requested grants of land. Robinson's report, covering both treaties (at Lake Huron and at Lake Superior) reads as follows:

I have the honor [sic] herewith to transmit the Treaty which on the part of the Government I was commissioned to negotiate with the tribes of Indians inhabiting the northern shore of Lakes Huron and Superior; and I trust that the terms on which I succeeded in obtaining the surrender of all the lands in question, with the exception of some small reservations made by the Indians, may be considered satisfactory. They were such as I thought it advisable to offer, in order that the matter might be finally settled, without having any just grounds of complaint on the part of the Indians.

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.

I explained to the chiefs in council the difference between the lands ceded heretofore in this Province, and those then under consideration, they were of good quality and sold readily at prices which enabled the Government to be more liberal, 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: whereas 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.

Neither did the British Government contemplate the removal of the Indians from their present haunts to some (to them) unknown region in the far West, as had been the case with their brethren on the American side.

I told them that the two chiefs who were In [sic] Toronto last winter (Shinguacouse and Nebennigoebing) only asked the amount which the Government had received for mining locations, after deducting the expenses attending their sale. That 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.

There were twenty-one chiefs present, about the same number of

principal men, and a large number of other Indians belonging to the different bands, and they all preferred the latter proposition, though two of them (Shinguacouse and Nebennigoebing) insisted on receiving an annuity equal to ten dollars per head.

The chiefs from Lake Superior desired to treat separately for their territory and said at once in council that they accepted my offer. I 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.

I 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; and that as a large majority of them had agreed to my terms I should abide by them.

I accordingly 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--all the chiefs and others were present. I told them I was then ready to receive their signature; the two chiefs, Shinguacouse and Nebennigoebing, repeated their demand of ten dollars a head by way of annuity, and also insisted that I should insert in the treaty a condition securing to some sixty half-breeds a free grant of one hundred acres of land each. I told them they already had my answer as to a larger annuity, and that I had no power to give them free grants of land. 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.

I trust his 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 a promise of accounting to them for future sales. 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.

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, I 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 was so reasonable and just that I had no difficulty in making them comprehend it, and it in a great measure silenced the clamor [sic] raised by their evil advisers.

[Note by Morris:] "* The annuities under these treaties have recently been increased. the following item having been inserted in the Supplies Act of Canada. viz., "Annual grant to bring up annuities payable under the Robinson Treaty to the Chippawas [sic] of Lakes Huron and Superior, from 96 cents to \$4 per head, \$14,000."

In allowing the Indians to retain reservations of land for their own use I 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 be securing these to them and the right of hunting and fishing over the ceded territory, they cannot say that the Government takes from their usual means of subsistence and therefore have no claims for support, which they no doubt would have preferred, had this not been done. The reservation at Garden River is the largest and perhaps of most value, but as it is occupied by the most numerous band of Indians, and from its locality (nine miles from the Sault) is likely to attract others to it, I think it as right to grant what they expressed a desire to retain. There are two mining locations at this place, which should not be finally disposed of unless by the full consent of Shinguacouse and his band; they are in the heart of the village and shew no indications of mineral wealth, they are numbered 14 and 15 on the small map appended to Messrs. Anderson and Vidal's report. I pledged my word on the part of the Government that the sale of these locations should not be completed, and as the locatees have not, I believe, complied with the conditions of the Crown Lands Department there can be no difficulty in cancelling the transaction.

The chiefs are desirous that their several reservations should be marked by proper posts or monuments, and I have told them the Government would probably send some one next spring for that purpose. As I know many of the localities I shall be able to give the necessary information when required.

When at Sault Ste. Marie last May, I 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. I found this information very useful at the council, as it enabled me successfully to contradict the assertion (made by those who were inciting the chiefs to resist my offers) that there were on Lake Superior alone, eight thousand Indians. The number on that lake, including eighty-four half-breeds, is only twelve hundred and forty--and on Lake Huron, about fourteen hundred and twenty-two, including probably two-hundred half-breeds; and when I paid the Indians they acknowledged they knew of no other families than those on my list.

The number paid, as appears on the pay list, does not show the whole strength of the different bands, as I was obliged at their own request to omit some members of the very large families. I have annexed to this Report the names of the chiefs, their localities, and number of souls in each band as recognized by me in apportioning the money, thinking it will be useful when paying the annuity hereafter.

This information may I believe be fully relied on for Lake Superior, but the census for Lake Huron is not so perfect; and I would suggest that Captain Ironside should be furnished with copies of that document and also of the pay-lists, in order that he may correct, in time, any errors that are found to exist.

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 I came 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. To this no one, not even their advisers, could object and I heard no more on the subject. 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.

...

It will be seen on referring to the treaty that I have kept within the amount at my disposal. Of the £4,160 agreed to by me to be paid to the Indians of both lakes, there remains £75 unexpended. I could not from the information I possessed tell exactly the number of families I should have to pay, and thought it prudent to reserve a small sum to make good any omissions, there may still be a few who will prefer claims, though I know of none at present. If not, the amount can be paid next year with the annuity to such families as are most deserving; or it may be properly applied in extinguishing the claims made by the Lake Simcoe Indians, should it appear on inquiry to be just.

...

I have much pleasure in acknowledging the valuable assistance afforded me by all the officers of the Honorable [sic] the Hudson's Bay Company resident on the lakes; and the prompt manner in which their Governor, Sir George Simpson, kindly placed their services at my disposal.

The report made last year by Messrs. Anderson and Vidal I found of much use to me, and the long services and experience of the former gentleman in Indian affairs enabled him to give me many valuable suggestions.

Captain Cooper and his officers by attending at the council, and otherwise, gave me most cheerfully all the aid in their power; and Captain Ironside, of your Department, with his assistant, Assickinach, were of essential service to me.

...

I have, in course of my negotiations with the Indians on the present occasion, collected some information which may be useful to your Department and will at an early day send it to you.

I will thank you to lay the two treaties accompanying this Report before His Excellency, and trust they may meet with his approval.

[Doc. No. 12-emphasis

added]

13. In a letter dated October 15, 1850, Simpson wrote to Robinson offering to pay the annuities under the Robinson Treaty to the First Nations of Lake Superior. He

asked for a list of people to be paid, or, in the alternative, offered to take a census during the upcoming winter. Simpson's letter follows:

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, & the distribution of their presents. I beg, through you, to tender to the Government the services of the Hudsons Bay Company in making those payments and distributions at their establishments of Michipicoton and Fort William on the 1 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. It would be necessary, however, we should 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 population of Lake Superior, after such form as may be pointed out.

[Doc. No. 13]

14. The Robinson Treaties were ratified by Order-in-Council on November 12, 1850.

The Order has been excerpted below:

Extract form a Report of a Committee of the Honorable [sic] the Executive Council on LAND APPLICATIONS, dated 12th November 1850 approved by His Excellency the Governor General in Council on the same day.

In the letter of the Honble W. B. Robinson, submitting for the approval of Your Excellency two Treaties of surrender by the Indians inhabiting the northern shore of Lakes Huron and Superior which he was Commissioned on behalf of the Provincial Government to negotiate.

The Committee recommend that the Treaties be ratified and confirmed & 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.

[Doc. No. 14]

15. In a letter of April 19, 1851, Robinson informed Bruce of the Hudson's Bay Company's offer to pay the treaty annuities. He wrote as follows:

I have the honor [sic] to inclose [sic] you a letter from Sir Geo. Simpson, accompanied by copies of documents which were by him transmitted to the Govt. in 1845.

I would respectfully direct your attention to Sir George's letter of 15 Oct. last, on the subject of paying the annuity to the Lake Superior Indians, in order that any communication with him on the subject may be made at once, and before he will probably be leaving Lachine for the interior.

You will observe that Sir George offers to pay in money the amt. of the annuity free of any charges [per?] agency, on being furnished with a list of the Indians entitled to receive it.

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.

You will please bear in mind that according to the terms of the Treaty the money is to be paid in the month of Augt every year to the Lake Superior Indians.

With respect to issuing presents to the Sault Ste Marie Indians & those of Lake Superior, you are aware I think, from what you heard from the Chiefs, last summer, of the great anxiety to receive them at their respective places of residence, that is, at Garden River, for those residing near Sault Ste. Marie, & Michipicoton & Fort William for the Indians of Lake Superior. This subject was repeatedly urged on me by the Chiefs, who wished a promise to that effect should be inserted in the Treaty. I explained to them that [I] had no power to do anything of the kind - but that I would represent their wishes to the Head of the Indian Department.

...

[Doc. No. 15]

16. On June 16, 1851, D. Finlayson, an Agent of the Hudson's Bay Company, wrote to Bruce reiterating Simpson's offer to distribute the annuities to the Michipicoten and Fort William signatories at no charge. In his letter, he also suggested methods of making these payments:

I have the honor [sic] to acknowledge the 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 Octr. last to the Hon.ble Wm 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 by the Government, as compensation for certain lands ceded by them on the north shore of that Lake, implies a guarantee of the payment of the said annuities, without deduction to the Indians entitled to receive them.

In reply, I beg 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; leaving 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.

With reference to the mode of making these payments, I am at a loss what to suggest, not knowing whether the annuities are payable in specie, or in Bank Notes; if payable in the former, the necessary sum will, I fancy, have to be forwarded from Toronto, to the Sault de St Marie, and thence, by our Craft to Michipicotton [sic] and Fort William; but if in the latter, a

sufficient sum, with some silver for change-can be procured at the branch of the Bank of British N. America, at the Sault de St. Marie, which may be returned, by a cheque for the same amount payable in Montreal.

I hope, it is unnecessary to add that, every facility will be afforded by the Hudson's Bay Co. for sending an officer of the Indian Department to be present at the distribution.

[Doc. No. 16]

17. Simpson wrote a letter to J. Swanston, the Postmaster at Michipicoten, on June 30, 1851, in which he provided instructions on the distribution of the annuity money at his post under the Robinson Treaty. He indicated that receipts were to be taken from each head of family and signed by the Chief and two of the company's officers. His letter reads as follows:

Herewith I transmit copy of a letter to my address from the Hon.ble Col. Bruce, acting Superintendant General of Indian affairs under date 27th Inst: together with sundry papers therein enclosed, and of my reply, in reference to the payment of the annuity to the Lake Superior Indians to be made on or before the 1st August next at the Company's posts of Fort William and Michipicoton.

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 L485 is to be distributed this season (L15 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 hand, and the resident missionary. These instructions may be literally complied with at Fort William but as there is no resident missionary at Michipicoton I have proposed to substitute for his signature that of two of the company's officers. The Receipts must be taken in duplicate and sent to Lachine. The originals by one Conveyance, and the duplicate by another. You may have been familiar with a form of receipt last year by government, when you paid out the L2000, but if not, I think the annexed form might be adopted [included below].

... [signature]

P.S. In the event of your having forwarded all the Cash on hand to the Sault, before this reaches you, I have directed Mr. Hargrave or in his absence, Mr. W. M. Simpson, to meet your order for £485.10.0 in specie.

[Doc. No. 17]

18. On April 9, 1852, A. McDonnell of Toronto, wrote to Mr. Cameron on behalf of the Lake Superior First Nations indicating that they had not received the reserve they had desired. In his letter, he also commented on the "half breeds" living at Sault Ste. Marie who were not in receipt of presents or payments from the government

but who were told by Robinson that they would be granted their lands. The letter has been extracted below:

I take the liberty of thus addressing you in a friendly and unofficial [sic] kind of communication because I know that you take a deep interest in all that relates to the advancement of the Country generally and trust through you to direct the attention of the Government to certain matters which some time since were laid before it, which invite consideration & claim attention, Justice demands its adjustment; - I have been written to on the behalf of bands 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 [sic] de St Marie. they informed me that they have forwarded a petition upon the subject. They allege 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, - I was present at the treaty I know that the reserves as therein described are 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 is to blame. At the time I knew that the reservations as made by him were not in accordance with the views of his band. Yet 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 after all that had occurred [sic] any motive but the true one would be ascribed to me, should any new difficulty arise I was therefore silent upon the subject but foresaw that future difficulty would arise respecting this surrender to the Crown, there were other matters besides this which has [sic] caused a general dissatisfaction with all the Indians upon the Lakes in regard to it: You must understand that by two separate treaties the surrender to the Crown was made one surrendering that portion of Country from the head of Lake Superior to Batchewaning bay on that Lake the other included the Country from that bay to Lake Huron and along Lake Huron to the Georgian bay; and with respect to the latter treaty, I am instructed to urge upon the Government the fulfillment [sic] of that which was understood to be agreed upon upon the part of the Govt tho not exactly stipulated for in the Articles of treaty[.]

Along the St. Mary river and particularly at what is called the Saut [sic] de Ste Marie 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 origin [sic] some who were formerly employés, in the Hudson bay & 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 [sic] upon these pieces of land & farms of Indian mothers are emphatically the children of the soil and quite as much entitled to the consideration of the Government as the Indian of pure blood, yet they do not participate in the benefits arising from payments or presents by the Government; and generally they are better educated and better conducted than most of the immigrants which we receive. In order then 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 thus occupied was at the request of the Indians prepared by me and offered to the Commissioner Mr Robinson. He told me there was an act which prohibited the Government making free grants of Land and to enable the Government to fulfil such agreement a special act of parliament would be required; he wished that I would 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 he urged that the Govert would not be so unjust as to exact from these parties actual purchase money and suggested that these people and also the Indian Chiefs should petition the Government upon the subject, and promised to urge upon the Government the fulfillment [sic] these their wishes, under these circumstances deeming that the stipulation proposed would be an unnecessary clog to the immediate perfecting the surrender the treaty was executed and Mr Robinson was the bearer of it together with the proposed petition to Government as early as Ocbr 1850. These petitions have never yet been replied to and the petitioners are discontented and complaining, some have been induced to abandon their little properties for a trifle to parties who have represented to them that the Government will exact same for them which they cannot pay or drive them out of possession, others are fearful of giving any attention to the cultivation of them apprehensive that they will be dispossessed of that which they have improved and enjoyed for 20, 30, and 40 years. You know that for some years past I have been deeply interested in the Country above I believe that there exists a wealth which can only be developed by individual energy and enterprize which if fostered and not thwarted by unwise measures, that development will be as rapid and astonishing as it is upon the American side. The first step to be taken is to removed 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 as as [sic] our neighbors [sic] [term?] it prospect, and I will promise you that speedily you will have from the other side, a crop upon our coast hundreds of parties making similar examinations and explorations as are now being carried on upon the American side. As a preparatory step I therefore offer my 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 [mar?] or retard that progress and advancement which I am so much interested in forwarding as speedily as possible upon our side of the Lake.

At the risk of being tediously lengthy I cannot abstain from relating a case of extreme injustice which the attention of the Government to the Petitions referred to would relieve[.] It is this, at the Saut [sic] is 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 40 years past he has lived upon it and raised a large family all whom are tolerably well educated and highly respectable during all this period no one has ever set up any claim to his property until about 12 months ago a man by the name of Johnson living upon the opposite of the river (in the state of Michigan) came to his house and demanded possession of all his property his dwelling house his store house and other out houses, informing Biron that he Johnson had purchased the property from the Agent of Crown Lands, whose certificate of purchase he Johnson then held Wilson is the collector of customs at the Saut [sic] and acted as Crown land agent, and tho living within a few hundred yards of Biron, and in the habit daily of seeing him , still he never even intimated to Biron that any party sought for his property. I advised Biron not to give up his property to Johnson that the very fact of his having lived upon for near half a century should give him a title he petitioned the Government and I represented the conduct of Wilson to Mr Price but I suppose that his going out of office last summer is the cause that the Petition has as yet been unattended to. The only motive which could have influenced Wilson to have acted as he did was that he [found?] that he could with impunity make the office the means of gratifying his [eximosity?] to this poor old man and his family with whom he has been at

variance [sic] since ever Wilson sent to the Saut [sic], this is not a solitary instance of the injustice and oppression exercised by Wilson, many others I have reason to believe will be brought before the notice of the Government.

Excuse this long [epistle?] read it when you have leisure and then as you deem it worthy of consideration treat it.

[Doc. No. 18]

19. In a letter dated June 30, 1852, Simpson wrote to J. McKenzie, of Michipicoten, providing instructions on the distribution of annuity money at that post under the Robinson Treaty. In this letter, he indicated that last year's lists were to be followed. The letter is excerpted below:

At the request of the Hon: Colonel Bruce Superintendant General of Indian Affairs, I have undertaken that the annuity to the Lake Superior Indians shall be distributed this year by the H.B.Co's officers at Michipicoton & Fort William in specie on or about the 1 August.

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. The census lists of last season are to be followed again, modifying them as deaths & other changes in the interval may render necessary. To save the trouble of writing duplicate receipts for every head of a family, Colonel Bruce has handed printed forms for the purpose, one of which I enclose, & have also forwarded to your address at the Sault Ste Marie 30 sheets more, which I hope may safely reach you. I also enclose copy of correspondence between myself & Colonel Bruce on this subject, to which I beg reference for further details.

You will be pleased to transmit to me here the receipts in duplicate, on copy to be forwarded to the Indian Department & one copy kept in the office.

[Doc. No. 19]

20. F. Ermatinger, of the Hudson's Bay Company at Fort William, authored another payroll showing the annuity payments paid in 1852 to the Fort William "Widows & Half Breeds". In it, he listed the "Half Breeds" separately and by name, who totalled totalling 14 families or 61 people for 1850 and 1851 and 56 people for 1852. The payroll reads as follows:

Payments to Fort William Indians 1852

...

	Balance	Annuity	
	1850 & 1851	1852	Total

Half Breeds

Henry Akibie H	3	[crossed out]	"	7	6	1	6	3	1	13
	9									
Joseph Boucher	9	1	2	6	3	18	9	5	1	3
Michel Collin Senr	8	1	"	"	3	10	"	4	10	"
Michel Collin Jr	3	"	7	6	1	6	3	1	13	9
William Corbeau H2	3	[crossed out]	"	12	6			2	3	9 2
	16	3								
Michel Deschamps	3	"	7	6	1	6	3	1	13	9
Joseph Deschamps H	2	[crossed out]	"	5	"	"	"	17	6	1
	2	6								
Isidore Dumoulon	4	"	10	"	1	15	"	2	5	"
J. Bte Faigneant	8	1	"	"	3	10	"	4	10	"
John Finlayson	4	"	10	"	1	15		2	5	
Michel Lambert	3	"	7	6	1	6	3	1	13	9
Charles Louis	8	1	"	"	3	10	"	4	10	"
J. Bte Vizina	3	"	7	6	1	6	3	1	13	9
Francois Vizina	3	"	7	6	1	6	3	1	13	9
Washirkons Sachakan Indians	28	3	10	"	12	5	"	15	15	
"										
		250	32	5	"	112	17	6	145	
	2	6								

[Doc. No. 22]

21. Another payroll drawn up by Ermatinger for the 1852 annuity payments at Fort William indicates that the "Half Breeds" totalled 16 families or 77 people. The same family names are included, with some variations in the numbers in certain families, and one extra person is added [See Doc. No. 20.].
22. J. Mackenzie wrote up a composite payroll of annuity payments to the Michipicoten "Half Breeds" for 1850, 1851 and 1852. In it, he lists the "Half Breeds" separately and by name, who total 28 families, or 86 people paid for 1850 and 1851, and 91 paid for 1852 [See Doc. No. 23.].
23. The payroll for the Michipicoten Band for 1852, authored again by J. Mackenzie, lists the "Half Breeds" as totalling 27 families or 82 people. One individual listed in the 1850 and 1851 list does not appear in this list. The payroll showing the "halfbreeds" reads as follows:

Michipicoten Half-Breeds

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

WITHOUT PREJUDICE: DRAFT, FOR DISCUSSION

Fort William 3d August 1852

NAME.	No of Persons.	Amount £ s p	Currency.	SIGNATURE.	Name of Witness to payment.	REMARKS.
...	123	52 5 6				
Brought forward						
Half Breeds						
Charles Begg 3		1 5 6		Charles Begg		paid 1st Augt 1852
Toussaint Boucher 3	1	5 6		Toussaint Boucher	Alex Robertson	" "
Narcisse Chastellain 1	"	8 6		MacKenzie	" "	" "
Amt transmitted to [illegible word] where this man resides						
Joseph Collin 6	2	11 "		Thomas Lam[illegible]	"	15 th Septem.
	"	" "		St. St Marie	"	" " " "
Pierre Deschamps 3	1	5 6		Pierre Deschamps	Alex Robertson	
" 4th						
August.						
Joseph Dubois 7	2	19 6		Joseph Dubois	Tootomine	" " "
Edward Heron 4	1	14 "		Edward Heron	"	1st " "
J. Bte Keotasine	3	1 5 6		J. Bte. Keotasine	Tootomine	" 4th " "
Thos Samplier 1	"	8 6		Thomas Samplier	"	4th " "
Louis Denis Delaronde 5	2	2 6		Louise Laronde	Tootomine	" 3rd " "
Amt paid Mr. Larondes Daughter at his request.						
David Perdrix Blanche 1	"	8 6		David Perdrix Blanche	Alex Robertson	" 4th " "
Joseph Moriseau 3	1	5 6		Joseph Moriseau	Alex Robertson	" 4th " "
Frans Mizzobec 6	2	11 "		Frans Mizzobec	Alex Robertson	" " " "
David Nitawapin 1	"	8 6		David Nitawapin	Tootomine	"
3rd " "						
Alexr Robertson 1	"	8 6		Alexr Roberston	"	3rd Septem "
William Robertson 7	2	19 6		William Robertson	Tootomine	" 4th Aug "
James Saunders 3	1	5 6		Philip Turner	"	15th Sepr "
Amt transmitted to Moose Factory f. P. Turner						
William Scheller 6	2	11 "		William Scheller	Tootomine	" 4thAug."
Antoine Soulier 3	1	5 6		Antoine Soulier	Tootomine	" " " "
Frances Swanson 2	"	17 "		Philip Turner	"	15th Sepr
Amt transmitted to Moose Facotry f. P. Turner						
John Swanston 6	2	11 "		J MacKenzie	"	" " "
Amt paid MacKenzie at Mr Swanstons request						
James Taylor 1	"	8 6		James Taylor	"	4th Aug. "
Joseph Tundess 2	"	17 "		Joseph Tundess	Tootomine	" " " "
Philip Turner 1	"	8 6		Philip Turner	"	" " " "
John Watakiya 1	"	8 6		John Watakya	Tootomine	" " " "
Joe. Skandagance 1	"	8 6		Fr. Skandagance	Tootomine	" 5 th " "
Jane McDonalds Daughter 1	"	8 6		Philip Turner	"	15 th Sepr
Amt. transmitted to Moose Factory f. P. Turner						
	205	87 2 6				

24. In the Michipicoten Band's payroll for 1853, Mackenzie added two names of French origin at the bottom of the list—those of Louis Bouchard (1 person) "At New Brunswick" and Nicholas Chastellain (1 person) "[At] Lac laPluie" [See Doc. No. 24.].
25. The payroll for the Long Lake First Nation for 1853 does not list "Half Breeds" separately, but the families of "Michel" and "Joseph Legarde Senn" are included [See Doc. No. 25.].
26. In 1853, Mackenzie added some names to the payroll showing the payments the Michipicoten "Half Breeds". During this year, they totalled 34 families, or 89 people paid. The payroll is excerpted below:

Payments to Michipicoton Indians 1853 Continued

...

Names	Date	Numbers	Births Deaths		Balance	Treaty
			1852	1852		
Half Breeds	Total					1853
Charles Begg	Aug 5th '53	4	1	"	1 14"	1 14"
Toussaint Boucher	Aug 1st '53	3			1 5 6	1 5 6
Narcisse Chastellain	Jany 9 '54	1		"	8 6 "	8 6
Joseph Collin						
Pierre Deschamps	Aug 6th '53	3	"	"	1 5 6	1 5 6
Joseph Dubois	Aug 1st '53	7	1		2 19 6	2 19 6
Edward Heron	Aug 1st '53	5	1	"	2 2 6	2 2 6
J. Bte Keotasine	[Aug?] 6th '53	4	"	"	1 14"	1 14"
Thomas Samplier	Aug 1st '53	1	"	"	" 8 6	" 8 6
Louis Denis Delaronde	" 6th '53	6	1	"	2 11"	2 11"
David Perdrix Blanche						
Joseph Moriseau	Aug 6th '53	6	"	"	2 11"	2 11"
Francois Mizzobec	Aug 6th '53	6	"	"	2 11"	2 11"
David Nitahwassin	Aug 1st '53	1		"	8 6 "	8 6
Alexander Robertson	April '53			1		
William Robertson						
James Saunders	Aug 3rd "	3	"	"	1 5 6	1 5 6
William Schillen		6	"	"	2 11"	2 11"
Antoine Souliere		4	1		1 14"	1 14"
Frances Swanson						
James Taylor						
Joseph Teindess	Aug 6th '53	2	"	1	" 17"	" 17"
Philip Turner						
John Watakiya	Aug 1st '53	2	"	"	" 17"	" 17"
Jane McDonalds Daughter						
Francois Skandagance	Aug 6th '53	2			" 17"	" 17"
Pierre Plante				1		
Sansong LaGuard	6th Aug '53	2	"	"	" 17"	" 17"
The annuitants dotted off thus [check mark] their receipts have been forwarded to [Lachine?] up to date 17th Aug. 1853						
Joseph Deschamps	5th Sepr	2			" 17"	" 17"
Louis Bouchard	2nd Jany '54	1			" 8 9	" 8 9

Tait enoweskwe	19th Apl '54	8	3 8 "	3 8 "
Kutsoy	2nd May "	1	" 8 6	" 8 6
Kapuponekais Sister	1 Aug	1	" 8 6	" 8 6
William Robertson	19th Feby 55	8	3 8 "	3 8 "

[Doc. No. 26]

27. The 1854 payroll for the Long Lake First Nation indicates that the same families with names of French origin were paid as in the previous year [See Doc. No. 27].
28. The 1854 payroll for the Michipicoten First Nation again includes a separate list for the "Half Breeds". This list, authored by J. Mackenzie, totals 19 families, or 77 people and is extracted below:

Payments to Michipicoton [Indians 1854 Continued]

Total	Date	Numbers	Births Deaths		Balance		Treaty
			1853/4	1853/4	1853/4	1853/4	
1854							
Half Breeds							
Charles Begg	5 9th Aug	4	1	14"	1	14"	
Toussaint Boucher	" "	3	1	5 6	1	5 6	
Pierre Deschamps	4 " "	3	1	5 6	1	5 6	
Joseph Deschamps	2 " "	3	1	5 6	1	5 6	
Joseph Dubois	8 " "	7	2	196	2	196	
Edward Heron	" "	4	1	14"	1	14"	
J. Bte Keotasine	" "	4	1	14"	1	14"	
Thomas Samplier	" "	1	"	8 6	"	8 6	
Louis Denis Delaronde	" "	5	2	2 6	2	2 6	
Joseph Moriseau	" "	6	2	11"	2	11"	
Frans Mizzobec	" "	6	2	11"	2	11"	
William Schillen	" "	7	2	196	2	196	
Joseph Teindess	" "	2	"	17"	"	17"	
John Watakiya	" "	1	"	8 6	"	8 6	
Sansong Laguarde	" "	3	1	5 6	1	5 6	
James Saunders	25 " "	3	1	5 6	1	5 6	
[paeco?] forwd to Lachine	62		267	"	267	"	
William Robertson	19th Feby 55	8	3	8 "	3	8 "	
Joseph Collin [illegible writing]		6	2	11"	2	11"	
Narcisse Chastellain	30th July 56	1	"	8 6	"	8 6	

[Doc. No. 28]

29. The Hudson's Bay Company official at Fort Nipigon drew up a payroll of the annuity payments to the Lake Nipigon "Half Breeds" along with the "Indians" [See Doc. No. 29].

30. The 1855 payroll for the Fort William First Nation lists the "Half Breeds" along with the "Indians". F. Ermatinger listed the pertinent entries, as compared with the 1854 list, as totalling 15 families, or 66 individuals [See Doc. No. 30.].
31. The payroll drawn up by the Hudson's Bay Company Postmaster at Long Lake for 1855 lists the family names of "Morain", "Michel" and "Joseph Legarde Senr" [See Doc. No. 31.].
32. The 1855 payroll for Michipicoten continues to list the "Half Breeds" separately. In this year, J. Mackenzie indicates that there are 20 families, or 80 people paid under this identification. The names listed agree with those on previous lists [See Doc. No. 32.].
33. The Fort Nipigon payroll for 1856, as in the previous years, again lists the names of "Half Breeds" along with those of the "Indians" [See Doc. No. 33.].
34. The 1856 annuity payroll for the Fort William First Nation likewise includes the "Half Breeds". Although they are not identified in a separate list, they are grouped together on the payroll, with the "Indians" [See Doc. No. 34.].
35. In the 1856 annuity payroll for the Michipicoten First Nation, J. Mackenzie continues to list the "Half Breeds" separately and by name, who totalled 27 families, or 107 people. Several names were added, as has been shown below:

Payments to Michipicoton Indians 1856		[Continued]		
	Date	No	Annuity	Total
		1856		
Toussaint Boucher	3 paid 4 Aug 1856	1 5 6	1 5 6	
William Schillen	7 "	2 196	2 196	
Louis Denis Delaronde	5	" 2 2	6 2 2	6
Isidore Dumoulon	5 5	" 2 2	6 2 2.	6
Antoine Souliere	5 "	2 2 6	2 2 6	
Chas Begg	5 "	2 2 6	2 2 6	
Pierre Deschamps	4 "	1 14"	1 14"	
Joseph Deschamps	3 "	1 5 6	1 5 6	
Joseph Dubois	7 "	2 196	2 196	
Edward Heron	6 paid 5th Aug '56	2 11"	2 11"	
Joseph Morrisseau	6 "	2 11"	2 11"	
Francois Mizzobec	6 "	2 11"	2 11"	
Joseph Teindess	2 "	" 17"	" 17"	
John Watakiya	1 "	" 8 6	" 8 6	
Sansong Laguarde	4 "	1 14"	1 14"	
James Saunders	3 "	1 5 6	1 5 6	
J. Bte Collin	4 "	1 14"	1 14"	

Anure^{*}Brasakiya

[paeco?] transmitted to Lachine 26 Aug '56 64 32 146 32 14

6

William Robertson	26th Aug 56	8	3	8	"	3	8	"
Penaisse Widge	1st Sep 4	1	2	2	6	2	2	6
Meekeesipinaise	" " 2	"	"	17	"	"	17	"
Thomas Samplier	23rd Sepr	1	"	8	6	"	8	6
Meenoojishisk	27th " Sepr	5	2	2	6	2	2	6
Shabokee's Mother	"	1	"	8	6	"	8	6
Cassl	29th "	5	2	2	6	2	2	6
Pierre Plante pd at St St Mary's	15th "	3	1	5	6	1	5	6
Narcisse Chastellain	l		"	8	6	"	8	6

[Doc. No. 35]

36. The 1856 annuity payroll for the Long Lake Post continues to include the names of "Halfbreeds" as being paid [See Doc. No. 36].
37. Similarly, the Postmaster at Pic River includes the names of "Halfbreeds" on the 1856 paysheets for that post [See Doc. No. 37].
38. In September 1857, an additional payroll was sent in from the Hudson's Bay Company post at Michipicoten. It is initialled "E.E." and is excerpted below:

List of Payments made on account of Her Majestys Government to Indians & others being Annuity Money for 1857 in addition to the Statements already transmitted" including Narcisse Chastellain (1) at Michipicoten, Louison (2) at the Pic, Sabourin (6) at the Pic, Joseph Legarde Snr (3) at Long Lake, Michell (9) at Long Lake, Metisse (8) at Long Lake, Grand Barbeau's wife and daughter (2) at Long Lake, Morain's mother (2) at Long Lake, Le Grand Perche (2) at Long Lake.

[Doc. No. 38]

39. In 1858, a Special Commission reported on matters regarding "Indians". The Commission's report includes a section on the "Scattered Bands on the Northern Shores of Lakes Huron and Superior". Part of this report makes reference to persons of "mixed descent" at Michipicoten, numbering 52 persons or 11 families. The relevant portions of the report are extracted below:

...

The number of Indians occupying this Reserve [Fort William] is at present 256. They enjoy the advantage of a R. C. Missionary resident among them, under whose instruction they are making a steady though not a very rapid progress. They have 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. They have also several head

of Horned Cattle. For want of Implements however they are still obliged to rely to a certain extent on the produce of the Chase, and their Fisheries. Even with these additional resources they are occasionally pressed by famine. The Missionary himself labours for their education by teaching a School, in which he numbers 25 to 30 pupils. Most of the Indians at this Station have renounced Heathenism but about 70 still cling to the superstitions of their ancestors.

...

The second Reserve is four miles Square at Gros Cap, being a Valley near the Honorable [sic] Hudson's Bay Company's post of Michipicoton for Totomenai and his Tribe.

This Band now consists of 41 families containing 169 individuals; of these 11 families 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. Six families seem to be Whites, and to be borne on the Rolls by mistake.

...

The third tract set apart by the treaty is four miles square on Gull River near Lake Nipigon on both sides of said River, for the chief Mishemuchqua and tribe.

These Indians number about 430, and are almost without exception heathens. About 50 have joined the Roman Catholic Church by the exertions of the Rev. Mr. Chonet. The only attempt at agriculture made by them is to scratch up small patches of ground wherein to plant a few potatoes [sic]. they are principally employed as trappers and hunters, and dispose of their peltries at the Hudson's Bay Company's Posts.

Some dissatisfaction has arisen among these Indians and those near Fort William at the smallness of their annuity. ...

Besides the Indians residing in the above mentioned Reserves, a considerable number are still to be found in the lands ceded by them to the Crown. About the Pic River 30 families of 138 individuals still occupy their old hunting grounds. One white man has attached himself to this band, and claims a share of the annuity for his family, through his wife. Three families too from Long Lake come annually to Michipicoton to receive their money.

...

[Doc. No. 39]

40. In 1859, *An Act respecting Civilization and Enfranchisement of certain Indians* was put into force. This legislation provided a definition of who were to be considered an "Indian", including "persons of Indian blood or intermarried with Indians, acknowledged as members of Indian Tribes or Bands...". Other sections of the Act indicated the circumstances under which an Indian was to be enfranchised, and

provided that the individual was to be allocated land once he left his "tribe or band".

A part of this legislation is excerpted below:

1. In the following enactments, the term "Indian" means only Indians or persons of Indian blood or intermarried with Indians, 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 are then reserved for the use of any Tribe or Band of Indians in common), and who themselves reside upon such lands, and have not been exempted from the operation of the next section under the other provisions of this Act; And such persons and such persons only shall be deemed Indians within the meaning of any provision of this Act or of any other Act or Law in force in any part of this Province by which any legal distinction is made between the rights and liabilities of Indians and those of Her Majesty's other Canadian Subjects; And the term "enfranchised Indian" means any person to whom the next section would have been applicable but for the operation of the provisions hereinafter made in that behalf; And the term "Tribe," includes any Band or other recognized community of Indians.

...

[Doc. No. 40]

41. The 1859 annuity payroll for Lake Nipigon includes the names of "Halfbreeds" as part of the First Nation [See Doc. No. 41.].

42. G. Barnston authored the payroll for the Long Lake Band in 1859, on which he included two "Half Breeds":

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 George Barnston 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 1859

NAME.	No of Persons.	Amount	Currency.	SIGNATURE.	[Name] of	REMARKS.
		£	s p		Witness to payment.	

...

Joseph Lagarde Senr	3	1	5	6	Joseph Lagarde x	let Ironside Half Long Lake Breed
---------------------	---	---	---	---	------------------	-----------------------------------

Joseph Lagarde Junr Wife	1	"	8	6	Joseph Lagarde Junr x	let Ironside " takes fur, has Wife
--------------------------	---	---	---	---	-----------------------	------------------------------------

...

[Doc. No. 42]

43. In 1859, J. McIntyre authored the list of annuity payments to the Fort William First Nation, including to those termed "Half Breeds" on earlier lists [See Doc. No. 43].

III. The Increased Annuities

44. On June 28, 1872, J. Bissett, an officer of the Hudson's Bay Company in Montreal, wrote to W. Sprague, Deputy Superintendent General of Indian Affairs. The purpose of his letter was to acknowledge a letter enclosing a cheque for the annuities for the Lake Superior Ojibway. In the correspondence, Bissett adds that the Company's agents would forward "a Return of those Indians on each settlement who are not entitled to and do not share in the annuity." The letter is quoted below:

I have the honor [sic] to acknowledge the receipt of your letter of the 22nd instant, enclosing official cheque [sic] No 2930 in my favor [sic] for \$196147/100, being amount of balance of annuity for distribution among the Ojibewa Indians of Lake Superior, for the year ended on the 31 March 1872.

The Paylists in the usual form will be forwarded to us later in the year, when they shall be at once transmitted to Ottawa.

The Agents of the Company stationed at Lake Superior will be requested to endeavor [sic] to forward, along with the Paylists, a Return of those Indians on each Settlement who are not entitled to and do not share in the annuity.

On the return of the Company's Chief Commissioner from the Northwest, I shall lay your letter before him, in order that he may be informed of the wish of the Department, and, if necessary, write further to ensure the desired Return being obtained.

[Doc.. No. 44]

45. A census dated July 6, 1874, taken by the Indian Agent at Lake Nipigon, includes various First Nation, as well as the names of families known as "Halfbreeds". Notations beside two of these names indicated that they "Reside permanently in Nipigon District" [See Doc. No. 45].
46. On November 28, 1874, E. B. Borron, M.P. for Sault Ste. Marie, wrote to D. Laird, Minister of the Department of the Interior, requesting that the Robinson Treaty provision for an increase in annuities be enacted and that the annuity of four dollars per capita be paid to the First Nations on the North shores of Lakes Huron and Superior. Borron's letter reads as follows:

I have the honor [sic] to call your 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 per annum for some time past - instead of only [page ripped] dollars per [page ripped] them by the Department. 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.

[Doc. No. 46]

Marginalia on this letter asks that Borron be informed that the matter had been referred to the Department of Justice and that as soon as an opinion was received, he would be advised.

47. Borron again wrote to Laird on April 1, 1875, requesting that "the Indians and Half-breeds" in the his district be paid their increased annuities under the Robinson Treaties. In his letter, he argues that the revenues of the Province had been sufficient to provide for this increase:

In view of the opinions expressed on the House last evening - that the Dominion Government is bound under the Robinson Treaties - to see that the Indians who were parties to that 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.

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".

The only point on which it is absolutely necessary, as I conceive, 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.

The number of Indians entitled to Annuity under these Treaties is I believe 3572 exclusive of the North and South Nipissing Bands and the Indians of Manitoulin Island, who, so far as my information extends, are not included, but on which point you have certain knowledge in the

Department over which you preside.

Assuming the number of Indians to be 3572 and that the increase to be provided for, be three dollars per head, the total sum will be \$ 10 716 00/100 per annum. The capital sum required to produce which at six per cent being \$178,600.00.

Now Sir - in order to satisfy yourself as to whether the territory ceded under the Robinson Treaties, extending from Penetanguishene to Pigeon River, and from the shores of lake Superior and the Georgian Bay to the Heights of Land, you need not go further than your own Colleagues. the Premier and The Hon., 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.

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.

I contend that there is quite sufficient proof at hand to enable you to decide this question at once, and that too in the affirmative.

I trust that you will bring this matter at once to the attention of your colleagues. The Indians and Half-Breeds at Garden River and Sault St. Marie (owing to the stoppage of the Saw Mills - and of almost all demand by the Steamers for cord[wood] coal being now substituted) have had little or no employment this winter, and are in greater straits than I have ever known them to be. Under these circumstances it would be a cruel thing to delay longer the payment to them of the full amount of annuity to which they are so justly entitled and for which they have waited so long and so patiently. Longer delay must shake the confidence of these poor creatures in all treaty engagements, even when entered into in the name of Her Majesty the Queen, and will create a feeling of distrust in the Government of this Dominion which may extend itself to other tribes in the North West.

Hoping that I may receive a decided and favorable [sic] answer on this subject before I leave Ottawa.

[Doc. No. 47]

48. The 1876 paylist for the Michipicoten First Nation at Gros Cap indicates that a total of 68 "Half Breeds" were included as being paid four dollars each at Michipicoten:

INDIAN PAY SHEET

Tootoominaies BAND. Gros Cap. CHIEF.		1876	
Date	No. Name	Person Wives. Boys Girls. Other	No. of Amount Paid.
		Paid.	Relations Persons Paid \$

Ojibways	44	37	62	55	2	200	\$800
Half Breed	9	11	30	18	/	68	272
Where Paid.	Witnessed by.		REMARKS.				
Michipicoten	Gilbert Spence						
"							

Gros Cap Interest Money.
5557

53 48 92 73 2 268 112757

[Doc. No. 50]

49. The paysheets for the Fort William and the Nipigon First Nations for 1876 do not provide separate listings for the numbers of "Halfbreeds" paid [See Docs. Nos. 48 and 49.].
50. On July 16, 1879, Amos Wright, the Indian Agent at Prince Arthur's Landing, wrote a letter to J. S. Dennis, Deputy Minister of the Department of the Interior, asking what he was to do about "halfbreeds" who claimed to be included in the Robinson Treaty. Wright indicated that he had refused to pay them their annuities, but that, as this had caused dissatisfaction, he required further instructions. His letter is extracted below:

I have the honour to inform you, 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.

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.

Will you have the kindness to reply at your earliest convenience

[Doc. No. 51]

51. On the payroll for the same year for the Michipicoten Band, Wright lists certain "halfbreeds" as band members, including Nos. 4, 11, 12, 44 and 68 [See Doc. No. 52.].

52. On August 1, 1879, L. Vankoughnet, Deputy Superintendent General of Indian Affairs, replied to Wright's query that those who were already included on the paylists were to be continued, but that no new names were to be added.

Vankoughnet's letter reads as follows:

In reply to your letter of the 16th Inst. [sic], I have to inform you that under the existing law the [illegible word] and Indian Women White men who have married White men Indian women and their children are not entitled to share in annuity or other moneys payable to Indians.

The Dept. 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. But no new names of persons who are not Indian within the meaning of the Act must be added to the Pay L[ists.]

[Doc. No. 53]

53. Wright also compiled the payroll for the Nipigon Band for that year, on which are included several names of "Halfbreeds", although they are not identified as such. On this payroll, Wright indicates that he had struck off the name of one of these individuals [See Doc. 54.]

54. In his book published in 1880, Alexander Morris, Lieutenant-Governor of the Northwest Territories, briefly outlines the conditions under which the Robinson Treaties were made, and mentions the cordial relations between the "Indians" and the "half-breeds". In the excerpt below, Morris adds that the claims of the "half-breeds" to be recognized by the treaties had been urged by the "Indians":

In consequence of the discovery of minerals, on the shores of Lakes Huron and Superior, the Government of the late Province of Canada, deemed it desirable, to extinguish the Indian title, and in order to that end, in the year 1850, entrusted the duty to the late Honorable [sic] William B. Robinson, who discharged his duties with great tact and judgment, succeeding in making two treaties, which were the forerunners of the future treaties and shaped their course. The main features of the Robinson Treaties--viz., annuities, reserves for the Indians, and liberty to fish and hunt on the unconceded domain of the Crown--having been followed in these treaties. A special feature of the Robinson Treaties, was the adjustment of a claim made by the Indians to be paid, the amount received, by the Government, for the sale of mining locations. This was arranged, by Mr. Robinson agreeing to pay them, the sum of £4,000 and an annuity of about £1,000, thus avoiding any dispute that might arise as to the amounts actually received by the Government. The number of Indians included in the treaties were stated by Mr. Robinson to be: on Lake Superior, 1240, including 84 halfbreeds; and on Lake Huron 1422, including 200 half-breeds.* The relations of the Indians and half-breeds, have long been cordial; and in the negotiations as to these initial treaties, as in the

subsequent ones, the claims of the half-breeds, to recognition, was urged by the Indians.

[Note by Morris:] * The census return of the Department of the Interior for the year 1878 gives the numbers of these Indians as follows:

Chippawas [sic] of Lake Superior.....1,947

Chippawas [sic] of Lake Huron.....1,458

...

[Doc. No. 55]

55. On June 23, 1880, the Chief, Second Chief, HB ("Halfbreed") Chief and people of Pic River petitioned the Governor General in Council for a reserve. This petition reads as follows:

The petition of the Indians and half-breeds of the Pic River Lake Superior, humbly sheweth:

That your petitioners have settled in good number, or propose to settle on land on both sides of the Pic River, near its mouth, immediately north of the property of the Hudson's Bay Company.

That those who have already given their attention to the cultivation of the soil have been amply repaid for their work by fair crops of various kinds, and consequently enjoy already a greater comfort.

That many others of our Band have determined to settle on land near us, expecting thereby to better their condition.

That we beg of Your Excellency, as the worthy Representative of our Beloved Queen, the king mother of Her Indian subjects, to give us as a Reservation said land on both sides of the Pic River, immediately north of the land belonging to the Hudson's Bay Company from its mouth, northwards for a distance of fifteen miles with a width of one and a half mile on each side of the River.

That only three small Reserves were left by the Robinson Treaty to the Indians on the north shore of Lake Superior, that the nearest Reserve is fully one hundred miles from this place, and that our number has more than doubled since 1850 when the Treaty was made.

That though our number was considerable at that time, no Reserve was secured to us by said Treaty owing to the conduct of our chief, who instead of going to Sault Ste. Marie, withdrew to the interior of the land, being afraid of falling into a snare.

And your Petitioners as in duty bound will ever pray.

Chief Antoine Morriseau
Batise [Drundles?] 2d Chief
John Anenyo (HB Chief)
John Finlayson
[Marie?] Mizakisbinas
David Mijazibines
Peter Sokiwe
Jacob Mashkigo
David Sheweindang

Isidore Desmoulins
John Wakodji
Louis Quinwabi
Pierre Saba
Joseph Girabatch
Basile Kitchikwinginobe
Samuel Desmoulins

Gwisens	J. Bte Wisia
Edward Sabourin	Jos Chabigan
George Joka	Widow Oshitigwanens
Louis Ichikobes	Widow Wabinin
Thomas Desmoulins	Widow Moosomin
David Desmoulins	Louis Wissiwa
Peter Nurhaw	Widow Wassegijig
Moses Mowis	Wm. Bibagawgejig
Taokwis	Widow Shos
Widow Sabourin	Paul Jabogijig
Widow Towens	Duncan Desmoulins
Pierre Tokani	Nicholas Groshishens
Pierre Namegijig	Michel Jagadash
John Minawasinens	Frs Shipaw
Paul Kagijegabaw	

[Doc. No. 56]

56. The above petition had been forwarded by J. F. Jamot, of Bracebridge:

...

I had furthermore the honour to forward to you another petition from the Indians and half breeds of the Pic River, by which they ask for a reserve and assign their reasons for so doing.

I hope Right Hon. Sir, to hear that you have given your kind attention to the above petitions and that you have conferred another kindness to the poor destitute Indians children of the forest.

[Doc. No. 57]

No response to this petition was located.

57. J. P. Donnelly, the Indian Agent in Port Arthur, authored the 1884 paylist for the Nipigon Band. He listed each the head and members of each family, including the names of several "Halfbreed" families [See Doc. No. 58.].
58. The 1885 Nipigon paylist was compiled by A. Wright and he included some of the same "Halfbreed" families as in the previous year, as well as some additional absentees [See Doc. No. 59.].
59. In 1886, 1887 and 1888, the Nipigon Band paylists were again written by J. P. Donnelly, and he included the same families he had listed in 1884, with an additional member in 1888, as well as the notation that one of these families had been paid at Red Rock [See Docs. Nos. 60, 61 and 62.].

60. On May 28, 1889, Donnelly wrote to the Superintendent General of Indian Affairs (E. Dewdney), and to the Deputy Minister of the Interior, regarding "Half Breeds" in the Fort William Band. His letters indicated that he had learned that several people in the Band were not entitled to annuities as they were children of White men, but that they had disputed him by claiming that they had been placed in the Band by the Chief. His letter to the Superintendent General reads as follows:

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, 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; and in order to have the matter settled in the most, satisfactory manner, have to ask the Dept to send some Superintendent or Inspector to look into these claims, his decision [sic] will be satisfactory to them, while with mine alone, it would not be so much so, if the Department grants my request, Mr Dingman with whom I am acquainted might be the most satisfactory to me, or as you may think best, and would like him sent as early next month as convenient [sic], as I wish to revise my pay sheet for my next payment.

[Doc. No. 63]

Marginalia on this letter instructs that Donnelly was to enquire into each case and send particulars to the Department, where it would be decided "whether the party concerned is entitled to share in the annuity or not".

61. Donnelly's letter to Vankoughnet is excerpted below:

I wrote your Dept. yesterday on the subject of half Breeds in the Fort William Band and take the liberty of writing you privately; to explain my reason for asking to have an Inspector come here to look into the matter, and if they have a right to establish it or and to the contrary; and be satisfactory all round, but if done by me would cause them to trouble your department with perhaps a good deal of correspondence on the matter Mr Indian Agent McIntyre, who knows all these parties from I may say from their infancy & 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.B.Co man of Quebec, Alex Clarks [sic] family and of B. Dona of this Town a wealthy man, these people were satisfied of their no right, but these others, are backed by the Chief & Ex Chief that their claim is good by being taken in the Band and acknowledged & paid by my predecessor, their 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

[Doc. No. 64]

62. On June 7, 1889, Donnelly's letter was acknowledged. The letter asked for particulars on the individuals involved and reads as follows:

I have to ack. the rect. of your letter of the 28th ult. reporting that there are about thirty-seven persons whose names are on your Robinson Treaty Annuity Pay Sheets whom you do not consider entitled to share in the distribution, and in reply I have to inform you that you should send full particulars after careful enquiry respecting each doubtful case and the Dept will then decide whether the party concerned is entitled to share in the annuity or not.

[Doc. No. 65]

63. Donnelly responded ten days later that he would endeavour to obtain the signatures of the heads of families referred to in his original letter. This letter, dated June 17, 1889, is excerpted below:

In answer to your letter of the 7th instant No. 96244, beg leave to state, that at present, I am puting [sic] in land marks and geting [sic] the different properties and land improvements, and their value; to register in the Fort William Bands [sic] Book, for the subdivision of their Reserve and sent me from your department for that purpose, when this is done I will have the signatures of the different heads of familes [sic], witnessed and sworn to, then 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; for your decission [sic].

[Doc. No. 66]

64. By the 1889 payroll for the Michipicoten/Big Head Band, the "Halfbreeds" were incorporated into the list and were no longer identified as such. The number of these families can be estimated at 17 [See Doc. No. 67.].
65. The 1889 payroll for the Nipigon Band, compiled by J. P. Donnelly lists the same "Halfbreed" families as were listed the previous year, with the addition of two new names and with notations that two of the members (De Larondes) had moved to Red Rock [See Doc. No. 68.].
66. In 1890, Donnelly's listing of those paid annuities at Lake Nipigon included the same people, with the addition of one [See Doc. No. 69.].
67. The Michipicoten/Big Head payroll for 1891 lists the same "Halfbreeds" as band members, as well as an additional two names [See Doc. No. 71.].

68. The Lake Nipigon payroll for the year 1891 lists the same "Halfbreeds" in the Band as were listed in the previous year's list [See Doc. No. 72.].

IV. Ontario's Involvement and the Arbitration

69. A letter dated May 26, 1891, and written by E. B. Borron⁹, then Stipendiary Magistrate, was sent to Oliver Mowat, Attorney General for the province of Ontario. Borron had apparently been appointed to look into the payments of annuities under the Robinson Treaties on behalf of the provincial government. In this correspondence, Borron provided his opinion that "Halfbreeds" whose fathers were White had no right to claim annuities under the Robinson Treaties. He argued that a basis for his postulation could be found in the treaties themselves. The letter has been quoted below:

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 which that have occurred to me in reference to this subject - which I think it is desirable in the interest of the Province should be brought under your notice.

In the first place - I beg to remark that when (in 1850) the Robinson Treaties were made - it is evident - that neither the Hon William Robinson himself nor any of the others who were parties thereto contemplated that there would be any increase in the number of the 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 - that the former would diminish in numb[er] if not disappear altogether - Hence w[e] find in the treaties a proviso - that at any future period the number of [Indians] then (in 1850) treated with should be red[uced] to two thirds - the fixed sums to be [word cut off?] divided among them should be dim[inished] in proportion to their actual numbers [word cut off?] This proviso - has no connection with - nor does it apply to that clause of the treaties which relates to an increase of the Annuity should the Government be able to do so without incurring loss &c &c - but only to the fixed sums or perpetual annuities mentioned in the first clause thereof. The "proviso" alluded to - has apparently been misplaced.

(2) If it should be found that the Province is bound to pay whatever arrears of Annuity - may be still 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. In other words the Province should object to pay either arrears of Annuity, or any Annuity whatever - to half breeds or

⁹ For information concerning the life and career of E. B. Borron, see article entitled "Edward Barnes Borron, 1820-1915" by M. Zaslow in Aspects of Nineteenth Century Ontario. S. H. Armstrong, et al. Toronto: University of Toronto Press, 1974.

quarter breeds, even although such may by the rights [gone?] or otherwise of the Dominion Officers or [connections?] of the Chiefs have been placed on the lists. Those half-breeds which have sprung from the union of Indian Fathers and white Mothers - might be allowed to remain on the lists. I only know of one or two such families in Algoma. But the children of White men - whether legitimate or illegitimate have no legal right (as it appears to me) to be included - [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. I am persuaded that a strict revision of the lists - on behalf of the Province - by parties thoroughly acquainted with the different tribes or bands in the Districts in which they are located - would prove that a great number of those whose names are on these lists - are not Indians - and others who are Indians - never had any claims to the lands or any part of the lands surrendered by the treaties alluded to.

There may be other points on which I may be able to afford more or less information - if I knew all the [points?] to be covered by the proposed Arbitration.

[Doc. No. 70]

The arbitration referred to in Borron's letter is that between Canada, and Ontario and Quebec with regard to which government was to be responsible for the cost of the increased annuities under the Robinson Treaties.

70. Borron authored another letter concerning the claims (to increased annuities) under the Robinson Treaties, which was dated December 31, 1891, and which was again addressed to Mowat. In this letter, the author outlines the importance of determining those entitled to receive annuities:

I have the honor [sic] to transmit herewith a Report on the Robinson Treaties, and the claims of the Indians under the same.

In it I have dealt very fully with what I believe to be the true intent and meaning of these treaties viewed from an impartial stand-point.

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 Indians, be they more or less--the importance of a correct enumeration of those entitled to receive such annuities, is sufficiently obvious.

As pointed out however in this report--some agreement must be come to--or decision obtained--in regard of several matters (therein specified) before the number can be even approximately estimated.

A further Report will be submitted so soon as I am in a position to lay before you any information on this subject which may be of use or value in the discussion of this some-what complicated Question.

[Doc. No. 73]

71. On the same day, Borron submitted a report to Mowat on his review of the claims of the Native people under the Robinson Treaties. In these pages, he outlined his opinion in great detail on those entitled to receive annuities and he stated that a review of the paylists would have to be made in order that "halfbreeds" be taken off.

The report is quoted below:

...
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. W. B. Robinson did not insert in the treaties some provision to protect the people of the Province from the [sic] consequences of an unlimited increase in the number of these Indian Annuitants, each of whom was entitled to receive four dollars yearly. This might have been done by the insertion of a clause in the treaties limiting the sum of money to be thus distributed annually, to twenty or thirty thousand dollars, or such other sum as he might have deemed amply sufficient. It is not at all likely that the omission from the treaty of such a clause was an oversight on part of the Hon. W. B. Robinson. He was too able far-seeing and careful a man to have overlooked the fact, that in terms of the treaties he was making, any great increase in the number of the Indians would be accompanied by a correspondingly large increase in the amount of Annuity the Government of the Province would have to pay.

The fact is, the Hon. W. B. Robinson was, as already stated thoroughly well acquainted with Indians, their character, mode of life and surroundings. A man of this intelligence [sic] 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. And in addition to this, he had before his eyes, "the object lessons" afforded by other tribes and bands of Indians in almost every part of the Continent.

Under these Circumstances Mr. Robinson never could have anticipated that there would be any increase whatever in the number of Indians. On the contrary he was unquestionably led to believe that they would diminish in number. Hence, while careful to make provision in the treaties for a decrease, which he expected, he made no provision whatever for an increase, which he seems to have regarded as impossible.

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. And yet, there is not in the writers [sic] opinion, a point of such vital importance in connection with the claims of the Indians, and (under these Robinson treaties) now being urged on the Provinces of Ontario and Quebec by the Dominion Government.

It is true, that the pay lists and reports of the Department of Indian Affairs show that there has been a great increase in the number of person who have been receiving Annuities. They further show, that this increase has been very remarkable since 1875 when the Annuities were augmented from one dollar to four dollars a head. But the writer, who is in a position to speak with some confidence, has no hesitation in saying, that the paylists 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. They do however,

afford conclusive evidence in his opinion, that a great number of half-breeds and others, have been permitted to draw Annuities, who had no just right or legal claim thereto.

The number of Indians really entitled to Annuities can only be ascertained by a rigorous scrutiny and revision of the pay-lists and census returns, by competent and impartial men. But 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.

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.

At the Meeting at Ottawa in 1884 to which allusion has been made on the ninth page of this report, the Hon. Mr. Robertson then Treasurer of the Province of Quebec asked Mr. Vankoughnet, Deputy Superintendent general of Indian affairs, the following very pertinent question. "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". Mr. Vankoughnet replied- "Those who are recognized by the Government, are Indians.[sic-closing quotation marks] To which Hon. Mr. Robertson responded- "Have we nothing to say in the matter, when we have to pay the Money?" Whereupon Mr. Vankoughnet made the further extraordinary following 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". This bold declaration appears to have silenced both the Hon. Mr. Robertson and also the Hon. A. M. Rose who represented the Province of Ontario at the Meeting.

Coming as it did from the permanent Head of the Department of Indian Affairs, this may be assumed to be the ground which will be taken by the Department and by the Dominion Government on this question.

The writer however takes exception to any such general and sweeping declaration, as being in his opinion contrary to law, to common sense, to the obvious meaning and intention of the Hon. W. B. Robinson and even to the understanding of the Indians themselves when these treaties were made.

Half-breeds the offspring of white men and Indian women, are not Indians and were never intended by the Hon. W. B. Robinson to be included in these treaties. Nor are they legally or morally entitled to participate in the annuities promised to the Indians only.

This contention rests on the following facts:- First that the Hon. W. Be. Robinson acting for and on behalf of the Queen and the Government of the Province of Canada, 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. In his report to the Hon. Col. Bruce Superintendent General of Indian affairs, dated 24th September 1850 already referred to (p. 12) the Hon. W. B. Robinson foreseeing the possibility of such claims, as the Government is now confronted with, writes as follows:- "As the Half-breeds at Saulte [sic] 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 that I came 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 and hey [sic] pleased. To this no one not even their advisors could object, and I heard, no more on he subject."

Nor were these half-breeds understood either by the Hon. Commissioner or by the Indians themselves, to be entitled to share in their reservations of land. This appears from what took place immediately before the signing of the Robinson Huron Treaty. On telling them, says Mr. Robinson in the above mentioned Report "that I was ready to receive their signatures, the two chiefs Shinguacourse and Nebin-migoebing repeated their demand of ten dollars ahead by way of annuity, and also insisted that I should insert in the treaty a condition securing to some sixty half breeds a free grant of one hundred acres of land each. I told them they already had my answer as to a larger annuity, and that I had no power to give them free grants of land. 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."

The "sixty half-breeds" above mentioned were doubtless heads of families and included probably the greater part if not whole of the half-breeds population in the surrendered territory, amounted (as stated bothin [sic] Mr. Robinson's Report and the treaties themselves) to about two hundred and eighty four souls in all.

Again- Mr. Robinson says in he same Report, "The Canadians resident on the lands just surrendered, at Sault St. Marie are very anxious to obtain titles to the land on which they have long resided and made improvements: they applied to me after the treaty, and I advised them to Memorialize the Government in the usual way, setting forth the manner in which they were put in possession by the Military Authorities of the time, and that I had little doubt that the Government would do them justice. I think the survey of the tract should be made so as to interfere as little as possible with their respective clearings, and those who, can show a fair claim to the favorable [sic] consideration of the Government, should be liberally dealt with". Thus it appears- that the Hon. Wm. B. Robinson absolutely refused to commit the Government to any recognition whatever of the claims of the Half-breeds- either to Annuities or to lands, And with a foresight and prudence as remarkable as it was commendable, placed on record his refusal to grant what he regarded, as unreasonable demands.

The final demand of the two chiefs Shinguacouse and Nebin-nigoebing- that MR. [sic] Robinson would insert in the treaty a condition securing to the half-breeds free grants of land a demand which was also refused- warrants the inference that the half-breeds in question were not at that time regarded as members of the tribes or bands of Indians, then treated with -- either by the Hon. W. B. Robinson himself or by the Chiefs and principal men of these tribes.

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?

The Canadians who after the conclusion of the treaties, applied to Mr. Robinson (as just stated) in regard to a confirmation of their titles to the land at Sault Ste. Marie on which they had long resided, and made improvements-- had been, with few exceptions, voyageurs or servants of the Hon. Hudson's Bay Company. Some might have been in the service indeed of the North West Company before the two great Fur-trading Company united. And a very few might have been trading or otherwise employed on their own account. they were mostly French "Canadians, and almost every one of them was or had been married to Indian women and

the father of a more or less numerous progeny commonly known as half-breeds." Such families were to be found not only at Sault Ste Marie but in the vicinity of the all the Hon. Hudson Bay Company's posts in the ceded territory and elsewhere. They were most numerous of course at the principal posts such as Fort William and Michepicoten [sic] on Lake Superior--and La Cloche and Penetanguishene on Lake Huron. At Sault Ste Marie situated midway between [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. They lived in log houses and when not employed by the Hon. Hudson Bay Company or others--as voyageurs, boatmen, couriers or labourers would eke out a subsistence by hunting and fishing or in various other ways. 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 amply supply of fish for use during the winter. In the winter season--cutting and hauling cord-wood for their own use or for sale, and catching rabbits were the principal occupations--when as already said not employed by the Hudson Bay Company or others.

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. But few if any such Canadians or their half-breed children had any regular hunting grounds-- as the Indians always had. Nor were they like the Indians dependent on Game and Fur-bearing animal [sic] for their subsistence. With the exception of the lost on which they might have built and made improvements- these men and their half-breed sons- useful as they were- had no more right title or interest in or to the soil- timber or minerals of the territory, than any other Canadians or sons of Canadians.

They had nothing to cede or surrender and no treaty with them was required. They suffered no loss and had consequently no claim whatever to compensation. The opening up and settlement of the country instead of being an injury and misfortune, has been 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.

They had no moral claim whatever - under such circumstances - to compensation either in the form of annuities or otherwise[.]

Hence it undoubtedly was- that in making these treaties- the Hon. W. B. Robinson while frankly admitting the claims of the real Indians- and securing to them and their children perpetual Annuities and liberal reservations of land- refused (on behalf o the Government of Province [of Canada]) to recognize the claims of the Half-breeds to either one or the other.

As squatters the Half-breeds in the ceded territory might, and as the writer thinks were entitled to be liberally dealt with- in respect of the land on which they had settled and made improvements. But they had no right- either legal or moral, that he can see, to Annuities, or as it is commonly called "treaty-money". Second. The next fact in support of this contention is- that the treaties themselves expressly declare that they are "Agreements between the Hon. William Benjamin Robinson of the one part, on behalf of her Majesty the Queen- and the Chiefs and Principal Men of the

Ojibewa Indians" inhabiting the surrendered territory- on the other part. Now half-breeds are not and cannot be held to be Ojibewa Indians even if their mothers belonged to that tribe. But even this, was far from being always the case. Not only have their Fathers been white men but their mothers have been- in many instances women belonging to other tribes, or to bands not included in either treaty. The word "half-breed" is not found in either of the treaties- and they were manifestly never intended to be included therein.

Third. This construction alone accounts for the omission in the treaties of any provision to protect the interest of the Province in the event of any great increase in the number of persons entitled to claim Annuities. If confined to Indians only- the Hon. W. B. Robinson knew that no such provision was necessary. Had he intended to include, or ever anticipated- that French Canadians and French Half-breeds or other "breeds of like fecundity and longevity-[sic-closing quotation marks] were to be recognized as Indians by the Department of Indian Affairs and permitted to draw Annuities which is Province would be called upon to pay, a man of the Hon. W. B. Robinson's sagacity and shrewdness would surely have inserted a clause in the treaty to protect the Province [of Canada] from such an imposition.

...

4.-- In striving to arrive at the true meaning and construction of these treaties, it is most desirable, that we should know authoritatively--what is meant by the words 'Indian' and Half-breed" as implied employed in the making of these treaties, and in the Hon. W.B. Robinson's Report to Col Bruce Deputy Superintendent General of Indian Affairs. The contention of Mr. Vankoughnet that every one "recognized" as such "by the Government, is an Indians', that "halfbreeds 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 extragavant [sic] and absurd is certainly not the meaning attached to these words by the Hon. W.B. Robinson of 1850. In the making of treaties and the interpretation of the obligations contained therein, the writer contends that "Indians" means and was intended to mean one class of person--and "half-breeds" another and different class of persons. That this was the Hon. W.B. Robinson's understanding is clearly shown in the report referred to.

...

The Department of Indian Affairs is chiefly if not entirely responsible for these irregularities [as to those paid annuities]. The Superintendent General, and other Officers of this Department occupy a peculiar position. (1) That of Guardians of the Indians. (2) As Guardians of the Public interests.

It is a position the two-fold duties of which demand that every officer from the Superintendent General to the Indian Agent, should not only be capable and honest and but impartial but and vigilant also. 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.

Now in the matter of these Robinson treaties the Department of Indian Affairs--has not only failed to apprehend the true meaning of these treaties, in some most important particulars, and thus protect the Indians; but it has been exceedingly remiss in taking such precautions as were necessary to protect the Public from the unreasonable and unjust demands of the Indians, and of others claiming to be "Indians".

1.-- As trustee and Guardian of the Indians--it appears that the Department

from the Year 1850 to the year 1873-- a period of twenty-three years, was either entirely ignorant of, or utterly indifferent to, the fact that there were clauses in the Robinson treaties, providing, under certain circumstances, for an augmentation of their annuities. There were obvious reasons for thinking that this augmentation would have taken place many years before. But 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.

2.-- As a branch of the Public service and Guardian of the Public interest, the Indian Department has been equally negligent and remiss. This has been more or less the case in regard to the payment of the annuities under the Robinson treaties from the very beginning, but more particularly since the year 1875 when the annuities were increased to four dollar a head.

When the Hon. W.B. Robinson concluded the treaties and made the first payment of two thousand pounds (Canadian Currency) to be divided among the Indians included [sic] in the Robinson Superior treaty, and two thousand one hundred and sixty pounds, among those included in the Robinson Huron treaty, he refused to recognize officially any right on the part of the Half-breeds, to participate in the same, or in any future payments of money in the shape of annuity. He held that it was sufficient for him, if he paid the foregoing lump sums to the Chiefs of [however?] the band included in the respective treaties, taking their receipts for the same. The division thereof, even as between the Chiefs included in each treaty, he insisted upon leaving to themselves, with the remark "that when in their possession they might give as much or as little money to that class of claimants (the Half-breeds) as they pleased".

Subsequently however, as we learn from his report, at the earnest request of the Chiefs themselves, he undertook the distribution of the money among their respective bands, and all parties expressed themselves perfectly satisfied with this division of their funds.

This division could not have meant more (in the opinion of the Writer) 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 Hon. W.B. Robinson had several months before taken measures for ascertaining as nearly as possible the number of Indians inhabiting the North shore of the two Lakes, and was therefore with the assistance of the Chiefs and principal men, as well as of other Indians present at the making of the treaty, in a position to make a satisfactory division of the money among them. To have paid to each family or head of a family--the share, or sum of money coming to them, was impossible; for although Mr. Robinson says "There were twenty-one Chiefs present, about the same number of principal men, and a large number of other Indians belonging to the different bands"; as a matter of fact [sic], not more than none 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.

The vouchers taken by Mr. Robinson will however show how and to whom the money was really paid--

How or to whom the Annuity money amounting to four thousand four hundred dollars in all, has been paid is not shown in any of the statements or returns as yet received by the Writer From a statement of the Department of Indian Affairs dated Ottawa 16th September 1884, and prepared (as he supposes) for the Meeting which took place in that year between the Minister of Finance and the Treasurers of Ontario and

Quebec, at which this Indian question was discussed--it appears that for the first five years after the conclusion of the treaties, or from 1851 when the first payment of annuity should have been made until 1855, inclusive--no pay lists can be found. And from this last mentioned date until 1884 the Statement merely shows gives the total number of individuals in each band, the annuity payable to each individual, and the total amount [sic] paid yearly. The names of the head of families to whom the annuity or treaty money has been paid, are not given for any one year in the period covered by this Statement. Nor are we told how it was paid; that is, whether paid by the Indian Agents to the Chiefs of each band, or to each head of a family in each band, or whether it was not for a number of years distributed by the Hon. Hudson Bay Company's Officers, at the various Posts on Lakes Huron and Superior, which the Indians were in the habit of frequenting resorting to trade their furs.

If the perpetual Annuity guaranteed by the treaties (\$4,400) was in 1851 divided equally among the two thousand and three hundred and seventy-eight real Indians, who according to the Hon. W.B. Robinson's Report were alone included in the treaties, it would have yielded them about one dollar and eighty five cents each per annum.

But 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 ninety[sic]-two cents a head.

In the absence of full particulars the only inferences that can be drawn in reference to this first period of twenty-four Years, are (1) That there must either 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; in no other way can the diminution in the dividend or treaty money be accounted for.

It may be proper to state - that in the opinion of the writer- the Indian Chiefs were from the first willing to allow some of the Half-breeds to participate in or at obtain a share of their Annuity money; and that in dividing this \$4,400 among them the Indian Agents and Hudson Bay Company's Officers readily complied with their wishes. The more readily perhaps because, during the period in question, 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. It was only as already pointed out when the number fell below 1775 that the Province could gain or save anything, and by no increase of numbers could it lose anything, so long as the "augmentation clause" securing to each individual a fixed sum yearly in the treaty was not in force.

But 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 preexisting 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.

As the Government instead of a fixed sum of four thousand four hundred dollars a year, was bound in future thereafter to pay an amount which

when divided would yield every Indian legally entitled to annuity the sum of four hundred dollars a Year, it now became now 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. It mattered not how they came to be included in the tribes or bands, or whether by adoption of the Chiefs and other lawful Members of the bands, or otherwise. Nor can the circumstance that the Indian Agents had not objected to their participating in the annuities under the old order of things, and had even placed them on their lists, constitute any sufficient grounds for their being permitted to remain thereon.

Under this change of circumstances, it became the bounden [sic] duty of the Department of Indian Affairs which was charged with the payment of augmented annuity-- to exercise such reasonable care in the distribution thereof, that only those Indians who were legally entitled to annuities in terms of the Robinson treaties should have been recognized and paid.

If the Officers and Agents of the Department 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.

The Department of Indian Affairs since confederation has been a special branch or Department of the Government of Canada. It has appointed the Officers and Agents and these have been entirely under its own control.

The Government of Canada therefore is responsible for their acts, and must bear the losses occasioned by the improper payments [sic] -- (if any) of its Officers and Agents.

That the total amount thus improperly paid during the last seventeen years is very large, the writer has no doubt whatever. It forms in his opinion a part and very important part of the claim made by the Government of Canada, on the Province of Ontario that the money paid by it on account of these Indian Annuities shall be refunded. It is needless to say that this part of the claim should be repudiated, whether the Province be responsible, or not responsible, for the annuities paid to those really entitled thereto.

With the documentary and other evidence already within our reach a strong "prima facie" case can be presented to the Court, in support of this contention. Such a case in the writer's humble opinion as will amply justify the Court in ordering a revision and scrutiny of the pay-lists and census returns, without which, scrutiny, by strictly impartial men, no trustworthy information can be obtained in regard to the number of those persons whose names appear on these pay-lists, who are justly entitled to the annuities they have been receiving, and of those who have been paid annuities, to which they had no legal right or claim whatever.

If this point be carried, the "onus of proof" in the enquiry before such a Court of Revision should rest on the Department of Indian Affairs. What the writer would be understood to mean by this, is -- that in regard of those persons on the pay-lists, to whose right to draw annuities or treaty-money objection is taken by or on behalf of the Province, it should devolve on the Department to show cause why they should be included therein, and the money thus paid made a charge against the Province of Ontario.

Such a claim, reasonable in itself, will appear much more so in view of the fact, that not only are all the Indian Agents under its control, but all the documentary evidence required is in the possession of the Department of Indian Affairs.

What the writer apprehends should be satisfactorily proved in such cases is as follows.

- 1.-- That each head of a family (or in some special cases member of a family) is an Ojibbewa Indian in the sense understood, and explained by the Hon. W.B. Robinson, when the treaties were made, or in such other sense as the Court may direct.
- 2.-- That such Indians were parties to, and included in one or other of the two treaties made by the Hon. W.B. Robinson in the Year 1850, or--
- 3.-- 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.

Females entitled to annuities in their own right, should continue to receive the same as long as they live, and that whether they be married to white men or non-treaty Indians. But the children of such by white men or Indians- other than those included in the treaties under consideration, have, in the writer's opinion, no valid claim to annuities. This is very important, for 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 will necessitate the allowance of a vast, and constantly increasing number of claims to annuities, and impose a very heavy and (as the writer thinks) very unjust burden on the Country, whether those annuities may have to be paid by the Dominion or by the Province.

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. It is much too short a time since the writer received a copy of the pay-lists for last year to enable him to give any reliable estimate of the total number of half-breeds in receipt of annuities. But he feels warranted in saying, that from his own personal knowledge, and such limited enquiries as he has been able to make--more than one half of those in several of the bands to whom annuities have been paid, are half-breeds.

The number of Indians now entitled to annuities under the Robinson treaties-- or the number who may have been entitled to the same, at any former period, must be left for a future report.

For as already stated, no revision of the pay-lists can be made until the legal points arising out of the construction of the treaties, and the meaning of the terms employed therein, have been submitted to, and pronounced upon by the Court.

[Doc. No. 74]

72. The above report was sent under cover of the following letter to Mowat, dated January 20, 1892:

I have sent herewith the first part of my Report on the Robinson Treaties. It deals chiefly with the Annuities promised therein to the Indians on the North shores of Lakes Huron and Superior.

Having devoted a great deal of attention to these treaties, I hope that the information and opinions therein contained may be valuable.

You will perceive that great stress is laid on the importance of excluding Half-breeds from any participation in the Annuities. There can be no reasonable objection - to half-breeds sharing in the Indian Reservations - or in the money obtained from the sale of the timber thereon - or even from the sale of such portions as have been surrendered for settlement. This is a matter - which may properly enough be left to the decision of the Chiefs and their bands - as the Hon. W.B. Robinson did in regard of the lump sums of money paid - on the conclusion of the treaties. But when it come to the question of paying each individual the sum of four dollars (as has been the case since 1875) the Provincial Government is clearly entitled to refuse either to pay, or to be responsible for the payment of such an Annuity to any but those legally entitled to the same in terms of the treaties.

If the opinions entertained by me, and fully set forth in my report, be well-founded - the Indians originally included in these treaties and their descendents [sic] in the male line are unquestionably entitled to four dollars each yearly - whatever may be their number - or whoever may have to pay them - provided always - that the revenue derived from the ceded territory has been sufficient to enable the Government to do so without loss.

The questions as to when the Annuities should have been increased in terms of "the Augmentation clause" in the Robinson Treaties - and that in regard to the amount of the Arrears which may be owing to them, in consequence of such increase not having been made sooner - are not dealt with in this Report - It is a matter on which experts (accountants) after an examination of the public Accounts - can alone give any reliable opinion.

The expression in the treaties - that "the Annuities were to be augmented from time to time" warrants the inference that it was never intended that the increase promised by the Hon. 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.

That the Indians are justly entitled to raise the question of arrearages [sic] - whether such may have accrued before, or after Confederation - is I think unquestionable. The contention put forward on behalf of the late Province of Canada - that it is not liable for arrears that have accrued before confederation - or on behalf of the Province of Ontario - that it is not liable for arrears which have accrued since Confederation will not I venture to predict be sustained by the Court. It seems to me - that the Indians will be fairly entitled to plead - that they are minors or infants in the eye 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. The Department of Indian Affairs was, I believe, a branch of the Executive Government of the Province of Canada and the Commissioners of Crown Lands - were to my own knowledge for many years before Confederation - the Superintendents of Indian Affairs.

If the Annuities were not increased when they should have been in terms of the Robinson Treaties - the responsibility and the blame should rest on the Indian Department and Government and not the Indians. They had no means of knowing when the land ceded by them had or had not yielded or produced an amount sufficient to entitle them to an increase in their Annuities. But the Commissioner of Crown Lands who was also Superintendent General of Indian Affairs - might and should have known. Such a plea with all due respect and deference does not appear to me a very creditable one to be put forward on behalf of our Province.

I am of opinion 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.

The plea that the arrangement made shortly after Confederation - in terms of which the Dominion Government agreed to accept the capital sum of \$88,000 - as an equivalent for the \$4,400 - perpetual Annuities - payable to the Indians - was final and cannot be re-opened - if sound in law, is manifestly unjust. If a larger sum than \$4,400 should have been paid to the Indians for a number of years before Confederation (as is contended) - the difference between what was paid, and that which should have been paid was a debt justly due, by the Province of Canada to the Indians at the time of Confederation - notwithstanding that it may have been unknown to - or overlooked by both parties - I fail to perceive therefore that the arrangement between the Provinces and the Dominion in reference thereto - can justly be held to bar the claim of the Indians - or even to impose the liability for such debt on the Dominion Government. The existence of such a liability (if known at all) - could only be known to the Provincial Government - for it was alone in possession of the information in regard of the revenue derived from the ceded territory - on which this claim of the Indians is entirely dependent. It is not even pretended that the Dominion Government was cognizant of any such claims - for several years after Confederation.

Admitting the liability of the Province for Annuities not exceeding four dollars each yearly - the contention that it 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 - is in my opinion contrary to the meaning - that these treaties were intended to bear - and will not, I think, be sustained.

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.

The clause in the treaty which provides that under certain circumstances, the Annuity shall should be augmented from time to time, until it amounted to four dollars - certainly contemplated that each and every Indian legally entitled at such future time to participate in the Annuities at all should be paid the sum of four dollars - irrespective of their numbers.

As pointed out in my Report the promise in the treaty - in reference to a decrease in the number of Indians - ceased to have any necessary force or affect whatever as soon as "the augmentation clause" in [the?] treaties came into force.

The increase or the decrease were alike left to the laws of Nature.

It is obvious to me - that the Hon. W.B. Robinson never expected there would be in accordance with these laws, any increase in the number of real

Indians and other than real Indians - he never expected or intended should be included in the treaties. This is shown at length in my report.

I myself believe that the Indians are, as a race, dying out - and will continue to do so, until comparatively few if any remain. I am 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. As regards several of the bands - I am persuaded more than one half of those whose names appear on the pay lists of the Department as having been paid Annuities last year - are really half-breeds.

It is in my opinion not only in accordance with the meaning and intention of the treaties - but really the best possible policy that can be pursued in the interest of the Province - to frankly admit our liability to pay the increased Annuity - from the time when it should have been paid to the Indians - until the year 1875 - since which they have been in receipt by the hands of the Dominion Government of the highest amount of annuity promised in the treaties. The only proviso necessary being that such liability whether for arrears or for Annuities - shall be strictly confined to Indians - who are or were entitled to be included in the Robinson treaties.

If I am right in my opinion - that the real Indians are decreasing - and will ultimately become all but extinct - it was 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 - A mistake that should be 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.

The amount of such annuities - should be paid yearly to the Department of Indian Affairs to be distributed among those legally entitled thereto. By so doing - as the Indians die out - or become [sub?]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 do - and not with the Dominion.

[Doc. No. 75]

73. In the meantime, the "Halfbreeds" of the Michipicoten/Big Head Band at Michipicoten River and of the Lake Nipigon Band continued to be paid their annuities [See Doc. No. 76 and 77].
74. Throughout 1892, Borron had made inquiries into the people appearing on the Robinson Treaties paylists. In a letter dated October 11, 1892, he stated that the views he had expressed in his report of December 31st, 1891 had been confirmed. This letter, reviewing the number of annuitants in each Band of the Robinson Superior area and listing the numbers of those entitled and those considered to be "Half-breeds", reads as follows:

I have the honour to inform you that I have now finished the outside work connected with the inquiries I have been desired to make in reference to

the Indians and others in receipt of Annuities under the Robinson treaties.

There are still some lists only just received to be examined - and further inquiry by mail may be necessary in respect of the members of the Band to which they refer - but I have got with these [exceptions?] - which are not likely to be of much importance - all the information that is I believe necessary.

The principal point aimed at has been - to ascertain, as far as the means, at my command would permit - How many of those persons - whose names appear on the Pay-lists as being in the receipt of Annuity-money, are in terms of the treaties - justly and legally entitled thereto?

In my last Report - I respectfully submitted my opinions - as to what were the meaning and intentions of the Parties to these treaties, and of the obligations which as it appeared to me - was thereby imposed on the Province.

My inquiries - confirm the views and opinions expressed in that report.

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.

They show conclusively however - 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 will be seen from a rough and somewhat hasty classification of the Lake Superior* returns which are all sent in to me ("and which Mr Borron has recd" [in different handwriting-likely Irving])

*[in different handwriting-likely Irving] This means that Mr Borron sent out the copy of the Dominion Pay Lists which Atty Gen Mowat had recd from the Dom Gov. (but he does not know the Depart from whence) - to officers of the Hudson Bay Co generally - and received from them - Returns of information of whether Half Breeds or Non Treaty Indians etc and these Hudson Bay agents - in the vicinity of their respective Trading posts - know all these Indians
Non Treaty Indians are American Indians who have come in since the Treaty

Commencing with the Band at Fort William Lake Superior, of which Mr. James Donnelly is Agent. I find - that 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 Indians, leaving only 189 whom it is thought by my informants may be legally entitled to treaty-money.

2nd. We have Lake Nipigon Band in regard of which I find - that out of 514 persons in receipt of Annuity money - No less a number than 295 are Indians inhabiting Territory North of the Height of Land: and possessed of no right whatever to the Annuities granted under the Robinson Treaty. In addition to these, there are 12 persons on the List of whom my informants

know nothing - leaving 184 only apparently entitled to treaty-money.

3d. We now come to Red Rock Band at or near the mouth of Nipigon River - in regard of which I find --That the number of persons in receipt of Annuity money is 205. Of whom, 72 would appear to be Half-breeds - leaving 133 who are said to be entitled to treaty money.

4th. Following down the Lake we have the Pays Plat Band. This Band numbers in the Pay List 55 persons of whom 6 appear to be Half-breeds; 14 Non-treaty Indians - and 5 to belong to unceded Territory North of the Height of Land - leaving 30 Indians who are apparently entitled to treaty-money.

5th. The next Band is the Pic River Band - In reference to which I find that out of 279 persons in receipt of Annuities - 61 are said to be Half-breeds and 19 - to be Indians whose Hunting Grounds are in unceded Territory - North of the Height of Land, leaving 199 Persons apparently entitled to Treaty money.

6th. We now come to Long Lake Band. In regard of which I find - that the number of persons in receipt of Annuities is not less than 345. Of this number (strange to say) no less than 241 Indians belong properly to unceded Territory North of the Height of Land - 32 are believed to be Half-breeds - and 20 are unknown by name or otherwise to my informants Leaving some 52 Indians only of this Band as apparently entitled to Annuity money.

The preceding Bands are all in the Superintendency of Mr. James Donnelly.

7 We now come to the Michipicoton River Band of which Mr. William Van Abbott is Agent. The number of Annuitants in this Band is 327. Of whom I find - that 100 are Half-breeds and 67 are Non-treaty Indians mostly belonging to unceded Territory in the North. Leaving 167 - or about one half only - as being apparently entitled to treaty-money.

Thus it would appear that of the 2075 Persons in receipt of Annuity money - ostensibly in terms of the Robinson (Superior) Treaty - No less a number than 1108 are Half-breeds, and Non treaty Indians, who in my opinion have no legal or moral claim whatever to any Annuities under that treaty. Deducting these and some 20 persons altogether unknown, we have remaining 947 Indians - who are apparently entitled to treaty money. I say "apparently" - because I am fully persuaded - that a strict scrutiny of the Pay and Census Lists - by impartial Commission[s?] possessed of ample powers, would result in a still further reduction of this number.

I have not yet completed the classification of the Lake Huron Bands - so as to be able to give you even approximately - the figures, but may say - that although the proportion or percentage of to the whole - may be less - the actual number of person in receipt of Annuity-money who (on the lines laid down in my Report) are not entitled to do so - will exceed that included in the Lake Superior Bands - as given above.

I shall be glad if you can let me know when the question of "Outstanding Accounts" - between the Federal and Provincial Governments is likely to come up before the Arbitrators or Court to which it is proposed to refer it - more particularly this Indian br[an?]ch of the question.

If the Department of Indian Affairs has put in any additional or amended claims - since the last conference in 1884 I would much like to see the particulars thereof, as I might be able to offer some suggestions [anent?]

the same of more or less importance.

P.S. If you have got a full and complete statement or Account of the Claims of the Dominion, in regard of payments to be made or which have already been made to the Indians - whether under the Robinson Treaties - or that made by the late Governor Morris at the North West Angle (No 3) - a copy thereof would be very desirable - and of material assistance to me in making out my Report. It seems to me - that you would have a Statement of these claims - giving the details as fully and completely as possible & including Interest to date.

[Doc. No. 78]

75. In a report dated December 31, 1892, Borron outlined, in detail, what he believed would be the federal government's arguments regarding the rights of certain individuals, most of whom were referred to as "Halfbreeds", to receive annuities.

Borron's report is extracted below:

...

The general conclusion arrived at [in his report dated 1891/12/31-indexed above] was:- That a large number of individuals appeared to have been in receipt of Annuities for many years, to which they were not entitled in terms of the Robinson treaties, as understood, when those treaties were made.

It was shewn, that the individuals to whom Annuity-money had been, and still was being improperly paid, by the Department of Indian Affairs, consisted chiefly of three classes of persons, namely,

1. Half breeds, or persons of mixed race who are of White descent on the father's side, and Indian on the mother's side.
2. Indians who, when the treaties were made, had their hunting-grounds in Unceded Territory, for the most part North of the Height of Land referred to in the treaties, and which territory has not even at the present moment been ceded to the Crown.
3. Indians who in terms of an invitation on the part of the Government in the year 1836 removed from the territory, surrendered by the Robinson Treaties, and voluntarily elected to exchange (as I contend) all their right, title or interest in the said territory, for a like right title or interest in and to the Manitoulin Island.

The inquiries which the writer, under instructions from the Honorable [sic], The Attorney General, has made, this past season in the territory in question, fully confirm the opinions expressed in his previous report.

Before giving however the statistics obtained, it will be well to review the arguments which may, and probably will be adduced, by the Indian Department and the Dominion Government in support of the claims of the several classes of persons above alluded to.

The following are some of the grounds upon which, it is possible, the claims to Annuities of these parties, will be founded: beginning with the most numerous and most important, namely,

HALF BREEDS.

It will in all probability be again contended as was done by the Deputy

Superintendent of Indian Affairs in 1884 That all those who are recognized as such by the Government are "Indians", and that "Half breeds are by the law of Ontario "Indians". As long as they have Indian blood in their veins they are (says Mr VanKoughnet) Indians legally[.]

I am totally at a loss to understand upon what grounds such an apparently wild and absurd definition can be maintained. There was no law of Ontario in existence in 1850, so far as known to me. which thus describes the legal or social status of half-breeds, and others with more or less Indian blood in their veins.

...

Secondly, It may be contended in support of these Half-breeds claims, That some of the Chiefs and principal men of the tribes or bands with whom Mr Robinson negotiated these treaties, and whose signatures are attached thereto were actually half breeds.

From which it may be inferred, that Mr Robinson thus recognized and practically acknowledged these men to be "Indians" possessed alike of the power to make treaties, and the right to enjoy the benefit thereof.

This appears at first sight a much more formidable argument than it really is, when carefully examined.

So far as known to the writer, out of forty seven Chiefs and principal men who signed the treaties, three only were half breed in any sense of the term. The first of these was Nebenaigooching, Chief of the Batchewanaung Band of Indians. The second was Dokis Chief of the Dokis Band. The third was John Bell who signed the Robinson Huron Treaty as a principal man.

In explanation I may say, that as regards Nebenaigooching, although of mixed blood, he is, I believe, of India[n] descent on his father's side. and therefore, as already said, fully entitled to rank as an Indian. His Father, himself a chief was killed fighting for the British, when Nebenaigooching was quite a boy. And the British Officers with whom he had served, made the lad a Chief on the spot. This position he held long before the treaty was made and still holds, being yet alive, though an old man. Thus, even if he had not been legally entitled to rank as an "Indian" which he really was. Nebenaigoochings' [sic] case is an entirely exceptional one.

"Dokis" on the other hand is not an Indian but a half breed. His father as I am credibly informed was a White Man, and Mother and Indian Woman.

There is no proof however that this circumstance was known to the Hon. W. B. Robinson. The probability is, that he (Mr Robinson) did not know that Dokis was a half breed, as he (Dokis) is said to have come originally from the Ottawa Valley. And although as stated in my former Report, Mr Robinson was more or less intimately acquainted with the Indians, who inhabited the Northern and Eastern shores of Lake Huron, it is not likely that he knew much, if anything, about the Inland Indians belonging to the French River and Lake Nipissing Bands.

The claim of this man Dokis to recognition either as an "Indian", "Principal Man" or "Chief" of any band was, if the information I have received be correct, anything but a good and sufficient claim.

I have been informed, that Dokis traded with the Indians in the neighborhood [sic] of Lakes Nipissing and Temagaming, and attended the

Council at Sault St. Marie, at the request of one of the Chiefs. This Chief was not a fluent speaker, and desired that Dokis should speak for him. He certainly appears to have been very able to do so, and at the same time put in a word for himself. ...

The third and last half breed whose name appears in the treaty is that of John Bell. This man now dead, was I believe a half breed, but whether the Hon. W. B. Robinson was, or was not, aware of that fact, there is nothing either in the treaty, or in his report to show. My own opinion is, that in all probability, Mr Robinson did know, and that an exception to the general rule in regard to half breeds "as a class", was made in his particular case. This was done I think partly as a personal favor [sic] to himself and partly from motives of policy and expediency.

...

The next and, as I think, the principal ground that will 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, it as follows.

That the number of Indians entitled to the benefit of the treaties was incidentally stated in the treaties themselves, as being at that time 1240 in the Lake Superior Territory, and 1422 in the ceded territory on Lake Huron. And that the numbers thus named in the body of the Treaties included not only the Indians of pure blood, but all the Half breeds in the respective territories.

I may observe here, that there is nothing in the body of either treaty, to support the assertion that any half breeds whatever, excepting the three already mentioned were recognised or included therein.

But on reference to Mr Robinson's Report the following statement will be found therein, namely, "When at Sault St. Marie last May (1850) I took measures for ascertaining, as nearly as possible, the number of Indians inhabiting the North shores of the two lakes; and was fortunate enough to get a very correct census,, particularly of Lake Superior[.] The number on that Lake including eighty-four half breeds in only twelve hundred and forty, and on Lake Huron about fourteen hundred and twenty one, including probably two hundred half breeds".

On comparing these figures with those given in the treaties, it will be seen that the numbers so far agree, that the number of Indians, stated in the treaties exactly correspond with the number of Indians and Half breeds together, as given in the Report.

It will therefore be maintained (and with apparent reason) that these two hundred and eighty four half breeds were really intended to be included in the treaties and to participate in all the benefits thereof, notwithstanding [sic] that only the word "Indians" is used therein.

This argument would be in my opinion unanswerable but for what immediately follows, in the self same Report upon which this contention rests- to wit,

"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 I came 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. To this no one, not even their

advisers, could object and I heard no more on the subject. 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."

No one, it seems to me, can carefully read this statement of the Hon. 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 a few days before. 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"[.] If recognized, what use or sense was there in his telling them virtually, that he (Mr Robinson) had not come to treat with them, "but with the Chiefs who were present", that the money would be paid to the Chiefs, whose receipt would be sufficient for him, and that when in their possession they might give as much or as little, as they (the Chiefs) pleased, to that class of Claimants (that is the Half breed class)[.]

This much is obvious, namely, that the Hon. W. B. Robinson, who negotiated these treaties on behalf of [Her] Majesty the Queen, and by whom the said treaties were actually drawn up for signature, 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.

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. It has been admitted by several of the survivors who have been questioned on his point, and I venture to think that the truth of the allegations contained in the Hon. W. B. Robinson's Report will be confirmed by the evidence of a majority of these Indians, still living, who were present at the Council.

Surely the original parties to the treaties should be the best judges of the interpretation that the treaties were at least intended to bear.

And their testimony goes to show that whatever inferences may be drawn from the correspondence of the number of Indians (as incidentally stated in the treaties) and Mr Robinson's Report, or to whatever cause that coincidence may be owing, 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 Indians.

That this coincidence is too remarkable to have been purely accidental must I think be admitted. But granting such to be the case, and that no rational explanation thereof can be given, it seems to me impossible that the Court in view of the facts, (1) that half breeds had no moral claim or right whatever to be included in the treaties. (2) That the Hon. W. B. Robinson distinctly refused to comply with the half breeds' demands to be recognized or included therein. And (3) to the fact, that the truth of Mr Robinson's Report of what occurred at the Council whereat the treaties were made, it confirmed by the evidence of Indians and others who were present, it seems to me impossible that the Court can hold (in the absence of any direct statement to that effect in the treaty itself) that the half breeds

were included in the Robinson treaties and entitled to the full benefits thereof.

But it can, I think, be shown to the satisfaction of the Court, that the coincidence in the figures, as given in the treaties and the report, has, in all probability, originated in a mistake on the part either of Mr Robinson himself or of those who assisted him in drawing up the treaties.

...
It may be contended that the half breeds whose demands, the Hon. W. B. Robinson, in his Official capacity, refused to grant were not the same half breeds as those it is asserted were thus included in the treaties. But this is nothing more or less than a quibble, a mere assertion unsupported by a particle of evidence, and can be easily refuted. The half breeds who waited upon Mr Robinson and made "the demands alluded to, represented the whole of "that class of claimants" in the ceded territory, and the reply given applied not only to those who resided at Sault St. Marie, but elsewhere.

Another Argument which will probably be presented in support of the claims of the half breeds, is, That although the right 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.

That annuities and other moneys have not only been paid to half breeds, but 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, is not denied by us; on the contrary we have asserted and are in a condition to prove to the satisfaction of the Court, that such payments have been made by Indian Agents.

But it does not follow that these payments have been made in terms of the treaties. Nor does the fact that half breeds and others have been thus permitted to receive a share of the Indian Annuities [sic] and other Moneys confer upon them any rights as against the Crown.

In order to present this part of our case in a clear, and as I think, true light, it will be well to review the position and aims of the respective parties, as I conceive them to have been at the time the treaties were made.

The dissatisfaction of the Indians and consequent seizure and stoppage of the Quebec Mining Company's operations on the North Shore of Lake Superior in 1849, by a party of armed Natives, led, as stated in my last report, to the Hon. W. B. Robinson's appointment in 1850, to make a treaty or treaties with the Indians inhabiting the territory on Northern shores of both Lake Huron and Lake Superior for the surrender of all their right and title thereto, to Her Majesty. The influence wielded, at that time, by the half breeds among the Indians, has already been adverted to, in this report. It is generally understood in that section of the country, that 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. They doubtless expected to profit by any treaty that might be made with the Indians. And it appears to me, that some, if not all of the Chiefs and principal Men were willing or even anxious that

they should do so. For in Mr Robinson's narrative of what took place at the Council he says "the two chiefs, Shinguacouse and Nebennigoebing repeated their demand of ten dollars a head by way of annuity, and also insisted, that I should insert in the treaty a condition securing to some sixty half breeds a free grant of one hundred acres of land each". I told them, they already had my answer as to a larger annuity, and that I had no power to give them" (that is the half breeds) "free grants of land".

On the other hand, Mr Robinson doubtless knew the active part which the half breeds had taken in the recent disturbance, he knew that they had no more right to the territory about to be ceded, than the native Canadians of European origin, who had settled in the same: and that consequently having no right or title to convey there was not call either to treat with them or to pay them anything. But 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 that 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. Consequently, Mr Robinson's position was a very delicate one, especially when the half breeds demanded recognition, and insisted upon being paid a portion of the money, which the Indians were to receive in terms of the proposed treaties. His answer was, under such circumstances, studiously guarded and exceedingly cautious. Some may even be disposed to view the answer he gave as evasive, rather than a direct refusal, which left the claimants no hope whatever of being able to get any of this money. It will seem [sic] to be, at all events, a very diplomatic answer, on which while refusing in his official capacity to recognize any claims on the Crown or the Government, did not leave them without a well-grounded expectation that they might be able to obtain indirectly from the Chiefs and principal men of the bands to which their mothers belonged, a share of the money in question. ...

...

Knowing their power and influence over the Chiefs, and the friendly disposition of the Indians generally toward them, these half breeds were easily led to believe that they could thus readily obtain from and through the Chiefs a share of the money considerations promised, by Mr Robinson, on behalf of the Government. And more than that, this answer at the same time afforded them apparent grounds for believing, that neither he (Mr Robinson) or the Government would feel called upon to interfere or to prevent the Chiefs from thus giving to them as much or as little of the money as they pleased.

...

It seems to me, that with the payment of this money [annuities] to that Department [of Indian Affairs], all future further responsibility on the part of the Province in respect thereof, whether as regarded its division or its distribution, really ended. If so, the conclusion of halfbreeds 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 that I can see on the Province.

...

It follows therefore, that whether this annuity money has been divided and distributed by the hands of the Hudson Bay Company's Officers, or those of Indian Agents, such was virtually done in accordance with the wishes of the Chief and principal men of the bands, specially interested in the funds

thus distributed. And the fact that hundreds of person 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.

While persuaded that no formal recognition of the claims of the half-breeds by the Indian Agents or their officers of the Department of Indian Affairs, can be established in the face of our arguments and the evidence we can adduce, the writer contends that 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 has, I think, no legal or binding force whatever as against the Crown or the Province.

...

Founded as the contention of the claimants is, on inferences drawn from a mere coincidence in the numbers of the Indians, as embodied in the treaties on the one hand, and in the report of the Hon. W. B. Robinson on the other, and not upon any positive declarations of right or interest in the treaties themselves, I am persuaded that the Court in view of all the facts and circumstances of the case can come to no other conclusion than that to which I have come, namely, that the half breeds as a body or class were not recognized by Mr Robinson, on behalf of the Crown either in the negotiations preceding, not in the treaties themselves.

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, has not established any legal or moral right thereto on the part of the said half breeds as against the Crown or the Government.

That while the Crown or Government was not called upon to object to the Indians sharing with the Half breeds their annuities or other moneys, so long as the funds thus divided were strictly speaking, "their own funds".

The Government however was perfectly entitled to object; on the arrival of the period, when it was no longer a question of "division" or of "sharing", but of paying, in addition to the maximum amount of annuity justly owing to the bona fide Treaty Indians, the sum of four dollars each to all half-breeds and non-Treaty Indians, whose names appeared on the pay-lists and previous to the change of system.

...

[Doc. No. 79]

76. On February 11, 1893, Borron wrote another letter to Mowat in which he sent his report on the Robinson annuities. In this correspondence, the author alludes to an impression that Mowat had taken "an unfavourable view" of his opinion that "half-breeds of White origin" had no right to annuities. Consequently, Borron requested that he carefully read his report(s) again and that they meet to discuss the case. The letter is quoted below:

I am sorry that I am unable to call upon you today - as I am very much out of sorts - and it would to say the worst be imprudent.

I send you herewith the first part of my Report in which I have dealt with the Half-breed Claims to Annuities.

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.

As this is by far the most important class with which you have to deal in connection with these Annuities - I have - devoted most of my time and attention to a re-examination of the grounds upon which I had arrived at this my convictions - and to the anticipation - and refutation of what may be said on the other side.

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 which requires strong [illegible word] - or that it should be abandoned altogether kindly point such out to me.

As regards the Manitoulin Indians who - are as I conceive improperly in receipt of Annuities under the Robinson treaties - as well many of them are I believe in receipt of interest moneys also derived from the sales of land on Manitoulin Island - I cannot complete that part of my Report until I get a list of such Indians. This was I understood at our last meeting to be asked for, and should have been furnished by the Department of Indian Affairs before now. If so please have it or a copy sent to me - as soon as possible.

If you can kindly fix - a day about the latter out of such week that you can see me - unless something unforeseen [sic] occurs - I expect I shall then be able to wait upon you - and give you any further information you may need.

[Doc. No. 80]

77. The report referred to by Borron in the above letter reads as follows:

Revision of the Pay Lists for 1890-91, by Mr Borron.

The revision having been made in the Case of some Bands from the pay-list of 1890- and in others from the pay-list for 1891- Some slight difference may exist in the totals but if such- it will only be trifling.

Statement showing approximately on the lines contended for, in this Report.

The numbers of Treaty-Indians and of Non-Treaty Indians, in receipt of annuities, and subdividing or classifying the latter.

Total Number of Annuitants in 1890--	5231 Persons
Classified as follows	
Indians, supposed pro tem to be entitled to annuities, otherwise know as Treaty-Indians----	2337
Non-treaty Indians and others whose right to be paid annuities is	

questioned	2894
Total	5231

NON TREATY INDIANS AND OTHERS

Subdivided into the following classes

Half breeds, or claiming only in right their mothers	1710
Indians, "inhabiting", or possessed of hunting-grounds, in unceded Territory	650
Indians of Manitoulin Island	365
Indians, stragglers, from other tribes or bands	169
Total	2894

[inserted:] AS follows, Annuities "perpetual" payable to 5231 Persons
at \$4. per Ann. Each

\$20,924.00

Less amount already provided for

4,400.00

\$16524.00

Which amount capitalized at 5 per cent

will call for

\$330,480.00

On the other hand should it be held by the Court, that Treaty Indians, as understood by us, and their descendants in the male line are alone entitled to Annuity money, the liability of the Province in respect of the "future" payment thereof will be as follows.

[different handwriting:] Annuities perpetual (over)

The number of Indians and Half-breeds inhabiting the ceded territory onthe [sic] North shores of Lake Huron and Lake Superior in the year 1850 was according to the Report of the Hon. W.B. Robinson, as follows;

	Person	Half-breeds	Indians
Lake Superior	1240 including	84	leaving
	1156		
Lake Huron	1422 "	200	" 1222
Totals	2662	284	2378

ON a comparison of the figures in these statements, it will be seen that whereas the number of Indians, 2378 in 1850, and 2337 in 1890, has remained almost stationary; the number of Half-breeds has increased from about two hundred and eighty four, to one thousand seven hundred and ten, or six-fold in the same period.

ON the supposition that the foregoing Statement and Classification of the annuitants, paid in the year 1890 is correct, and that our contention in regard of the "Status" of the treaty and non-treaty members of the bands is sustained, it may be well to show how much the Dominion and the Province stand to lose or gain in respect of the annuities paid in that year alone.

The Account as it appears to me would stand thus;

Annuity money paid by the Dominion in 1890

to 5231 Annuitants at \$4 each \$20924.00

Less amount of annuity capitalized "on Confederation"

and then charged to the Province 4400.00

Nett [sic] amount paid by the Dominion \$16524.00

- DEDUCT -

The annuities paid to 2894 Non-Treaty Indians and others, having "no claim" as we contend upon the Province.

11576.00

Balance of Dominion Claim for 1890, which

balance the Province may have to pay. 4948.00

Again as regards the future payments of this annuity money.

Should it be held by the Court, that the Province is not only bound under the treaties to pay perpetual annuities to those classed as Treaty-Indians but to those also classed as Half-breeds and non-treaty Indians, the amount would be as follows;

Annuities "perpetual" payable to 5231 Persons	
at \$4. per Ann. Each	\$20,924.00
Less amount already provided for	4,400.00
	\$16524.00

Which amount capitalized at 5 per cent
will call for \$330,480.00

On the other hand should it be held by the Court, that Treaty Indians, as understood by us, and their descendants in the male line are alone entitled to Annuity money, the liability of the Province in respect of the "future" payment thereof will be as follows.

Annuities "perpetual", payable to 2337 Treaty	
Indians at \$4 each	\$9348.00
Less amount already provided for	4400.00
	\$4948.00

Which amount capitalized at 5%
will require \$98960.00

A difference on this item along of Two Hundred and Thirty one Thousand five hundred and twenty Dollars.

As the number of Treaty Indians, and also of Non-Treaty Persons, included in the Pay-lists, varies from year to year if any or all of the classes of persons objected to by us are pronounced by the Court to be Non-treaty members, and therefore not entitled to annuities. Each pay-list since 18[75] when the first payment of a per Capita Annuity was made, to the present time will have to be revised on the lines, laid down by the Court, and the yearly amount which the Province may be justly required to refund to the Dominion correctly ascertained.

As stated in my Report for 31 December, 1891, [indexed above] When this change 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. For this omission, and its consequences, the Dominion and not the Province is responsible.

The Claim of the Dominion on behalf of the Indians to arrears of annuity.

ON this subject I have little to say or to suggest, The amount will depend upon the time when, and increase should have been made in their annuities. and also the amount of such increase- Questions to be determined by the Court- But from whatever year, such increase is decided to have been due. Arrears from that time until the year 1875 can only be claimed for. or on behalf of the "bona fide" Treaty Indians, and hence the yearly pay-lists of the intervening period will require to be revised, on the same lines as the Court lays down, in regard of the revision of the Lists, for the subsequent period namely, from the year 1875 (inclusive) to the present time.

If our contention be sustained, this claim of the Dominion Government, be it more or less, founded as it doubtless is, on the right of all, whether Treaty Indians nor NON-treaty members of the tribes or bands, to arrears, will, I have no doubt be cut down to less than one half.

[Doc. No. 81]

78. In a letter dated March 7, 1893, Borron forwarded another report to Mowat regarding the Robinson Treaty annuities. The letter is quoted below:

I have the honor [sic] to enclose Report - giving the results of the enquiries you entrusted me with making in reference to the Annuities payable to the Indians of Lakes Huron and Superior under the Robinson treaties - and the claims of the Dominion Government in connection therewith[.] I have, you will find, gone very fully into the subject and trust that some of the - facts and opinion contained in this report may aid for materially in resisting claims - which to say the least are extravagant.

I have sent Mr. Irving a copy of this Report.

In my inquiries I have received most valuable assistance from the Officers of the Hon Hudsons [sic] Bay Company - to such of whom as I was not acquainted with - Sir Donald A. Smith was [sic] good enough to give me letters of introduction.

[Doc. No. 82]

79. Borron's report pertained to the claims of the federal government for a refund of annuities paid under the Robinson Treaties and for arrears for these annuities. In it, he outlines the points of agreement between the federal and provincial governments, and the points of contention, especially with regard to "Halfbreeds":

Outstanding Accounts - Claims of the Dominion and the Provinces arising out of the payment of Annuities, under the Robinson Treaties.

Memorandum by Mr. Borron.

The Dominion makes two claims -

The first - is for a refund of the money advanced (pending a settlement) between the years 1875 and 1892 inclusive, to pay the increased annuities promised under the Robinson Treaties.

The second - is on behalf of the Indians for arrears of annuity and is preferred on the ground, that, according to the terms of the Treaty, the increase in the amount of annuity to be paid to each individual referred to in the first claim, should have commenced earlier, that is prior to the year 1875.

As regards the first of these claims passing over the plea, that all matters in relation to these annuities were supposed to have been settled between the Federal and Provincial Governments, soon after Confederat[ion] - there are points upon which both parties may be expected to agree and other

points in regard of which differed views will doubtless be held.

It will probably be admitted by both sides -

(1) That all those Ojibewa Indians who inhabited (or possessed hunting grounds in) the ceded territory, in the year 1850, were intitled [sic] of right to the annuity and other moneys, and still retain their right thereto, with some exceptions in which it may have been voluntarily relinquished or abandoned.

(2) That, as these Annuities were to be perpetual, it follows that their descendants in (at all events) the male line are also entitled to the Annuity-money promised in the Treaties.

(3) That the survivors of the old "treaty Indians" of 1850 and the lineal descendants of these and other Treaty-Indians deceased, in the male line - were rightfully entitled to be paid increased Annuities, in 1875, and yearly thereafter, provided that the ceded territory had, as was contended on their behalf, produced such an amount as would enable the Government of the Province to do so without loss-

(4) 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.

The respective Governments will probably disagree and join issue on the following points 0

1 The Rights, under the Treaties, of Half breeds and their descendants. Our definition of this word "half-breed" being 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, loses [sic] her rights as a member of the tribe, and her children (that is halfbreed children) have no claim on the lands or moneys belonging to their mothers nation".

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.

(2) The rights of Indians, whose hunting-grounds, in 1850, lay north of the Height of Land, alluded to in the treaties, and who, having no right, title or interest to or in the territory ceded to Her Majesty by and in terms of the Robinson Treaties, can have no conceivable right to the money, annuities, and other considerations named therein.

(3) The right to annuities, etc. of certain Indians who have settled upon Manitoulin Island in accordance with an invitation given by the Government when that Island was set apart for the North Shore and other Indians, in the year 1836.

(4) The right of to Annuities, etc. of stragglers from other bands or tribes of Indians in Canada and the United States, and of their descendants.

We take the ground that none of the persons included under any of these four heads are strictly speaking Treaty Indians or entitled to claim. as against the Crown or Government, any of the money, or other considerations, promised to Treaty Indians.

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, it is reasonable to infer that Counsel for the Dominion will contend that all these person 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 further future payment of their annuities. The right of the treaty-Indians, included in the pay-lists of the Indian Agents to receive the Annuities paid to them is not questioned. And if the plea, that the whole matter was settled at Confederation, and cannot be re-opened, be not sustained, there is no reasonable doubt on my mind that the Province may be required to pay so much of this claim. But if our contention, in regard to the rights of other than bona fide treaty Indians to be paid annuity-money, be sustained, there is hardly a doubt that the total amount claimed by the Dominion, under this head will be reduced to less than one half.

As regards the second claim of the Dominion, namely, that of the Indians to arrears of annuity, its validity and the amount in which the Provinces of Ontario and Quebec may be found liable, will depend upon 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. It is largely a question of accounts; by may possibly be limited to a period not early than 1870 in the case of the Lake Superior Indians or before 1874, in the case of the Lake Huron Indians - on the grounds - that neither the Indians themselves nor their guardians - the officers of the Department of Indian Affairs, applied for any increase prior to these dates.

But at whatever period the Court, with the evidence before it, may decide that an increase in the annuities should have been made, the sum total of the arrears between that time and the year 1875, must be calculated, not upon the number of persons included in the paylists, but on the number of treaty Indians who were, during these intervening years, entitled to such increased annuities.

The arguments in support of our position on these questions will be found in the reports of the writer.

When decided by the Court, a basis will have been laid down, on which a revision of the lists may be made, with the view of eliminating those non-treaty Indians and others who have no valid claim whatever to Annuities.

Until this is done, the amount really due by the Province to the Dominion, and to the bona fide Treaty Indians, in respect of either of these claims, cannot be ascertained - or finally settled.

Hence the propriety, so soon as these preliminary questions are settled decided, of applying to the court to have such a revision made.

[Doc. No. 83]

80. In a memorandum dated March 15, 1893, Borron reviewed the case presented by the federal government regarding the payment of the Robinson Treaty annuities. He indicated, point by point, the weaknesses of the governments' cases and possible arguments against some of the points regarding "Halfbreeds" and others. The memo reads as follows:

Indian Annuities Under Robinson Treaties

Memorandum - in reference thereto As suggested by Rough Draft of Case as presented by AEmelius Irving Esq. Queens [sic] Counsel

...

Part II

The Case Resolves itself - in Mr Irvings [sic] Opinion into 3 Points

...

2 The Construction of the Treaty, as to the numbers of Indians to be paid from time to time

While the total number of Indians entitled to participate in the benefits of the Treaties is stated (incidentally) in the treaties themselves - as being about 2662 - of whom 1240 were said to be included in the Robinson Superior - and 1422 in the Robinson Huron Treaty. A reference to Mr Robinson's Report shows - that in the former 84 Half breeds were included - And in the latter about 200 Half-breeds. In the same Report Mr Robinson says in effect - that he refused to treat with or to recognize these half-breeds - as Indians or has [sic] having any legal right to participate in the benefits of the treaties. This can be proved - by the evidence of living witnesses.

the Actual number of Indians - parties to and included in these treaties - were therefore as follows: Lake Superior Treaty 1156

Lake Huron	"	1122
In all		2378 Indians.

These and these only were entitled to Annuities [.]. Others have received annuities - but only as sharers with the Treaty Indians and at the request of the Chiefs - so long as the Annuities paid consisted of lump sums - amounting to \$2000- for the Lake Superior and \$2400. annually for the Lake Huron Indians.

It was never expected by Mr Robinson or anyone else that the number would never change. The treaties - secured to the Treaty Indians perpetual Annuities - and it was of course intended (though not actually inserted in the treaties) that the children and Grandchildren of the original treaty Indians should receive these Annuities. But such descendants must be confined to the Male line.

I have no hesitation in believing that Mr Robinson regarded any increase in the number of real bona fide Treaty Indians - as all but impossible - hence he made no provision therefor. But he fully believed that their number would decrease - and for that he did make provision. The contemplated decrease of one third - was not reached however during the period that the Annuity was [limited?] to the lump sums mentioned in the treaties - And when the augmentation clause of the treaty - was carried out in 1875 - each Treaty Indian was thereafter entitled to be paid \$4.- annually - whatever their number might be - and that proviso in the treaties relating - to a reduction of the annuities in the event of the number of Indians being less than two thirds of the original number - never put in force at any time - became absolutely void and dead-

When the total Amount of Annuity money - was dependent upon the number of Treaty Indians - in the Indian Bands - entitled to receive \$2- \$3 or \$4- yearly - it must be evident to all - that such a change of system,

rendered a Revision of the Pay-Lists comparatively necessary - in order to determine what that total sum or amount should be - For beyond doubt - hundreds of persons had been previously - permitted by the Chiefs and Indian Agents to join to the Bands and to receive a share of the lump sums (together \$4,400) previously paid by the Government.

If the [contemplation?] "augmentation" or increase of Annuity should properly have take place - before Confederation - the Province of Quebec may have to pay a proportion of the arrears owing to the Indians at that time (1867). Hence it is in the Interest of the Government of that Province, as well as that of Britain - that all half-breeds and other Non-treaty persons - on the lists - even although they may have been adopted as members of the tribes or bands - shall be struck off and not counted in - with the Treaty Indians who are legally entitled to two - three or four dollars each of Annuity - in terms of the treaties.

It follows of course - If my views in regard to the number of Indians entitled to annuities be right - Those upon which the claims of Dominion rest - are entirely wrong.

The Third point - mentioned - in the Case Namely "whether the Dominion can raise the Question of Arrearages prior to Confederation" rests entirely on points of law.

...

1 The Dominion can claim for the payment of a greater number than those described in the Treaties. If it can show that these are presently or at any future time living of the [Progenies?] Treaty Indians or the descendants thereof in the male line exceed in number exceeding that mentioned in the Treaty. The Voucher taken for the first payment at [the?] conclusion of the Robinson Treaties affords the only safe ground on which to base a calculation as to either the number or names of the Treaty Indians-

...

[Doc. No. 84]

81. In the Michipicoten or Big Head Band paylists for 1894, the same "Halfbreeds" as had been listed in 1892 continued to be paid annuities, although under different numbers [See Doc. No. 85.].
82. On October 21, 1894, Borron forwarded the documents regarding the claims of the Robinson Treaty Native people to Aemilius Irving, Counsel for the Province, for his use before the Board of Arbitrators. Borron added some comments to his covering letter regarding the Attorney General's views with regard to the exclusion of "Halfbreeds". The letter has been excerpted below:

Herewith you will receive all the documents in my possession - in reference to the claims of the Indians - which will I conceive be of the least service to you in the discussion about to take place before the Board of Arbitrators at Ottawa next month.

Any papers remaining in my hands, relate entirely to the revision of the pay-lists - consisting chiefly of letters from my Interpreter - Hudson Bay Company Officers and others.

These and my own notes and memoranda - will not be wanted or of any use - until the legal points in regard to right of Half-breeds, Manitoulin Indians - and Indians whose hunting-grounds in 1850 - were situated North of the Height of Land is decided.

The Hon The Attorney General - expressed an opinion some time ago in a letter to me - "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" [.]

I have in hand a special report, on this point - which I will finish and send to you on or before Saturday. It will enable you, I think, to overcome the difficulty which has apparently suggested itself to the mind of Sir Oliver.

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.

[Doc. No. 86]

82. On the same day, Mr. Ross, L. Vankoughnet, L. Tilley, Mr. Robertson, G. W. Burbidge and Mr. Courtney participated in a conference between federal and provincial officials regarding the payment of the annuities under the Robinson Treaties. Part of their discussion centered on to whom annuities and arrears were to be paid. A portion of the transcripts referring to "halfbreeds" is included below:

...
Mr. Ross--To whom are we to pay the arrears now if we were to pay them.
[sic-punctuation]

Mr. Vankoughnet--To those who were present in person at the treaties or their heirs.

Mr. Ross--Under the treaties the amounts were to be paid to individual Indians. They are not to be paid to their heirs.

Mr. Robertson--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.

Mr. Vankoughnet--Those who are recognized by the Government as Indians.

Mr. Robertson--Have we nothing to say in the matter when we have to pay the money. [sic-punctuation]

Mr. Vankoughnet--Half-breeds by the law in Ontario are Indians. As long as they have Indian blood in them they are legally Indians.

...

[Doc. No. 87]

83. In a report dated October 27, 1894, Borron expounded on the right of "halfbreeds" to participate in the benefits of the Robinson Treaties, from the Province's point of view. Borron argues against the Dominion Government's position that the "halfbreeds" in question had been legally admitted to the Bands and, as such, they were entitled to receive annuities:

On the RIGHT of HALF BREEDS to participate in the benefits of the ROBINSON TREATIES

"With regard to the exclusion of half breeds he sees little chance of excluding those who lived a tribal life with the band to which they belonged but other half-breeds there may be some hope of excluding, as not having been intended by the Treaty"

The Opinion above quoted, is that of an authority so high as justly to claim for it the most careful and respectful consideration on the part of all those engaged in answering the claims of The Dominion of Canada for and on behalf of the half breeds in question.

The half breeds referred to are those who claim to have been included in the Huron-Superior Treaties of 1850 and others who subsequently joined or were adopted into, and, as they assert, became members of the Bands of Indians with whom these treaties were made. Their contention, or that of the Dominion on their behalf, is, ^x that these half-breeds, have been adopted or admitted into the bands in question at the request of the Chiefs and principal men, or at all events of the Chiefs, and with the knowledge and consent of the members thereof generally. That they have for a great length of time received a share of the Annuities and other moneys paid to their respective bands. That this has been done with [inserted:] the knowledge and consent of the Indian Agents, by whom they have been paid, and who have inserted their names in the vouchers and pay lists - AND THEREFORE that they, the said half breeds, are members of the said bands and legally entitled to participate in all the benefits of the respective treaties, past, present or future, as fully and freely as the Indian members thereof.

[Marginalia at bottom of first page: "^x This will I expect be the line of Argument adopted when the question is [brought] before the Arbitrators. E.B.B."]

Our answer to this contention is -

That it never was intended that half breeds should be included in the number of those legally entitled to participate in the treaties, or in the annuities, and other considerations promised to the Indians inhabiting and claiming the surrendered territory embraced therein.

This denial is based among others on the following grounds

- (1) That almost without exception these half breeds are of Indian blood, on the mother's side only-their fathers or grandfathers (on the father's side) have been white men. These white men have generally been French Canadian, and as it is believed, lawfully married to the Indian or half breed wives.

(2) That in numerous instances even the wives of the Canadians or other white men, from whom these half-breeds have descended, when of full Indian blood, have been members of other tribes or bands of Indians, than those inhabiting the North shores of Lakes Huron and Superior.

(3) That the Hon. W.B. Robinson when making the treaties in question, as shown in his Report, distinctly informed the Half-breeds, when they sought to be recognized, that he had come to treat with the Chiefs who were present--that the money would be paid to them--and their receipt was sufficient for him--that when in their possession--they might give as much or as little to that class of claimants as they pleased. This was the answer which he gave to their demands on that occasion, and it was thus carefully reported by him, in the event of the Half-breeds at Sault Ste. Marie and other places seeking (as he truly suspected they would) to be recognized by the Government in future payments

(4) That it was at the earnest request of the Chiefs themselves, as stated by Mr. Robinson, that he undertook the distribution of the money among their respective bands. As contended by the writer this request was preferred subsequent to, and not before the conclusion of Huron Treaty. The distribution of this money formed no part of the obligations imposed by the Treaties. It was voluntarily assumed by Mr. Robinson. He undertook the division of their funds evidently--from his own report--as a favour--and not because it was required of him--that this was his own opinion is apparent, not only from what he said, but from what he did, for on the conclusion of the "Superior Treaty" the two thousand pounds (\$8000) granted in terms of that treaty were paid in one lump sum to the four chiefs and five principal men who took part in making the treaty, and was distributed by them among their respective bands. Doubtless they gave more or less of this money to the Half-breeds living (as nearly all such did) at or near the Hudson's Bay Company's Posts, on Lake Superior. They need not have paid these Half-breeds any money, unless--they pleased. The fact that they did so--and subsequently allowed these Half-breeds and many Indians--whose hunting grounds were in unceded territory North of the Height of Land to be placed on the pay-lists and to participate in their Annuities--cannot possibly--as it seems to me--have conferred any right or title on such Half-breeds--and non-treaty Indians, as against the Crown--in respect of these Annuities--which they did not, and do not now possess--under the treaty itself. In like manner, in the division of the funds of the Lake Huron Bands by Mr. Robinson at the earnest request of the Chiefs--although some Half-breeds were directly or indirectly given a part of this first money--and they and many others have since (doubtless also at the earnest request of the Chiefs) been given a share of the Annuity and other moneys to which the respective Bands were entitled in terms of the Huron treaty--by successive Indian Agents--on whose vouchers and pay-lists the names of such Half-breeds and the sums paid to them duly appear-- All this may be admitted--but it cannot make valid or good, claims which were originally unfounded and bad.

[Marginalia at bottom of page: "There is no doubt that the Chiefs were assisted by the Hudson's Bay Company coffers in the distribution but there is nothing to show that these officers in so doing acted as Agents for the Crown. E.B.B."]

Such may have established a sort of claim on the part of these Half-breeds, and other non-treaty persons who have been adopted or admitted as Members of any Band, as against the Band itself--but not as it humbly appears to the writer as against the Crown--the Dominion or the Province.

(5) During the entire period--commencing with the year [1851?] and ending with the year 1874--the Bands included in both the Huron and

Superior Treaties were paid certain Fixed Amounts or sums, namely, \$2400 to the former, and \$2000 to the latter yearly, [sic-punctuation] This was all that it was supposed the treaties called for. It was not of the least consequence to the Crown or to the various Governments or Provinces representing the Crown how this money was divided, provided that the Indians themselves were satisfied. It mattered not whether these sums were divided among many or few. The Indian Agents--under these circumstances therefore, have not, apparently, felt it incumbent upon them, too rigorously to examine into the claims of those whom--the chiefs had adopted into their Bands and who, they were desirous, should receive a share of this so-called Annuity money. Hence during this period, a great many non-treaty persons have been numbered with the Bands, and entered on the pay-lists of the Agents.

When in 1878, it was decided by the Dominion Government that the time had at length arrived, when those Indians who were parties to the Robinson Treaties--and their descendants in the male line--(i.e. all those Indians legally entitled to Annuity money)- should in acceptance with the provisions of these treaties--be paid \$4.00 (four dollars) per capita annually, instead of the aforesaid lump sums which barely yielded them a dollar a year each--nothing is plainer and more easy to see--than that these pay-lists should have been revised and new Lists drawn up. In these revised pay-lists the Treaty Indians only should have been entered. Half breeds--non-treaty Indians and others--having no legal or moral claim, right or title to receive annuities under these Robinson Treaties, should have been left out.

The Treaty Indians and their families or descendants (in the male line) only--were legally entitled to be paid--the four dollars each--yearly--promised in the treaties, and to such only this Annuity should have been paid. When the money was in their possession, as was suggested by Mr. Robinson in regard to the money paid by him--they might give as much, or as little to the Half-breeds, or any other classes of claimants, as they pleased.

The Pay-lists however, have not been revised and corrected--but on the contrary half-breeds and non-treaty Indians and others in increasing numbers have been included year by year in these lists--and from the year 1875 to the present time--each and all of these persons have been paid by the Agents and Officers of the Department of Indian Affairs--four dollars annually. This amounts in the aggregate to a very large sum--re-payment of which, to the Dominion, by the Province of Ontario, is (as I believe) improperly claimed.

It appears, however, from the opinion quoted at the beginning of this Report--that those Half-breeds who lived a tribal life with the Bands to which they belonged^x --occupy such an exceptionally strong position that there may be great difficulty in excluding them.

...

Borron then continues in his report with a description of the way of life of each of the "different" groups comprising the Robinson Treaty Bands--those being the "tribal Indians", the "semi-civilized Indians" and the "halfbreeds":

...

In directing our attention to this particular point--it would seem indispensable that we should clearly apprehend the meaning of the term "tribal life". As the writer understands it, the tribal life therein referred to-

-means the kind of life led by a majority of the Ojibbewa Indians in the year 1850--when the Robinson treaties were made. What were the chief characteristics of a [inserted above: "that"] life? It was as I conceive, a homeless wandering nomadic life. They had no houses or fixed abodes of any kind, but lived in wigwams and roamed about from place [inserted:] to place, as inclination prompted, or necessity compelled. They rarely encamped or remained long at any one point or place during the summer season and even in winter not unfrequently moved their camps from one part of their hunting grounds to another.

[Marginalia at bottom of page: "X Allied in blood - would be more appropriate. E.B.B."]

Each Indian family had its hunting ground. These embraced a large extent of country--frequently as much as one hundred square miles. 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. On these hunting grounds the family generally resided from the latter end of September until the middle of May the following year. So far as an Indian could be said to have any domicile it was undoubtedly "on his hunting grounds".

Their occupation was fishing, hunting and trapping. A great majority of them subsisted almost entirely on game and fish. Some of those families whose hunting grounds were near to Lake Huron and Superior or to the Hudson Bay Company's coasts cultivated small patches of potatoes and Indian corn [sic-punctuation] 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. They ate all they could in seasons of plenty but stored up little, if any food, for periods of scarcity. Thus, they may be said to have lived, from hand to mouth. There were very few, if any Indians therefore, who did not, at intervals (longer or shorter) suffer severely for want of sufficient food [sic-punctuation] In the winter they were sometimes reduced to such straits that they were obliged to peel off and eat the inner bark of the birch and other trees to appease the pangs of hunger and keep themselves alive. Cannibalism was not unknown--and death from starvation was by no means uncommon.

The Normal or "tribal life" of the Indians living North of Lakes Huron and Superior, in 1850--was generally as follows,-

On the breaking up of the ice in the Spring--usually in the month of May--they descended the rivers in their birch [sic] bark canoes, to one or other of the Great Lakes--taking with them their families and the furs which they had succeeded in trapping on their hunting grounds in the course of the preceding winter. It was on these furs--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. Such articles as fish hooks and lines, twine for nets, axes, knives, guns, gunpowder and shot, files, traps, flints and steels, kettles, blankets, capots or overcoats, cloth and other stuff for breech clouts, leggings and petticoats, shawls, handkerchiefs and other articles too numerous to mention. These things--together with such luxuries--as tea, tobacco and occasionally a little lard, biscuit, pork and flour--they obtained in exchange for their furs chiefly from the Hudson Bay Company, whose principal trading posts were usually situated at or near the mouths of the larger Rivers.

After camping a while at Company's posts and roaming about in their canoes--subsisting principally upon fish, wild fowls and berries. the month of August would probably find them at Manitowaning to receive their

"presents" from the Imperial Government, or as they believed--from their great Mother--the Queen--Thereafter they usually wended their way [inserted:] back to the Post at which they were in the habit of trading their furs--and having "taken debt" as it was called--or obtained--on credit, an outfit of such articles as were most likely to be wanted during the winter and could be stored away in their canoes--they would take their departure for their hunting grounds in the interior to be no more seen until the following Spring. The families composing each band saw little or nothing of each other during the winter--their mode of life--and the scarcity of game--compelling them to live far apart [sic-punctuation]

It was a very rare thing for more than two families to be found living together or near each other at that season. The only occasion on which any considerable number met together--and then, for a short time only, were at the Hudson Bay Company's posts and on the Manitoulin Island--when receiving their presents. Such of them, as were Catholics--would also meet at Wikwemakong [sic], whither they resorted to see their missionaries and perform their religious duties.

As might be expected--their tribal organization was very loose and imperfect--The Chiefs had little influence or authority over their followers--and one band little intercourse or sympathy with another [sic-punctuation]

This description of "the tribal life" of the Indians in question is founded largely on the writer's own knowledge and experience, dating as they do from the month of May 1852 or little more than a year and a half from the time when the Robinson treaties were made-- Its truth is corroborated on some important points--by the Report of the Reverend Fathers Hannipeaux and Ferrard of the Catholic mission at Wik-we-ma-kong [sic], addressed to R.T. Pennefather, Esquire, Superintendent- General of Indian Affairs and dated August 1857 or seven years after the conclusion of the treaties.

Under the head "Present State of the Indian or Nomadic Bands yet inhabiting the forests between Penetanguishene and the Bruce Mines" (where the writer himself then resided) and mentioning, among other things, that the total number of these Indians was, at that time, 578; of whom 294 were Catholics; 23 Protestants and 261 Heathens. The Reverend Fathers go on to say "The greater part of these bands subsist by fishing and hunting and by selling their furs to the traders of the Hudson's Bay Company. They raise a little Indian corn and a few potatoes; encamping for a greater or lesser length of time--and living under huts made of bark or of reeds. Each Spring they descend from the highlands towards the mouths of the rivers emptying into Lake Huron -- and remain there, only sufficiently long to fish and for the purposes of trade; after which they return to their forests. It is during these short intervals that the Missionaries visit them but it can be readily understood that during these short visits and at such great distances, it is very difficult to impart to them any solid instruction." ----- "If the Government succeeds in reuniting them on Manitoulin Island, there will be no difficulty in bringing them to that state of semi-civilization, already attained by Christian Indians on the Island."

Such then was the tribal life -- and such was the condition of a very large majority of the Indians inhabiting the territory embraced in the Robinson Treaties.

- HOW THE HALF-BREEDS LIVED -

The condition and the manner in which the Half-breeds in this territory lived were described by the writer at considerable length in his Report to the Honorable [sic] The Attorney-General of the Province, dated 31st December, 1891 pag 26 et seq, and which in order to a comparison with the tribal life of the Indians at the same period it may be well to repeat. Briefly stated, the Half-breeds at that period (1850) did not dwell in wig-wams or huts--like the Indians--but in houses.

They did not 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. ^X They 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.

The 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. Some of them even had horses and cattle [sic-punctuation] Their fathers had been with few exceptions-- employes [sic] of the Hudson Bay Company, in the various capacities of voyageurs, boat-builders, canoe-builders, blacksmiths, servants and traders; and their half-breed sons continued, in many instances, to be employed in like manner, by the Hudson's Bay Co. and others, who needed their services.

[Marginalia at bottom of page: "^X To C[rees?] - there were some exceptions, but they were comparatively very [illegible word]"]

When voyaging with explorers-- sportmen and tourists, they usually received from seventy-five cents to a dollar a day and rations. Many of those living at Saulte [sic] Ste Marie- and Garden River and elsewhere found remunerative employment in this way for longer or shorter periods during the Summer season. Some made a good living "scooping" white fish in the rapids of St. Mary's River. 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. Later on in the fall--nearly all the [illegible word] set out in their "[Hastings?]" boats for the Duck Island--and other points, [illegible word] tour and white fish were [illegible word] together in vast numbers, in the months of October and November.

There in a few weeks they generally sought and salted down in barrels a quantity of fish amply sufficient for the consumption of their families, during the entire winter--and frequently had a surplus for sale. When winter closed in such of them as needed or cared for work, found ample employment chopping and hauling cord wood for domestic use, and to supply fuel for the steam boats, during the following summer. Almost every family re[pai?]red to "the Sugar Bushes" in the month of March--and made large quantities of maple sugar--not unfrequently I believe as much as some five hundred to a thousand pounds were made by a single family. This was far more than was needed for their own use, and the greater portion of it was sold to traders.

Of course, these Half-breeds fished and hunted, and even trapped occasionally--as white men would do under like circumstances, and said like surroundings. In a country where there were no butcher shops few of us--irrespective of that natural love of sport common to our race, as well as theirs-- but would have hunted and fished, when fish and game were in access and at all plentiful. Nor if valuable fur-bearing animals, such as the black fox were thought to be around, within any reasonable distance of our house--could many of us have resisted the temptation to set out traps to catch them. This too the half-breeds frequently did, some of them going

back several days' journey on snow shoes into the interior for that purpose, and remaining away from their homes for a few days or even weeks. But they rarely or ever took their families with them. And it 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 necessities of life.

It may be said that all the French Half-breeds in the territory--and a very large majority of the half-breeds are of French-Canadian origin-- professed then, as they do now, the Catholic faith; and with comparatively very few exceptions they still bear the surnames of their fathers and grandfathers. This may be seen on reference to the Pay-lists particularly those of the Garden River, Batchewana, Fort William and Michipicoten Bands in which large numbers of half-breeds are included; a fact which of itself constitutes "presumptive evidence" that they are not Indians. As a class, they are docile and though fond of change, fairly industrious. The Catholic Missionaries are respected and possess great influence over them. This influence has always been exerted to persuade them to choose a settled mode of life in preference to that of the Indian. [Marginalia: "Refer to the PayLists"]

In this, they had been so successful that in the year 1850--so far as known to me--very few half-breeds lived entirely the tribal or normal life of the Indians.

- SEMI-CIVILIZED INDIANS -

There have been from a period anterior to the Robinson Treaties what the Reverend Fathers Hannipeaux and Ferrard call semi-civilized Indians living not only on Manitoulin Island--but on the surrendered territory embraced in these treaties. These christian and semi-civilized Indians had abandoned in a great measure, not only their old superstitions and practices, but their former (tribal) mode of life.

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. They lived in houses [sic-punctuation] 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.

The majority of these semi-civilized Indians had "settled" --so to speak at Garden River, Sault St. Marie and Fort William--where also for like reasons most of the Half-breeds resided. As no "reservations" had been set apart for the Indians on the North Shores (main-land) of either Lake Huron or Lake Superior at that time -- it cannot with propriety be said "that the Half-breeds were living on the reservations with the Indians when the Robinson Treaties were made." And still less -- that the half-breeds belong to their bands, and were leading "their tribal life." 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. Though much more numerous now and residing generally on the reservations set apart for the several Bands in 1850--these semi-civilized Indians bore at the time referred to 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.

The fairness of the descriptions given in this Report-- (1) Of the lives of the Indians generally; (2) of those Indians who were semi-civilized; (3) of the Half-breeds, can be confirmed by many persons in a position to speak

authoritatively on these points. The last mentioned description is fully borne out by John Driver of Saulte [sic] Ste Marie, himself a half-breed, and thoroughly cognizant of the lives led by them. His letter which was written at my request is dated 4th March, 1893, and will be found among the papers forwarded to Mr. Irving on the 21st inst.

It may be well to mention before concluding this Report that among the papers in question are Statements by John Driver, Alexis Biron, Joshua Biron, and Edward Sayer, half-breeds; by Nebenaigcoching and Paquatchinine, Chiefs; by John Maskeyash, a Principal Man; and by Peter Ahbahjiganee, a Member of the Batchewana Band, also an affidavit by Major Wilson of Sault Marie [sic] who is I think, the only survivor of all those whose names appear as having been witnesses to the treaties.

All these parties were present when the Robinson Treaties were made and heard what took place at the Council, with the exception perhaps of Edward Sayer. Their Statements go to show :-

(a) That Mr. Robinson absolutely refused to recognize the half-breeds in any way.

(b) That when Chief Shinguaconse called the Council mentioned in Joshua Biron's Statement and asked the Half-breeds (who had been invited to attend) to join his Band, and be his men or soldiers and if so that they would get "Presents" same as his band were then getting -- and a share of whatever he might thereafter obtain (from the Government) for his land. (meaning the territory inhabited and claimed by the Band)-- it is evident that prior thereto no half-breeds had joined or become members of the Garden River Band. This Council was called, as I believe, a year, or at most, two years before the Robinson Treaties were concluded--and 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 Mines, on the North shore of Lake Superior in the year 1849. As a number of the half-breeds are known to have taken part in this affair it is 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. Hence the pertinacity displayed by Chiefs Shinguaconse and Nebenaigooshing 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. It has doubtless been at their earnest request and to redeem their promises that so many half-breeds have been placed on the pay lists of the Garden River and Batchewana Bands, and have become-- in a limited and restricted sense [inserted:] only (as we maintain) members of those bands.

Other half-breeds and non-treaty persons have been sneaked into these and other bands at various times and in ways unexplainable; and finally owing to the carelessness and indifference of the Indian Agents have been placed on the pay lists in the expectation and belief that once there they and their descendants will be paid annuities as long as "the sun shall shine and waters flow."

(c) Another point in these statements -- and one of importance, if true, is the alleged refusal of the Agents of the Imperial Government both before and after the year 1850, to recognize half-breeds as having any right to participate in "the presents" at that time distributed among the Indians.

84. The Board of Arbitrators granted their award concerning the increased annuities clause in the Robinson Treaties with regard to which government was responsible for payment. In their award, dated February 14, 1895, reference is made to the people who are entitled to the annuities for the pre- and for the post-Confederation periods. In addition, the Board ordered that Ontario was not to be precluded by Canada in prescribing a definition of who were Indians or in adding the names of individuals to the lists. The relevant passages of the award have been extracted below:

...
I. --Burden of Proof.

This Board, in respect of the burden of proof, doth order and direct that the rule hereinafter set forth be followed:

With reference to the period before the Union: The individuals whose names appear on the lists paid before the Union shall be taken into account in computing any increased annuity that should have been paid.

The onus of showing that the names of any individuals entitled to be reckoned were improperly omitted from such lists shall now be on the Indians or those who act for them.

And in like manner no names shall be struck off, except for good reasons as shown by those whose interest it is to keep the numbers down.

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.

The burden of showing that the names of any Indians so added since the Union to such lists were rightly added shall be on the Government of Canada.

II. -- Indians and Persons entitled to the Benefit of such Treaties, Respectively.

This Board, in respect of Indians and persons entitled to the benefit of such treaties respectively, doth further order and declare that for the purpose of ascertaining the number of individuals entitled, respectively, to the benefit of the Robinson Treaties of the seventh and ninth days of September, 1850, 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 respectively; that is to say:

- (a) Any member of any tribe or band who were parties to the treaty, and any lawful descendant of Indian blood of any such member of any such tribe or band;
- (b) 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;
(c) 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.

Descendants of Indian blood shall mean persons of at least one-fourth Indian blood.

...

[Doc. No. 89]

85. The Province of Ontario appealed the Arbitrators' award, and the decision, dated May 15, 1895, read, on pages 453 to 454, that:

...

III. It is not desirable to define with minuteness who are Indians entitled to share, in advance of any particular case which arises for decision. It would appear from the despatch (a letter of Mr. Robinson, the Commissioner), which accompanies the treaty that half-breeds were then embraced in and numbered with the tribe in the approximate totals given. The recognition of these half-breeds as members of Indian tribes by the government appears to be manifested in contemporaneous and subsequent statutes.

When the statute of Canada (13 & 14 Vic. ch. 74, passed 10th August, 1850), 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), and the act altogether seems to contemplate as Indians those of pure or mixed blood and those intermarried with and living among Indians (no distinction being made to sex). Then coming down to 1857, the statute of that year (20 Vic. ch. 26), gives 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. And the descendants of such marriage would be Indians as long as the tribal relation and residence lasted.

This appears to be a more comprehensive category than would be the case if the matter rested on common law or on international law, for in such case, the maxim *partus sequitur patrem*, governs cases as to Indians. (See judgment of Parker J., in *Ex parte Reynolds* (1).

There is the observation also to be made that the government of Canada, before 1867, had always power to regulate the inhabitancy of Indian lands by excluding all whites therefrom, and their marriage and residency on the part of white people must have been with the sanction of the government.

I would therefore favour generally the application of the rule so as to include among Indians those of other blood who are not only married to Indians, but were adopted and acknowledged 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) I should say the person of other blood and his descendants was and were not included in those entitled under the treaties.

...

(1) 5 Dillon 394.

...

And on pages 457 to 458:

...

Then as to 'the individuals' who in case the increase can be made without loss are to be reckoned in ascertaining the amount of the annuity, it is clear of course that they are to be Indians belonging to the tribes or bands entitled, and no one should be counted who was not by law or well-established custom a bona fide Indian of the tribe or band.

I agree with what was said by Mr. Robinson of the danger of attempting at present an abstract definition of the word 'Indian'. With reference to the period before the union I do not see that there can be any difficulty[.] Whatever government is now liable to pay or make good any amounts that were payable but not paid before the union, is so liable as the successor or successors of the old province of Canada, the government of which appears to have kept a record or list of the names of the Indians entitled to share in the fixed annuities. Generally speaking the 'individuals' whose names appear on such lists would be those to be taken into account in computing any increased annuity that should have been paid. The onus of showing that the names of any individuals entitled to be reckoned were improperly omitted from such lists should now be on the Indians, or those who act for them, and in like manner no names, should, I think, be struck off, except for good reason shown by those whose interest it is to keep the numbers down.

With reference to the period after confederation, neither Ontario nor Quebec would 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. The burden of showing that the names of any Indians so added since the union to such lists were rightly added, would be, it seems to me, on the Government of Canada.

...

[Doc. No. 90]

86. Borron wrote to Irving on May 17, 1895, concerning the award of the Arbitrators. He outlined who was considered to be entitled to annuities and he indicated the need to revise the paylists. The memorandum reads as follows:

Referring to the award of February 13th 1895 re Indian Claims arising out of the Robinson Treaties, a copy of which (2nd Edition) you kindly mailed to me some time ago - I am pleased to see that so far as decided, you have gained for the Province more than I expected.

I think 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. The success of your contention in regard of Interest has doubtless saved the Province a large sum of money; and a further large reduction of the amount claimed under that head - will follow - the Honourable Chancellor Boyd's opinion, should be sustained.

I observe that it is only payments properly made to the Indians since the Union that are to be charged against the Province of Ontario, by the Dominion - and infer from this - that any liability on the part of the old Province of Canada before the Union, in respect of Arrears, will also be confined to those Indians who were properly entitled to participate in the benefits of the Treaties.

But while agreeing generally - with the Arbitrators - in the Award, which they have made - I respectfully differ from them on some points upon which they have merely indicated opinions and have not, as yet, given positive or final decisions.

I feel 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; and further - that we should look only to the substance of the right without regard to technical rules; 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, I adhere to the opinions expressed in my previous reports.

The Honourable Mr. Chancellor Boy says (part III page 33) "It is not desirable to define with minuteness who are Indians entitled to share in advance of any particular case which arises for decision - and after quoting various Statutes which appear to him to support the Half Breed claims concludes as follows -

"I would therefore favor [sic] generally the application of the rule so as to 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 makes anyway) I should say the person of other blood and his descendants was and were not, included in those entitled under the treaties" [.]

Believing, as the writer does, 1st, That the Hon. W.B. Robinson, on behalf of the Province, absolutely refused to treat with or to recognize half breeds as having any right title or claim whatever to the territory -
2nd, That prior to 1849 the Chiefs and principal men did not regard any of these half breeds as members of their tribes or bands and
3rd, That the Half breeds themselves when approached by Shinguaconse, the principal Indian chief, in the year 1849, and asked to become his soldiers - and join in the attack contemplated by the Indians on the Quebec Mining Company's mine on the North Shore of Lake Superior, showed by their answer that they did not consider themselves, either Indians or Members of the bands or tribes into which they have since been adopted. I cannot but regard the rule favored [sic] by Chancellor Boyd as much too liberal and calculated, in my opinion, to saddle upon the Province, for ever, an unlimited number of Annuitants.

This question is one of the gravest importance not only to the Province of Ontario, but to the Dominion generally, and thus, indirectly, to all the Provinces.

Prior to the year 1850 none of the treaties made with the Indians pledged the Crown to the payment of perpetual Annuities to each individual Indian of the tribes treated with[.] The consideration granted usually consisted of fixed or lump sums paid down. Or, of fixed sums to be paid annually to the tribe or band, sometimes of both, and in all cases portions of the territory were reserved or set apart for the sole use and occupancy of the Indians themselves.

Thus under these older treaties the liabilities of the Crown were always fixed and determined and therefore limited.

But an entirely new departure was made in the treaties concluded by Mr. Robinson in the year 1850. It is evident to me that it was Mr. Robinson's intention, in the first instance, that in these treaties also, a limited liability only should be incurred by the Crown.

Fixed sums amounting to Two Thousand pounds, and Two Thousand One Hundred and Sixty Pounds Provincial Currency, were to be paid down at once, and further sums of Five Hundred and Six Hundred pounds (perpetual annuities) were to be paid yearly to the Chiefs and tribes inhabiting and claiming respectively the northern shores of Lake Superior and the eastern and northern shores of Lake Huron. It can hardly fail to be perceived by everyone, who attentively reads these Treaties in the light of Mr. Robinson's dispatch, that the fixed sums just alluded to comprised the only pecuniary obligations he was willing to undertake on behalf of the Crown, or which he intended to undertake in the Treaties as originally prepared[.] The amount of these obligations could not exceed (under any circumstances) Eleven Hundred Pounds Currency, or \$4400 per annum.

But in order, as Mr. Robinson says, to leave the Indians no just cause of complaint, a clause was inserted securing to them certain prospective advantages. The insertion of this clause marked, as I believe, a new and dangerous departure from the policy pursued by the Government in previous Treaties. Under that clause, as soon as it came into operation the pecuniary obligations of the Crown or Province, thereafter became vague and indefinite; for although no Indian could claim more than Four dollars in any one year, no limit whatever was placed to the number of individuals who might, in the course of time, become entitled to that amount of annuity[.]

The Honourable Chancellor Boyd admits that it is likely that the Treaties were shaped with reference to the then prevalent idea that the tribes were dying out. I am firmly persuaded that this was really the belief of the Honourable W.B. Robinson, Or, at all events, that between those Indians who would (so as to speak) die out and those that would become absorbed in the dominant race by marriage, there was certainly no probability of any increase in then umber of the bona fide Indians, and therefore that no provision in the Treaties was required to meet such a contingency. In this conclusion he was moreover quite right. There has been, in my opinion, no legitimate increase in the number of Indians included in the Robinson Treaties. On the contrary, a correct census take of all those Indians who were in the first instance properly included in the Treaties, and of their descendants in the male line will, I believe, show that the numbers have rather decreased than increased. It is the wholesale adoption of Half Breeds, and of Indians other than those justly entitled, into the bands, from time to time, since the Treaties were concluded, that has really occasioned the enormous increase in the number of Annuitants, now entered on the Pay lists of the Indian Agents. If this right therefore of the tribes to adopt Dick, Tom or Harry as members, and the right of these members - not simply to a share of the property and funds of the band - but thereafter to

claim perpetual Annuities amounting to Four dollars per capita from the Crown, be upheld, such a ruling, despite the limitations in regard of residence, will, it is to be feared, impose a heavy and as I view it, an unjust burden on the Provinces, and should be modified, if possible.

The Honourable Chancellor for whose opinions I have the very highest respect, acknowledges, that the rule favored [sic] by him is more comprehensive than would be the case if the matter rested on Common law, or on International law for in such case the maxim "partus sequitur patrem", governs cases as to Indians. I hope, that on further consideration, he may be led to see that this maxim is the only safe rule that can be followed in defining the position of the Indians in regard to the Crown, under the Robinson Treaties. There are three parties really interested in this matter, namely 1st The Crown; 2nd, The Indians, who inhabited and claimed the surrendered territory at the time the Treaties were made and their descendants; and 3rd Those Half breeds, and outside Indians who although possessed of no claim to the ceded territory, or again the Crown, in virtue thereof, have, since the conclusion of the Treaties, been adopted into the several tribes or bands included in the Treaties.

It respectfully appears to me, that as between the first and the second parties, the claims of the latter to perpetual Annuities should be decided in accordance with the maxim just referred to. But, that in all questions relative to the Indian reservations, the land, timber, minerals, or other sources of revenue, as well as the right of others than Treaty Indians to intermarry with them, to reside on their reservations, and so forth, may properly fall to be considered under a different rule.

I can conceive, that the adoption as members of person of other blood or of non-treaty Indians, by the chiefs and tribes specially interested, may entitle [sic] 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. But I cannot 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[.] Even if there had been some limitation in point of time to this "right of adoption" on the part of the Chiefs and their tribe -- say to three or four years after the conclusion of the Treaties -- it would not have been so bad.

...

Referring to The Honourable Mr. Justice Burbidge's Reasons for the Award, I find as follows, pp 36 and 37 "Then as to "the individuals" who in case the increase can be made without loss, are to be reckoned in ascertaining the amount of the annuity, it is clear of course that they are to be Indians, belonging to the tribes or bands entitled, and no one should be counted who was not by law or well established custom, a bona fide Indian of the tribe or band"[.] All of which appears to me quite reasonable.

Thereafter His Honour refers to the fact that the Government of the Old Province of Canada before the Union kept a record or list of the names of the Indians entitled to share in the fixed Annuities and then goes on to say "Generally speaking the individuals whose names appear on such lists would be those to be taken into account in computing any increased Annuity that should have been paid. The onus of showing that the names of any individuals entitled to be reckoned were improperly omitted from such lists should now be on the Indians or those who act for them, and in

like manner, no names should, I think, be struck off except for good reason shown by those whose interest it is to keep the numbers down"[.]

On this subject I beg to remark:

1st, That the lists of the names of the Indians which Mr. Justice Burbidge refers to as being kept by the Government of the old Province of Canada, before the Union, were made out partly by so-called "Indian Agents" and partly by the officers of the Hudson's Bay Company.

2nd That for a number of years after 1850 when the Treaties were made the Indians Affairs were under the control of Superintendents General and Agents, both appointed and paid by the Imperial Government, and although it was doubtless incumbent upon the Provincial Government to pay to the Superintendent General of Indian Affairs (as the Guardian or tutor of these Indians) yearly, as they became due, the fixed sums promised in the Treaties to the Chiefs and their tribes - the Government of the old Province of Canada during this period if not during the whole period from 1850 to 1867, was not directly responsible (as it seems to me) for the division or distribution of the money, among the members of each tribe or band. It is true that at the earnest request of the Chiefs, Mr. Robinson, as stated in the despatch to Col. Bruce dated 24th September 1850 undertook the distribution of the first money, and that the Indian Agent at Manitowaning, Captain Ironside - did so, for at least a number of the Lake Huron Indians, but as regards the Lake Superior and some of the Lake Huron Bands, the fixed sums guaranteed under their Treaty, was distributed prior to the Union, by the Hudson Bay Company's officers at Fort William, Michipicotin [sic] and elsewhere. The despatch of Mr. Robinson explains the circumstances under which this was done. It will be seen that he took the ground that it was not requisite that he (or the Government) should distribute their money, that all that was called for by the Treaties, was, that the money should be paid to the Chiefs and that they might divide it among the members of their respective bands or tribes, giving to the half breeds whose demands he, Mr. Robinson, had refused to recognize, as much or as little as they pleased. This being so, it is manifest, that from the very first, these pay lists have 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 [sic] 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[.]

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. Generally speaking the names of those really entitled, as individuals, to these annuities or of their fathers, may, with very few exceptions, be found in the records or pay lists, alluded to by Mr. Justice Burbidge, but under the exceptional circumstances in which the Province is placed, I contend that 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. And that the onus of showing that they were not merely members of the tribes or bands by adoption, but treaty Indians should be on these individuals, whether of Indian or other blood, and on those who act for them, that is, the Department of Indian Affairs. Mr. Justice Burbidge admits (page 37) that the burden of showing that the names of any Indians so added since the Union to such lists were rightly added would be (as it seems to him) on the Government of Canada, or, in other words, the Department of Indian Affairs.

...

I am convinced therefore that it is in the interest, not only of the Province but of the Dominion at large, where the title to annuity money rests upon Treaties in which each individual is guaranteed by the Crown a certain stated sum annually, irrespective of their number, or of the total amount necessary to make such payment, the onus of showing, that those claiming such annuities, are properly entitled, must in all cases rest on the claimant where his or her right is challenged by those interest in keeping the numbers down.

If this is not the law at present, the sooner a law is passed to that effect the better, for while inflicting no injustice on the Indians, such a law is, in my opinion, absolutely indispensable in the public interest.

[Doc. No. 91]

87. In correspondence dated 1896 with the Indian Agent at Sault Ste. Marie, William Van Abbott, no mention is made by the Department of Indian Affairs of the Award of the Arbitrators or any changes to be made in the annuity paylists [See Docs. Nos. 92 and 93.].

V. The Implementation of the Award of the Arbitrators

88. In 1898, the Department of Indian Affairs appointed its Inspector of Indian Agencies and Reserves, J. A. Macrae, to investigate and report on which individuals were eligible to receive Robinson Treaty annuities. Macrae reported on his investigation in the Port Arthur Agency on February 9, 1898. He reviewed the past policy of the Department (and of the Hudson's Bay Company) and classified persons into categories of entitlement, including those who "belonged to the bands or tribes of chiefs who were parties to the treaty"; those 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"; those "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 those "who were classed as Indians by the Treaty Commissioner and were treated with as such." Macrae's entire report is excerpted below:

Report 9th Feby. /98. Persons in Pt Arthur Agency. with doubtful or bad title paid annuity

I have the honour to make a further report indicating persons who have been receiving "Robinson" Annuity in the Port Arthur District, as it seems to me without title. Their names and numbers are set forth on the enclosed schedule [indexed separately], and in the memorandum attached will be

found the data upon which my opinion has been found.

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 as is expressly stated sets entirely to one side "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 restricts the term "Indian blood", and accords a recognition to adoption and acknowledgement prior to 1893 such as, at least between 1876 and 1893, the Dominion has I think not accorded.

It appears to be the opinion of the arbitrators that individuals were entitled to enjoy the annuities who after 1850 by adoption or acknowledgement became members of tribes that were parties to the treaties. If that view be accepted by the Dominion it follows, I suppose, that individuals will no less be entitled to enjoy annuities who by statute of the Dominion became members of the same tribes, and I presume that the Dominion will be liable for such annuities unless those individuals happen to fall under the arbitrators definition of an entitled person. In short other rights than those recognized in the arbitration, and which have been created by Dominion legislation may be held to exist and to be worthy of respect.

It will perhaps therefore, be convenient to here classify the persons who have seemed to me 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). The want of authorities to direct judgement left me very much unassisted in trying to determine legal rights that are in many instances difficult for a lay mind to discern, but I did the best I could governed by the few authoritative rulings I could discover.

The following classes have been considered entitled to the annuities, if British subjects, provided they have not sacrificed title by continuous foreign residence, under the Act of 1876.

Firstly:- 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.

Secondly:- Persons of Indian blood who occupied and used the surrounding 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.

Thirdly:- 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.

Fourthly:- Persons who were classed as Indians by the Treaty Commissioner and were treated with as such; and the lawful descendants of such persons:
and perhaps;

Fifthly:- 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.

Sixthly:- Persons who by the enactment of 1859 became Indians; and the lawful descendants of such persons.

I have had some doubt about the two last classes, but in all cases have given the benefit of that doubt to the annuitants and have not recommended that their pay should be stopped.

As to the statutes of 1868 I may say that I have not considered it as affecting the matter at all feeling that it was passed for certain particular purposes which had nothing whatever to do with title to annuity. Having pursued this course I was glad to find that I was supported in adhering to it by the Depart [sic] of Justice (Vide opinion expressed in letter of 14th November 1891 and 10th October 1894, on Department's file 42801) Which [sic] co siders [sic] that the definition of 1868 "was and was expressed to be for the purpose of determining what persons were entitled to hold, use or enjoy the land and other immoveable property belonging to the tribe or band. The fact is that the right of an Indian to share in the moneys belonging to band [sic] depends rather upon treaty than upon statute &c." Later the Department of Justice modified this opinion to the extent of stating that the definition might be appealed to "as showing the persons and classes of persons entitled to share in the income of a fund derived from the sale of land belonging to the band:, but to no greater extent.

It may be well, here, to submit those considerations from which the belief has sprung that has governed the recommendations I have made.

It has appeared 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 which were granted purely as a part of a quid pro quo for the surrender of such a title of occupancy, by favour of the Parliament or Government of the Dominion; for the title of occupancy which sprang from immemorial tribal use of he [sic] 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 to be a right in either equity or law.

That so much grace should be extended to any who were not clearly Indians under the law [would?], in my opinion, be wrong and though it has been urged that a sort of perscriptive [sic] right has been created by continued payment of persons who were not, and clearly not, entitled I have not been able to take that view of the matter. For it appears that no arguments in favour of perprescription apply here, when it becomes evident that first payments were made wrongfully or in error; and it seems 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.

Submitting this report with the utmost respect and diffidence.

89. A schedule listing people in the Bands belonging to the Port Arthur Agency was attached to the above report:

SCHEDULE.

Band No.		Cut out	Leave on	Doubtful
Fort William				
5	C. Annequet	3		
9	Louise Busha's family	4		
20	M. Ducharme's "	3	1	
39	Mrs. McLaurin	1		
40	Widow McKay	2	1	
61	A. Banan	2		
65	Michel St. Germain	2		
67	J. Singleton	1	1	
68	A. "	6		
69	Lucy "	3	1	
103	Frank Pero	7		
106	Moses Lodid	1	2	
107	George "	3	2	
113	Moses McKay	6	1	
115	Jos. Parent Jr.	2		
121	Alex. Scott	4	1	
127	Phillip Shabb	1	3	
128	Henry Scott	2	1	
130	Waywayson			2
131	Alex. Millet	3		
134	P. Banan	7		
135	Alex. McKay	3		
139	G. McVicar	3	1	
140	Josette Eagatchenni	5		
141	Mrs. R. Dick	1		
146	Old Mrs. Annequet	1		
147	Mrs. John Dick	1		
148	[Jos.?] O'Connor	1	1	
Red Rock				
4	Widow of Francois Bouchard	3	1	
5	Joe Bouchard	3		
[6]	Louis "	3		
7	Louisa "	2		
8	Jimmy	1		
10	Nicholas "	8		
9	Michel "	2	1	
55	Antoine "	5		
66	Moise "	2		
76	Ambroise "	2	1	
67	Mrs. Blais	1		
16	Alex. Laronde	2	1	
17	Charley "	12	1	
40	Mrs. Watt	1		
63	Catherine Laronde	1	2	
13	Pierrish Deschamps	7		
62	Dennis "	4	1	
22	Mrs. J. Michelson	1		
69	Julian Pontin	2	1	
Nepigon Band				

WITHOUT PREJUDICE: DRAFT, FOR DISCUSSION

18	Gilbert Bouchard	1	2	
41	J. B. Morrisseau	5	1	
Pays Plats				
7	Joe Lesarge	5	1	
9	Alex. Musquash	6		
Long Lake Band.				
45	Odo-gau-mee	2	1	
58	Peter Taylor	6	1	
60	Sha-bok-a-mek	8		
64	Stephen Wynne	5	1	
111	Tehabik	1	1	
Pic Band.				
85	Joe Morrisseau, Jr.	2		
		181	34	2

[Doc. No. 96]

90. A memorandum "Concerning certain persons in the Port Arthur Agency who received "Robinson" Annuity recently but who from information obtained after the payments of 1897 it is believed have no right to continue to receive that annuity" was also authored by Macrae. In it he outlines each individual case, following the list above, and includes the circumstances of the person's birth, where and how he/she has lived since and his/her family members. Finally, Macrae makes a recommendation on whether or not the family should be paid annuities in the future. The memorandum reads as follows:

Concerning certain persons in the Port Arthur Agency who received "Robinson" Annuity recently but who from information obtained after the payments of 1897 it is believed have no right to continue to receive that annuity.

FORT WILLIAM BAND.

Note.

In order that the circumstances on the Fort William Reserve may be clear, and to prevent too much importance being given to an impression that residence thereon of other persons than Indians signified that such persons attached themselves to the Indian community that inhabited the tract which became a reserve under the treaty of 1850 it is proper to remember that this reserve embraced to a great extent, if not entirely, the early settlement of Fort William. On one side of the Kaministiquia stood the Hudson's Bay post, on the other "The Mission" as the Indian settlement is to this day called, where about the church and houses of the Jesuit Fathers grouped whites, halfbreeds and the less nomadic Indians of the neighborhood [sic]. To this day at the mission are white men who have never in any way been regarded [sic] as Indians or as having any Indian rights.

... [list of individuals; mostly with roots in the U.S.]

Red Rock Band

The Bouchard Family.

It seems to be clear from the evidence that none of the members of this family possess inherited right to annuity.

Their father was a Frenchman named Louis Bouchard, their mother an Indian- sister of Chief Manitoshainse who subscribed the Robinson Treaty.

The evidence, shows that Louis Bouchard was a permanent employee of the Hudsons [sic] Bay Company, a woodcutter, cattle tender, and outside labourer, and that from 1859 to 1873 he was employed at Nepigon House and lived at that post. It is quite clear that he did not become an Indian when by marriage residence and acknowledgement he might have done so; and that, at least until after 1872 he did not enter into any communal relationship with the Indians. even [sic] if he then did. From the fact that he was never an annuitant may be gathered another viz. that he was never an acknowledged Indian, and I think it safe to conclude that he never had the status of an Indian or right to the annuity. From him, therefore, I cannot suppose that a right to annuity descended to his children and I think it only remains to be determined whether they, or any of them became Indians otherwise than by descent, or acquired any right to the annuity.

No. 4. Widow of Francis Bouchard.

Paid in 1897, for herself, two boys and one girl. Francois Bouchard (deceased) was the second son of Louis Bouchard.

[H]e was born about 1841 at Nepigon House and died in 1882. In 1851 he married an Indian woman of Lake Nepigon, daughter of Pas-ki-na-ass, but he appears to have taken her to, and remained at, Nepigon House in the employ of the Hudson Bay Company as a labourer until probably 1881, at which date he adopted to some extent the Indian mode of life. It is said he was looked upon as an Indian of the Nepigon Band, by the members thereof and such was paid by the Government, but it does not appear that he ever resided upon the reserve of the Nepigon Indians at Gull Bay, or lived amongst them on unsundered lands, or joined any Indian Society or community.

I think, therefore it is to be concluded that prior to 1876 Francis Bouchard was not an Indian in the eye of the law and that he acquired no right to the annuity. [sic] and that his children inherited no such right from him.

It is recommended accordingly that they be not paid in future, and that the widow be paid.

No. 5 Joseph Bouchard.

Paid for himself, wife and boy in 1897. Born in fall of 1858 at Nepigon House.

Joseph is another son of Louis Bouchards [sic] and as such has, I think, no inherited right to the annuity.

It appears that Joseph always and until seven or eight years ago, resided at the Hudson's Bay Company's post known as Nepigon House; that he was an occasional employee of the Hudson Bay Company and that when not engaged with that firm worked for surveyors, tourists etc.; that he married Angelique Laronde sister of Henry Laronde and daughter of "Count" Louis de Laronde in 1883; and that the boy for whom he draws annuity is the fruit of that marriage.

Under these circumstances I think neither he nor his son are entitled to the annuity and for reasons give elsewhere it appears to me that his wife has no title to it (See Laronde family page 91 of this report) Accordingly I recommend that it be not paid to them in future.

No. 6 Louis Bouchard.

Paid for himself, his wife and one girl in 1897. Born about 1837 at Nepigon house, Louis is the oldest son of Louis Bouchard Sr. and brother of Joseph and Francois.

Consequently, in my opinion, he has no inherited right to the annuity.

Until he was about sixteen years of age he lived with his father at the Hudson Bay post of Nepigon House. Then he was sent to Moose Factory- outside of the surrendered tract to provide for himself, he there entered the employ of the Hudson Bay Company, and remained about James Bay until about 1872. He was married at Fort Albany on James Bay to a half breed named Moore who came from Rupert's House on the east shore of that bay. By her he had four children, of whom survive one boy [sic] and one girl, the former paid as No. 9 of this band, the latter paid with him. It is stated that his wife first drew annuity in 1873 and that during the period of Louis' absence at Hudson Bay his mother was always paid for him. His name appears on the 1874 payroll of the Nepigon Band, with eight persons paid.

It is evident, to my mind, that Louis acquired no title to the annuity and I consider that none of this family should be paid in future.

No. 7, [sic] Louisa Bouchard.

Paid for herself and one girl in 1897, Louisa is a daughter of Louis Bouchard Sr., and from him I think inherited no Indian title.

She married a Soult [sic] Ste. Marie halfbreed named David Maville in 1883. Up to that time she lived with her father and was always paid annuity as Indian.

As in my opinion she had neither inherited nor acquired right, I think she should not be paid in future.

No. 8, Jimmy Bouchard.

Paid for himself and wife in 1897. Born about 1856 at the Hudson's Bay Company's post of Nepigon House. Jimmy Bouchard is the fifth son of Louis Bouchard Sr., and consequently in my opinion has no inherited rights, and as he [a]lways lived with his father up to 1872 at Nepigon House and did not reside with the Indians but rather adhered to white society than entered any society of Indians, I do not think he became an Indian or acquired title to the annuity.

His wife was a recognized Indian, of questionable paternity perhaps, but the daughter of a Nepigon Lake woman named Souri and was brought up with and always resided amongst Indians until her marriage.

It appears to me that he should not, be paid annuity in future, and that she should be paid.

No. 10. Nicholas Bouchard.

Paid for himself, wife, four boys and two girls in 1897. Born about 1848 at Nepigon House. Married about 1860.

Nicholas is another son of Louis Bouchard Sr., and I think has no inherited right to the annuity.

[N]icholas married a halfbreed woman named Soulier from Michipicoten, where her family received annuity as halfbreeds in 1852. There is no Michipicoten payroll prior to 1852.

"Nicholas himself states "In my boyhood I lived at Nepigon House at the Hudson Bay Company's post and when I came of age I was employed by the Hudson B. Company at that place as a day labourer, I continued in such employment after my marriage until seven years ago, always at Nepigon House excepting for one year when I wintered at Michipicoten".

It appears to me that Nicholas did not become an Indian nor acquire any right to the annuity, even admitting that his wife was an Indian, which is most doubtful, and that both he and his children's names should be removed from the lists.

As to his wife I think her claim to annuity is to be decided by the decision I reached in the case of the Soulier family of the Michipicoten Band.

No. 9. Michel Bouchard.

Paid for himself, his wife and one boy in 1897.

Michel is the second son of Louis Bouchard, Jr. No. 6 of this band and has in my opinion, consequently, no inherited right to annuity. He was first married in 1887 and then as a widower took his present wife a daughter of Wanenod, No. 120, of the Nepigon Lake Band.

I think he acquired no right to the annuity by this marriage and that neither he nor his boy should in future be paid but that his wife is an entitled Indian and should be paid.

No. 55. Antoine Bouchard.

Paid for himself a boy and three girls in 1897. Antoine is a son of No. 10 Nicholas Bouchard, and has consequently, in my opinion, no inherited right to the annuity.

He was first married in 1888 to a daughter of old Shogagotchish of Wabanosh, Lake Nepigon, named Shab-wab-an-da-mok. She is entitled.

I consider that she should be paid in future and he should not be.

No. 66 Moise Bouchard.

Paid for himself, wife and boy in 1897, Moise is a son of No. 10 Nicholas Bouchard and has, consequently, in my opinion, no inherited right to the annuity.

He was first married in 1891 to a daughter of Catherine Oquatchion, No. 49 of this Band, and in 1897 to Mrs. Joseph Parent, widow of J. Parent Jr., No. 115 Fort William Band. This Woman is an American Indian and has no title to the annuity. Her first marriage conferred none upon her (See No. 115 Fort William Band in this report).

I think that neither should be paid in future.

No. 76 Ambrose Bouchard.

Paid for himself, wife and Boy in 1897, Ambrose is a son of No. 10 Nicholas Bouchard and has, consequently, in my opinion no inherited right to the annuity.

His wife to whom he was married in 1895 or 1896 is a daughter of Nete-ways-engs, No. 44 of Nepigon Band. She is entitled to annuity.

I think that his wife should, and he should not, be paid in future.

No. 67. Mrs. Blais.

Paid for herself only this year. Mrs. Blais whose husband is a Frenchman is a daughter of No. 10 Nicholas Bouchard and has, consequently in my opinion, no inherited right to the annuity.

The Laronde Family.

Henry Laronde, styled "Count" de Laronde, a well-to-do and very intelligen [sic] trader says that he is a son of Count Louis de la Ronde a French noble and an officer of the Hudson Bay Company who married an Indian woman of Lake Nepigon, daughter of Pak-a-ah-kwan about the year 1830, at the time of his marriage he was at Lac Seul, being in charge of an outpost or "flying post" of the Hudson Bay Company's establishment at that place. Subsequently he had charge of Nepigon Home, in the surrendered tract, where he seems to have gone before, or in, the year 1859.

Louis Dennis de Laronde had nine children, seven of whom survive viz: Louise (Deschamps) born at Cat Lake 1832 Mrs. Watt born at Fort William 1834, Henry, born at Long Lake, 1836, Catherine, born at Long Lake, 1838, Alexander born at The Pic, 1840, Angelique, born at Mississauga, 1845 Charlie, born at Long Lake, 1847.

It is said that Louis Dennis de la Rounde [sic] was never paid annuity, that his eldest son was never paid, but that the rest of the family were. It is in the line of probability that if the family was or thought itself of noble extraction its head, and the heirs of its honours would not class themselves with Indians. In the list of 1852 which is the first we have of the Lake Superior payments Laronde's name appears in the Michipicoten list with five persons paid, the receipt signed by Louise Laronde, and a note "amount paid Mr. Laronde's daughter at his request" As his family in 1852 probably consisted of nine persons it seems that only certain members were paid and experience of the common feelings of those who enter into union with Algonquin Indian women, or are of mixed descent teaches that the members paid would almost surely be the mother and her four daughters, as females and those guiding them are commonly governed by an idea that daughters may without derogation and with propriety take their mothers status whilst the male progeny may derogate by doing so. [sic-punctuation] In 1865 five persons were paid in the Nepigon Band as "Laronde family" and in 1871 five were again paid as "Laronde, Louis D. (family).

I think that it is clear enough that Louis Dennis Laronde never became an annuitant, and was not in any sense an acknowledged Indian or a member of any of the Indian societies by which he was surrounded, nor followed

the Indian mode of life, nor resided amongst the Indians otherwise than as a trader, and that when he married he took his wife from her family and tribe, not in any way entering into tribal relationship with her people, that his children all had his status, and that none of them therefore had any title. His wife had inherited title to the annuity, but as this would not have descended to her children it remains to be seen whether they either became Indians or acquired title to the annuity on their own account.

No. 16? [sic] Alexander Laronde.

Paid for one woman, one boy and one girl in 1897. Alex. is a son of Louis Dennis de Laronde and was formerly paid annuity but stopped drawing some twenty years ago owing it is alleged to a dispute with Mr. Agent Wright. It is probable that Mr. Wright thought him unentitled and told him so. In 1856 he left Canada and resided for some time fifteen years, in the States becoming, it is said, a lieutenant in the United States Navy. Returning he entered the Hudson Bay Company service under his, Henry Laronde's [sic] at Nepigon House. There he remained for three years, after which he removed to Red Rock, or Nepigon, where he has lived since. He does not live on any reserve. In 1877 or thereabouts he married a daughter of Chief Windjob of the Nepigon Band and she and her family by Alex. Laronde have always been paid.

It appears to me that neither Alex. Laronde nor his children should again be paid annuity and that his wife should be paid.

No. 17. Charley Laronde.

Paid for his wife 7 boys and five girls in 1897. Charley is another son of Louis Dennis de Laronde and was formerly paid annuity but like Alex. stopped drawing it some twenty years ago owing as it is said to a dispute with Mr. Agent Wright.

Charley was educated at St. Michael's College, Toronto, when he returned to the north he was employed by surveyors, and subsequently entered the Hudson Bay Company service at Nepigon House. There he [sic] remained as postmaster until seven years ago, when he left the service and moved to Red Rock - Nepigon Station - where he settled. He does not live upon the reserve.

About 1876 Charley married a daughter of Wenargoos, a Lake Nepigon Indian, and both she and her family have always been paid annuity.

I think that Charley Laronde and his children should not again be paid annuity, but that his wife, being entitled, should be paid.

No. 40 Mrs. Watt.

Paid for herself, only, in 1897. Mrs. Watt nee Mary Anne Laronde is a daughter of Louis Dennis de Laronde. In 1872 she married a white man named Watt from Albany, Hudson Bay.

I think she was never entitled to the annuity and should not be paid in future.

No. 63. Catherine Laronde.

Paid for herself, a boy and a girl in 1897. Catherine is a daughter of Louis Dennis de Laronde, and I think has never been entitled to the annuity and should not have been paid. I believe that the children who are adopted are

entitled.

The Deschamps.

No. 13. Pierrish Deschamps.

Paid for himself, his wife, two boys and three girls in 1897.

It appears that Pierrish is the son of a Frenchman named Baptiste Deschamps who was continuously employed in the services of the Hudson Bay Company at Fort William. He married a Saskatchewan Cree and had children of whom three survive, Pierrish being the eldest.

Up to the time of his marriage in 1850 Pierrish lived at Fort William. He then moved to the Pic for five years and from there to Mischipicoton [sic] and Batchewana for, each a year.

Thence he went to Nepigon House for twenty years, and during all the periods enumerated he worked for the Hudsons' [sic] Bay Company as interpreter and guide. Perrish [sic] says he was first paid annuity by gebbardt or Gibbard about 1854 or during the year that this person was drowned.

Pierrish is at present Chief of the Red Rock Band.

It does not appear that he had any inherited right to annuity or that he ever acquired any right. His wife who was Louise Laronde daughter of Louis Dennis de Laronde, in my opinion was not an Indian and has no right to the annuity, and consequently their children have none.

I therefore recommend that they be not paid in future.

[Notes inserted after previous page:] P. Deschamps. Early lists [imperfect?]. Not in band in 1852. All names strictly Indian.

In 1859, Joseph Deschamps was paid for 4 & Michel for 5 but no Pierrish. I have one Deschamps at Ft William of the same family, & in 1866 Joseph was paid with Ft. W. band. He is a brother of Pierrish ([illegible word])

In 1866 Pierre Deschamps pd for 7 by H.B.CE. As there is a [note?] increase of 1 he was no doubt paid in 1865.

He claims he was first paid in 1863 "during the year Gibbard was drowned" & so far as they go the paylists bear out this statement. His name cannot be found in 1859 & is found in 1866 with indication of payment in 1865.

Record. May 16th/1863.

Wm Gibbard was appointed to look after the interest of & pay Inds. north of Lake Superior on Mr Spragge's recommendation by Hon. Wm McDougall S.G.I.A. this date provided he gave bond. This he evidently did as the money for pymts was on the boat at the time of his disappearance. reported [information?] from Collingwood July 28th 1863. that he was drowned off the "Ploughboy" a little to the Shabawaning side of Little Current at 3 a.m. Tuesday July 27th, 1863.

Note (6th Oct. 04) In 1898 Michel D. was paid with his father. In 1899 as No. 88 R.Rock Bd having md No. 88. [daughter?] of No 30 Pic Bd who herself enjoyed N.T. title. (Desmoulins)

Mr Macrae

I have looked through old pay-lists but cannot get much light

In 1852 Pierre Deschamps was paid [alone?] for 3 [illegible word]

In 1859 - Michel & Pierre Joseph were paid separate

In 1866 - Pierre was paid. alone

" 1868 - " " " "

" 1870 - Michel was paid but Pierre was left off list.

Hoping this information may be satisfactory

[initialled] H.N.A[wrey].

[Marginalia:] Chances are that the payment of [illegible word] in 1852 by H.B.C. was disapproved. Disappearance from lists indicates that such was the case. Then when got pd [illegible words] & 4 annuity Crept on [end of notes]

No. 62. Dennis Deschamps.

Paid for himself, his wife and three boys in 1897. Dennis is a son of Pierrish Deschamps, and consequently I consider not entitled to annuity. In 1888 or 1889 he married a daughter of Francis Messobie, No. 46, Fort William Band, who is entitled.

I think she should continue to be paid but that he and his children should be refused annuity in future.

...

Nepigon Band.

No. 18. Gilbert Bouchard.

Paid for himself, his wife and one boy. Gilbert is a fourth son of Louis Bouchard Sr. described in this report at the commencement of the comments upon Red Rock Indians.

He was born at the Hudson Bay Company's post of Nepigon House in 1853 and 1871 married a daughter of the late Akewise of Nepigon Lake Band.

By inheritance in my opinion he had no title to the annuity and I do not think he had the status of an Indian when in 1871 he married. If he had not his wife under the Act of 1869 ceased to be an Indian upon marriage to him.

It appears that up to 1872 he lived with his father at Nepigon House- a Hudson Bay Company's post. There he was occasionally employed, and occasionally "free". During times of freedom he hunted and fished but he does not seem in the first place to have in any way attached himself to any Indian Society or community in a manner that would constitute him a member thereof by association or common interest, or in the second place to have become an Indian by marriage, residence and association whilst that was practicable.

His wife has title to the annuity because she was an Indian, and so has the boy for whom he receives as he is a child of No. 37 of the Nepigon Band, Meno-bok-e-kesh-ke-gee, adopted by Gilbert Bouchard prior to 1891.

I think that Gilbert should not be paid annuity in future, but that his wife and adopted child should be.

No. 41. J/B/ [sic] Morriseau.

Paid for himself, his wife, one boy and three girls in 1897. Born about 1861.

This man's father was Pierre Morrisseau brother of Antoine Morrisseau of the Pic Band whose descent was described on page 17 of appendix "B" to my report of September 21st 1897, (on file 36072). It is therefore my opinion that J. B. Morrisseau has no inherited right to the annuity, unless such were acquired by his father Pierre and descended from him. Pierre married an Indian Woman of the Nepigon Band and it is said drew annuity though I have not been able to find his name on the lists, but he was a servant of the Hudson Bay Company until [a] short time before his death which occurred in 1861, serving first at Long Lake House with his father, and then at Nepigon House and Pays Plat. So far as I have been able to learn he was not in occupation of the surrendered tract as an Indian before the treaty, nor was he attached to any Indian society, nor did he follow the Indian mode of life, nor reside amongst the Indians on unsurrendered or reserved lands, or himself reside upon such lands and I think he acquired no title that would descend to his son, who is, therefore it seems without title.

J. B. Morrisseau married an Indian woman of the Nepigon Band niece of Misaik. [sic] She has title.

It seems, that the man and the boy should not be paid in future and that the woman should be paid.

...

No. 85 Joe Morrisseau, Jr.

Paid for himself, wife and one boy in 1897.

Son of Antoine Morrisseau elsewhere reported as having in my opinion no title to the annuity.

His wife to whom he was married about three years ago is a daughter of Francois [sic] Bouchard, No. 4 of the Red Rock Band, reported, as in my opinion unentitled.

I think neither should be paid in future.

[Doc. No. 95]

91. The 1898 paylists for the Michipicoten, Red Rock, Nipigon, Fort William, Pays Plat, Pic and Long Lake Bands indicate that most of the people previously considered "Halfbreeds" were still paid. On only one occasion was a person listed on Macrae's "to be cut off" list removed from the list [See Docs. Nos. 97, 98, 99, 100, 101, 102 and 103.].
92. On January 30, 1899, Macrae reported on those in the Manitowaning Superintendency whose claims as "halfbreeds" he had investigated. In his report, he devoted time to reviewing the policy followed in the agency as to whom annuities were paid. The report is excerpted below:

I have the honour to append hereto two memoranda marked A and B. In one of these (A) are set forth the reasons why, in my opinion, the rights of certain persons to the Robinson Treaty annuity are doubtful, and on the other (B) a number of claims made on behalf of persons who do not receive that annuity, but conceive that they have a right to do so.

The number considered to be doubtful is 419 persons. Of these I recommend that 150 be declared to have non-transmissible title to the annuity and that the pay of 269 be stopped. This stoppage is in addition to 37 stopped this summer and 2 recommended to be stopped for reasons given in my report of 23rd Novr., 1898. The Number of those for whom claims to the annuity is made is 213. Of those I have recommended 3 for favourable consideration and 210 for disallowance for stated reasons. To complete the tale of the suggested revision of the lists in Manitowaning Superintendency I may add that in my report just referred to I recommended that 3 whose pay I stopped last summer should again be paid.

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. I suppose there is little doubt that many other persons who have not yet applied have equally good claims and will yet be heard from.

The reversals since 1896 of the decisions of Superintendents as to who were entitled, and the establishment since that time of principles which lay the Department open to the siege now on, has naturally given rise to the feeling amongst Indians that all who have asked for the annuity in the past and been refused it may have been refused improperly. This feeling prompts them now to come forward and endeavour to have their claims recognized. It will be seen, as the matter submitted herewith is perused, that it is my opinion that for the most part the Superintendents' decisions in respect to these claims have been perfectly correct and consistent and that the most important thing now to be done is to get back to the state that existed before 1896 - adjusting, of course, any wrongs that may be met with, in doing so.

I cannot hope to do this or to report clearly and comprehensively upon rights to receive the "Robinson" annuity in the Manitowaning Superintendency without first endeavouring to lay down a rule which appears to have guided its various superintendents in deciding what descendants of annuitants were entitled to that annuity before the rulings which later governed came into force under the influence of legislation passed in 1869 and 1876. Because if late rulings (which term I shall use to express rulings given since the Act of 1869 and 1876 passed, as no complete rules seems to have existed) be applied to test rights which antedate them 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.

That some well understood rule did exist before the late rulings were given, and a rule that was different from those late rulings, became apparent to me the moment many uniform acknowledgements, and denials, of titles to the annuity were observed which, judged from our present standpoint, seemed wrong. And enquiry 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. 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. And it became clear, too, why some families were marked "not to increase" and why women married to male members of such families and the descendants of such members were refused the annuity. I write some families advisedly for no doubt other families were similarly marked simply because their rights were deemed bad and it was intended to let them drop off the lists.

The chief principle which determined the line of descent of right to the annuity was obviously contained in one or other of the two maxims *Partus sequitur patrem* and *Partus sequitur ventrem*. Both could hardly be applied. And it is quite clear that with a very important exception the first of the two maxims governed, and right descended in the male line. The exception was in favour of the immediate offspring of what may be termed "treaty" (or annuity receiving) women by "non-treaty" (or not annuity receiving) men.

These children as a matter of indulgence, and probably to ease a transition from the Indian maxim-which was "*partus sequitur ventrem*"-were treated in accordance with that maxim. But this was only so far as they themselves were concerned and whether the children were male or female no right to the annuity was accorded to their offspring. 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.

The rules referred to as nearly as I can reframe it seems to have been : Title to annuity passed from all annuitants to their legal descendants; excepting to the issue of the children of female annuitants by men who are not annuitants. To such issue right of annuity did not descend. Women who married the sons of female annuitants by men who are not annuitants were not deemed to be entitled to the annuity by reason of such marriage. Women who married other male annuitants acquired title to the annuity by the marriage.

There may be doubt as to the exact reason why title descended from the mother's side for one generation and then stopped, but I think it may be safely accepted as a fact that such was the case and that with the exception of one descent of title to the annuity the paramount idea was "*partus sequitur patrem*." The evidence of this, though not given here, I look upon as being sufficient.

The fact that some members of families have been paid while other members of the same families have not, seems to be attributable to the change made in the rule I have just stated 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. It then became clear that certain persons were not Indians and as the annuity was for Indians ("chiefs and their tribes") many were refused who would otherwise [sic] have been granted annuity under the exception to the rule which has just been described with 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.

It would therefore, I think be quite wrong to conclude by applying rulings

of comparatively late date, to rules framed now, to circumstances which preceded 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 the annuity.

I think 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 I could not suggest taking away an enjoyment of the annuity which was freely conferred, and on the other hand I am strongly averse, and think it would be wrong, to create at this late date rights of transmission to wife and child which have never been recognized nor until a couple of years ago ever claimed, and then only when official action caused claims to arise. This involves, only, a connection of the mistake which was naturally enough made in jumping to the conclusion that because a man is was an annuitant his wife and family must be have been entitled to the annuity also, and will allow all those who are on the list under the old rule to disappear from it as time passes, and without sacrifice, as it was evidently the intention of the Indian Superintendents of the past-who made the payments and controlled the lists-that they should do.

I further beg to say again, as I did last year, that it does not yet appear to me that any prescriptive right to the annuity could be created by enjoyment of it for a longer or shorter time whether there was no natural right to such enjoyment. If there is a prescriptive right I presume the length of time of enjoyment necessary to create a prescription will have to be determined. But, whilst recognizing as a principle that there is no such right, I have not been guided so strictly by it as to recommend striking from the lists those who have been long upon them, when, in my opinion, the surrounding circumstances, such as association and residence with the Indians, have made it appear that such a course would be harsh.

I may further state here my reason for thinking that in revising the pay lists at this date the Department niether 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. It cannot be, because the terms "tribal life" and "members of any tribe or band" are too vague to be applied to construe rights under existing conditions and there are many widely divergent views as to what these terms mean; it ought not to be, because the Dominion has two sets of obligations, to one set of which only (the first) the definition under any circumstances could possibly be applied. These two sets are, 1st: 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, 2nd: obligations to certain individuals which the Dominion has created for itself since Confederation and from which it cannot properly escape. And it would seem, especially if a wide construction is to be put upon the terms "tribal life" and "members of any tribe or band" that 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. A great disruption of the lists would occur in either case. Upon such a disruption many complications would ensue, and, although I have observed from the record (Memo. of

6th June, 1898, on File 170,073) that the Arbitrators' definitions appear to 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, I must most emphatically express dissent from that view nor have I been guided by it in doing my part of the revision, For [sic], I think I perceive that its adoption would be most dangerous and be attended by most serious and widespreading effects, as a paradoxical position would be created and persons would become Indian annuitants who were not Indians at all in the eye of the law. To illustrate what (amongst other things) would ensue upon such a course I may point out that with 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, &c., 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. Those rights often exceed in value the right to the annuity. If the lists were disrupted 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 ights 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, &c., are in the aggregate, large.

To contemplate such a course entails to my mind contemplation of impracticabilities amounting to impossibilities. It seems to be out of the question. 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 and half-breeds married to Indian women and who are not legally Indians would become annuitants. These would, no doubt, claim to be equally entitled to Indian properties and residence upon the reserves in despite of the evident intent of Dominion Statutes, and other complications discerned, but not here dilated upon, would, no doubt, arise. In short- as the Department of Justice pointed out there might be- there are, 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 fully done before the status quo of 1895 is disturbed, -if it has to be disturbed at all.

And I might perhaps be permitted to add here, incidentally to the dispute between the Provinces and the Dominion, that I do not see why, because for the purpose of settling accounts a definition has been fixed, this Department should undertake to:-

- 1st: Press any claims to annuity of persons, who are not, in its eye or in a legal sense, Indians.
- 2nd: Press any claims to annuity of Indians who, in its view, are not entitled to payment.

To do the first would, I think, be to go beyond what I understand is the sphere of action of this Department; to do the second would be to seek to impose a liability upon the Provinces, which, according to Departmental views and precedents, is not a fair one. Neither course would I submit be justified by the fact that the definitions given to fix the extent of Provincial liability to the Dominion for fulfilling obligations existing [since?] [illegible word] between the Dominion and certain individuals happened to be so wide as to embrace certain other individuals towards whom the Department Dominion considers itself under no obligation at all.

If these views are correct the rights and claims to the annuity now under

consideration are to be tested, at all events primarily, by the past and present rules of the Department which spring from considerations of occupancy of the surrendered tract and of association and residence with Indians of that tract and descent from such Indians, and not by the Arbitrators' decision, which, as I take it, does no more than fix what proportion of the load which the Dominion is now voluntarily carrying may, under certain stipulated conditions, be thrown upon the shoulders of Ontario and Quebec.

I have not left unconsidered the thought which is naturally suggested by perusal of the text of the treaty, viz: that as "chiefs and their tribes" were to be the recipients of the annuity it might, only, be necessary to determine each year who were living in tribal association with the recognized chiefs in order to ascertain who had right to the annuity. Importance has been attached to a continuance of "tribal relation and residence" by the Hon. Chancellor Boyd, but there would be so many difficulties in the way of determining rights by [illegible word] this point in such a way that I have been unable to see how it could be done without very arbitrary procedure.

It is almost essential, also, in submitting the accompanying memoranda, to take a brief glance at the history of some of the Indians referred to in them.

"According to the terms of the Jay Treaty of 1794 all the posts held till then were to be given up in 1796 and I believe Michillimackinac was one, in fact you may be certain that such was the case. On the 6th of August, 1796, Peter Russell, Administrator, wrote to the Duke of Portland that all the posts except Niagra [sic] had been given up. On the 26th of September the United States' captain applied for a loan of pork to enable him to occupy Michillimackinac and the request was granted". (I quote from a letter of D. [J.?] Brymner, Esq., Dominion Archivist, addressed to myself.)

[Marginalia: "Manitowaning 22/7/99 C. Wabigejig says Drummond Isld was given up at the same time as Michilimackinac."]

At the time of this abandonment of the British posts and when the international boundary came to be defined under terms established by the Treaty of Ghent (1814) and later by the Ashburton Treaty (1842), throwing territory which had been British into the United States, many Indians, occupants of that territory or attached to British posts therein, following the British fortunes, moved to Coldwater near Penetanguishene, Ont., to La Cloche, to Manitoulin Island and to other points in Canada. At various periods both prior to and after 1836 and 1837, when the Manitoulin Island establishment was founded by Sir Francis Bond Head, and at later dates principally before, but to some extent after, the date of the Robinson Treaties (1850), numbers of Indians from territory now included in the States of Michigan and Wisconsin, and a few from the North shore of Lake Huron also, found their way to and settled on the Manitoulin Island. Upon that Island, before these migrations, some Indians resided, and these, together with the migrants, who moved most extensively in the thirties and forties and were principally of the Ottawa tribe West of Lake Huron, together formed the community now found on Manitoulin Island unceded. The principal village from which the Ottawas came were Detroit, Saginaw Bay and Michillimackinac, and I emphasize the fact that the migrations were principally from the West of Lake Huron because it is so necessary to understand that the Indian Communities now settled at Wikwemikong and Wikwemikongsing are chiefly composed of Indians who had no claim whatever to occupancy of the tract covered by the Robinson Treaties, and were at a date even prior to 1850 constituted bands with chiefs and councils of their own.

That most of those who sought a home on Manitoulin Island came from territory now in the United States was very natural. The Sauklings from Saugeen Peninsula and the Mississaugas and Ojibways of the North shore of Lake Huron resisted the Government's efforts to move them to the Manitoulin because they preferred to live on their own hunting grounds. But the Ottawa, and Ojibways who lived in alliance with them, to the West of Lake Huron, had to change their allegiance or migrate, and those who did the last with Indians already in occupancy of Manitoulin Island were, as I have said, the principal constituents of the Wikwemikong and Wikwemikongsing Bands. Naturally a few "North shore" Indians from the tract covered by the Robinson Treaties joined these bands, which may for convenience be called the Ottawa-Ojibway community of Manitoulin Island. These were principally the persons now known as the Spanish River No. 3 and Tahgawinini Bands, or, perhaps it would be more correct to say that some of the members of those Bands came from the North shore and the rest, now known as members, were recruited from the migrants to Manitoulin Island who were introduced to paymasters on account of connections more or less distant (or upon other scores) as members of those or other mainland bands. Hence arose much confusion in the lists, for, although the members of mainland bands living with the Ottawa-Ojibway community on Manitoulin Island really became members of that community, and ceased to have chiefs of their own; shared the protection, the benefits, the residence and the rules of that community, and lived scattered throughout it upon its lands, they still technically belonged to the mainland bands from which they came, and their descendants and those entering into marriage with them were accorded certain rights, though all tribal association and residence with any band of the surrendered tract within that tract had absolutely ceased.

It has been urged, and much has been made of the point, that Indians who loyally followed the fortunes of the British and left their country rather than leave the flag under which they had lived and fought deserved every consideration, and, therefore, their claims to the Robinson Annuity should not be too strictly scrutinized. I fully concede their title to consideration but think I perceive a mistake in connecting them with the Robinson Annuity on account of their loyalty. This appears to spring from forgetfulness of the fact that occupancy of the Manitoulin Island was set apart for the occupation of these loyalists, that their right of occupancy was treated for and so far as it extended over what is now known as "Manitoulin Island Ceded" was bought and paid for in 1862 under the provisions of the "McDougall" Treaty, and that so far as it extends over what is now known as "Manitoulin Island Unceded" it still exists. In that portion of Manitoulin Island, which, as time passes, is coming to be looked upon as a reserve, belonging to those Indians who have inhabited it [illegible words] which a mere right of occupancy extends, the loyal emigrants have a heritage which may yet prove of far greater value to them than was the tract surrendered under the Robinson Treaties to those who actually occupied it. The confusion that exists in both the minds of Indians and some whites in this matter certainly is not made less by the fact that they reason that as Indians from all quarters; from the West as well as the North of Lake Huron received in the days that long preceded the Robinson Treaties presents from the Crown without discrimination, so too, without discrimination, should they receive the annuity. Of course this is an error, as the Treaty clearly only concerned those who actually occupied the surrendered tract.

I think this is all that need be said to throw light upon the accompanying memoranda, which is are respectfully submitted with the remarks that, owing to the manner in which statements made to me as facts were gathered, it will only be fair if any are questioned to hear evidence against

them; and that, doubtlessly, as time passes other cases similar to these will come to light which will have to be dealt with as they arise. Twenty five days of constant travel did not afford sufficient time in which to do much searching and to this fact I beg to have the many imperfections of this report, at least to some extent, ascribed.

P.S. I attach a letter from Mr. Supt. Ross (24/1/99) which has bearing upon what is contained in this report, respecting the non-transmissibility of certain persons' title to the annuity and a letter of 13th Feby, 188[?] last from Mr Ross' successor Supt. Sims. From the last it will be seen that 63 persons named therein, other than those whose rights are dealt with in this report are [divided?] by the [illegible words] non-transmissible title [is?] with original report.

It simply affirms that certain families were not to increase because they had not good title.

[Doc. No. 104]

93. At around the same time, Macrae also authored a report on those in the Sault Ste. Marie District whose claims as "halfbreeds" he had investigated. The report reviews the groups into which he placed people regarding their right to annuities:

I have the honour to append hereto three memoranda marked respectively "A", "B" and "C". In one of these, "A", p. 29, are set forth the reasons why, in my opinion, the right of certain persons in the Sault Ste. Marie District to the Robinson Treaty Annuity are doubtful. In "B", p. 65, are presented the claims made on behalf of persons who do not receive that annuity but conceive they have a right to do so; and in "C", p. [87?], an account of the stoppages of pay to certain persons for causes set forth. The number considered to be doubtful is 282. Of these I recommend that 147 be declared to have non-transmissible title to the annuity and that the pay of 135 be stopped. This stoppage is in addition to 49 stopped this summer. The number of those for whom claim to the annuity is made is 10. These I have recommended to be disallowed.

The only points to which I need draw attention in submitting these memoranda are; the 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; and the fact that in the earlier days, when the payments in the Eastern portion of this District were made by officers of the Manitowaning Superintendency, a much greater strictness in deciding who should be put upon the lists was exercised than was shown later when Captain Joseph Wilson and Mr. Van Abbott of Sault Ste. Marie made the payments. These gentlemen readily accorded the right to the annuity to persons who had never been deemed entitled, and, as late as 1892 I find that 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.

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 and voyageurs, - both white and of Indian blood, - fur traders, and Indians, should establish a settlement. The real Indian portion

of the community belonging to this settlement was non-resident and 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.

Upon the abandonment of the British posts in territory which passed to the States the 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. 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' minds and they only account such persons of the Garden River community as being Indians who have intermarried with, and been adopted by themselves. That the line is still clear will be shown by the accompanying list, [illegible word] which is a copy of one submitted to the Department last year and sets forth, for the purpose of illustration, those whom the Indians of Garden River do not to-day consider Indians but yet are upon the reserve and for the most part on the annuity lists. These names were given to me by Chiefs Pequatchinini and Jarvis Ogiston in 1898 and they 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.

It was principally in connection with the Garden River and Batchewana Bands, who desired the inclusion of half-breeds, that the Hon. W. B. Robinson had difficulty when negotiating the Robinson-Huron Treaty in 1850. I have so frequently referred to what he said on the subject of half-breeds which is to be found in the copy of his despatch of the 24th September, 1850, printed upon pages 17, 18, 19, 20 and 21 of the "Treaties of Canada with the Indians of the Northwest" by Morris that I do not think I need dwell upon it here. It is perfectly plain to my mind that it was the intention and properly the intention that these Indian Treaties should apply to Indians only, with the exception of a few half-breeds who were so closely related to them that no line of demarcation could be fixed upon, and I think that the general principles which I have endeavoured to lay down for guidance in revising the lists can be safely adopted in this Superintendency.

[Doc. No. 105]

94. Macrae also submitted a statement outlining the "suspensions and stoppages" of Robinson Treaty annuities in the Sault Ste. Marie District. Within the list were included six people of the Michipicoten Band. The statement reads as follows:

SUSPENSIONS AND STOPPAGES, SAULT STE. MARIE DISTRICT.

Memorandum of certain persons who were paid Robinson Treaty Annuity in 1897 but not in 1898; of the reasons why they were not paid.

Bd. No.	Family	No.	Reason.
---------	--------	-----	---------

...

[M]ICHIPICOTEN BAND:

[4?]0 ½	Komokanazie, Peter	4	Paid twice
[?]4	Soulier, Aut., Sr.	1	Illegitimacy

[?]2	Pen hah mas	1	"
		6 [circled]	Robinson-Superior Treaty.
Total	-----	49	

[Doc. No. 106]

95. On February 8, 1899, Duncan Campbell Scott, Accountant for the Department of Indian Affairs, wrote a memorandum outlining, in detail, the numbers of people paid Robinson Superior annuities for 1853, 1854, 1856, 1872, 1873 and 1874. Although he does not specifically mention "halfbreeds", he indicates that "The collacation [sic] of pay-sheets of 1866 and 1872 shews that comparatively few names have been added to the lists when a proper deduction is made for new families having been formed by marriage." Scott's memorandum is quoted below:

This memorandum is written to promote a settlement of the account between the Government of the Dominion and the old Province of Canada, as represented by the Provinces of Ontario and Quebec jointly, insofar as any amounts are concerned which may be due the former by the latter in the matter of Robinson Superior Treaty.

From statements furnished by the Province of Ontario, it is shown that without loss to the Province an increased annuity as stipulated by the treaty may be paid for the years 1853, 1854, 1856, 1873 and 1874. Whatever amount is found to be due for these years belongs to the Treaty Indians, as the increased annuity began to be paid by the Dominion Government in 1875. The liability of the Province for these years being conceded, it remains to fix the number of Indians for whom in each year payment can be properly claimed. During the years 1853, 1854 and 1856, the pay-sheets were made up by officers of the Province and were in the custody of the Province. The burden of proof with regard to recipients of annuity during these years is upon the Province, and it should not be the intention of the Dominion Government to dispute these lists. The only point upon which the Dominion Government should claim consideration is the incompleteness of the lists as received from the Provincial officers in 1867. We find no paylists for the years 1853, 1854 and 1856. The earliest pay-sheets now of record are for the year 1852. These show the following numbers:

Fort William.....	346
Nepigon.....	152
Pic.....	116
Michipicoton.....	307
Total	921

But the Nepigon paylist for that year is not complete. Evidently only one page of the list is in existence. The numbers paid at Nepigon have always been larger than at other points in he treaty. For instance in 1859 - 412, in 1860 - 406; in 1866 - 407; in 1868 - 428 were paid. If the number paid at Nepigon in 1852 were placed at 400, the figures would stand as follows:

Fort William.....	346
Nepigon.....	400
Pic.....	116
Michipicoton.....	307

Total.....1169

Upon this number (1169) I think it would be fair to base the claim for the three years, 1853, '54 and '56. The amount due for each year would be \$2,677.00 and for the three years \$8,035.00.

For the years 1872, 3 and 4, for which we can also claim the burden of proof as to Indians who should receive annuity, lies upon the Dominion. The paylists for the year 1872 are fortunately complete, and they shew payment of 1312 Indians as follows:-

Fort William.....384
 Nepigon.....349
 Pic.....232
 Long Lake.....100
 Michipicoton.....247
 Total.....1312

This number is greater than the total number mentioned in treaty (1240) by 72. I have collated [sic] the pay-sheets for the years 1866 and 1872, as a comparison of these two years would show the difference between the last pay-list for which the old Province of Canada was responsible (1866) and the first pay-list after Confederation upon which the Dominion can claim arrears (1872).

The result may be tabulated as follows:

Fort William, 1866.....289 Indians
 " 1872.....384 "
 Increase.....95

This increase of 95 is made up:

Natural Increase net.....6
 Number under family names appearing on payroll for 1872 not traceable on payroll for 1866.....48
 Gross increase.....143

Less number under family names appearing on payroll of 1866 not traceable on payroll of 1872.....48
 Net increase.....95

Nepigon, 1866.....407 Indians
 " 1872.....349 "
 Decrease.....58 "

Natural decrease net.....35
 Number under family names appearing on payroll of 1866 not traceable on pay-list of 1872.....95
 Gross decrease.....130

Less number under family names appearing on payroll of 1872 not traceable on pay-list of 1866.....72
 Net decrease.....58

Pic, 1866.....269 Indians
 " 1872.....232
 Decrease.....37

Number under family names appearing on pay-list for 1866, not traceable on pay-list of 1872.....64
 Less natural increase, net.....2
 Numbers appearing on payroll of '72 not traceable on payroll of '66.....25 27

Net decrease.....	37
Long Lake, 1866.....	87
" " 1872.....	100
Increase.....	13
Natural increase net.....	7
Numbers under family names appearing on payroll for '72, not traceable in '66.....	11
	18
Less number under family names appearing on pay-list for 1866 not traceable on payroll for '72.....	5
	13.
Michipicoton, 1866.....	171
" " 1872.....	247
Net increase.....	76
Natural increase, net.....	6
Number under family names appearing on pay-list for 1872, not traceable on payroll for '66.....	101
	107
Less numbers under family names appearing on payroll for '66 not traceable on payroll for '72.....	31
Net increase.....	76
Recapitulation.	
Total payroll, 1866.....	1223
" " 1872.....	1312
Increase.....	89
Number under family names on pay-list, 1872, not traceable on pay-list, '66, 246 less transfer between bands 65.....	281
Less natural decrease net.....	14
Number under family names on payroll of 1866 not traceable on payroll of 1872 = 243, less transfer between bands 65.....	178 192
Increase.....	89

What I have called natural increase and decrease is the augmentation or diminution in families whose names I could trace, and I am aware that decreases shewn for this reason often arise from division of a family owing to the marriage of adult sons and daughters, and similarly the same names would appear as new names in 1872, when they were merely offshoots of the parent stem. Again the deviation in spelling during the six years of copying by different clerks must account for a large number of those families which appear in 1866, but which cannot be found in 1872, another cognate difficulty is actual alteration of name.

I would point out that the lists for 1873 and 1874 are imperfect. For the three years the numbers paid may be set down as follows where I have ticked the figures in red [*], the pay-lists are missing and the number inserted is that paid for the previous year:

	1872.	1873.	1874.
Fort William.....	384	306	258
Nepigon.....	349	*349	421
Pic.....	232	232	*232
Long Lake.....	100	100	*100
Michipicoton.....	247	250	*250
	1312	1237	1259

The average number of Indians paid for these three years was 1267, and I would recommend claiming for that number for each of the years in question. This claim is I think reasonable. The number is only greater by 44 than that paid by the Province of Canada in 1866, viz: 1223 or an increase of seven for each year, and greater only by 27 than the number mentioned by the Hon. Wm. B. Robinson as the population in 1850, viz. 1240. The collation [sic] of pay-sheets of 1866 and 1872 shews that comparatively few names have been added to the lists when a proper deduction is made for new families having been formed by marriage. The actual additions would be 56 families (calculating the family at 5 individuals) and a considerable proportion of the whole should be traced to marriage and the consequent natural increase, of, to the appearance of old names under new, or with transformed spelling. In fact, if the whole increase in these six years were set down to an excess of births over deaths, the number would be only 15 in each year, which is small for even and Indian population of over 1200.

if these numbers be adopted and accepted as fair, the amount due for each year would be \$3066.00 or for the three years \$9,198.00. The whole amount due would be:

1853-4-6.....	\$8031.00
1872-3-4.....	9198.00
	\$17229.00

As the statements produced by Ontario shew that in no year since 1874 can an increased annuity be paid without incurring loss, this memorandum need not be continued.

[Doc. No. 107]

96. At around the same time, Scott drew up a statement "of the number of Indians entitled to payment of the increased annuities under the Superior Treaty, for the several years in which payment could be made without incurring loss, according to the definition of the Board of Arbitrators". This statement listed 1169 persons as being entitled to payment under the Robinson-Superior Treaty for each of the years 1853, 1854 and 1856, and 1267 persons entitled to payment for each of 1872, 1873 and 1874 [See Doc. No. 108.].
97. Macrae's final report to the Superintendent General of Indian Affairs on his investigation of "halfbreed" claims under the Robinson Treaties was dated

February 18, 1899. In it, he reviews the policy followed and outlines those paid in the Robinson-Superior area. His report is quoted below:

I have completed, now, consideration of all the evidence in hand respecting the rights of certain of the annuitants under Robinson-Superior and Robinson-Huron Indian Treaties and have to-day submitted my conclusions to the Department in brief reports on each district, which should be read with this letter; accompanied by memoranda containing data.

I may here say to you that I conceived it to be wise not to suspend payments to all persons whose rights to the annuity appeared only to be open to doubt. It was the intention that this should be done, but, when I found that to do it would inevitably cause turmoil and trouble, I assumed the responsibility of acting upon my own discretion. Had I not done this hundreds of annuitants would have besieged you with correspondence during the past eighteen months and no little hardship would have been inflicted upon poor people. I trust, therefore, that the course pursued may meet with your approval.

In 1850 the Hon. W. B. Robinson, reporting on the Treaties he had just concluded wrote: "The number on that lake" (Superior) "including eighty-four half-breeds is only twelve hundred and forty - and on Lake Huron about fourteen hundred and twenty-two including probably two hundred half-breeds; and when I paid the Indians they acknowledged they knew of no other families than those on the list." That was a total of 2,662 souls in both districts.

By adding the numbers paid before my scrutiny of the lists was made I find that the number under both Treaties had increased up to the times of such scrutiny (i. e. on the Robinson-Superior lists of 1896 and on the Robinson-Huron lists of 1897 plus the addition of 160 souls determined to be paid for 1896) from 2662 souls to 5469 souls, and, as about 225 more claimed the annuity, the demand upon the Department had come to be for a total of 5694 persons at \$4.00 per cap., or \$22,776.00 per annum instead of for 2662 persons at \$4.00 per cap., or \$10,648.00 per annum. This increase, which is only to a very slight extent to be ascribed to the excess of births over deaths, taken in conjunction with Mr. Robinson's statement that it was acknowledged by the chiefs in 1850 that no other Indians were known than those enumerated in that year - an acknowledgement which seems to have been substantially correct - shows the accuracy of the discernment which led to revision of the pay lists and the necessity of such a revision. I group these 5694 persons who are now annuitants and claimants roughly as follows: (for details see appended statement) viz:-

Persons whose title to the annuity has not been exposed to doubt (though in some cases it may be doubtful).....	4096*
Persons whose title is in my opinion so bad that I recommend it should not be deemed transmissible.....	369
Persons whose title is in my opinion so bad that I recommend they should not again be paid (perhaps 200 or 250 of those who were people recommended to be struck off in my reports of 1897 before the plan of declaring certain titles non-transmissible presented itself might be paid in the above class with non-transmissible title).....	723
Persons already struck off or suspended by myself as being U.S. citizens or clearly without title; payments made for persons dead or non-existent, stopped, &c.	278

WITHOUT PREJUDICE: DRAFT, FOR DISCUSSION

Persons whose claims are recommended for disallowance.....	
225	
Persons whose claims are recommended for allowance.....	3
Total.....	5,694

*Note: I am just advised that 63 of these are held by the Superintendent at Manitowaning to have non-transmissible title (Vide Postscript report on Manitowaning District).

It has been generally and reasonably held that women marrying annuitants, and children, issue of such marriages, are entitled to receive annuity. But when it becomes clear that annuitants have themselves no right to the annuity, it follows, I think, that those claiming through them have not; and that if annuitants have doubtful right then their descendants have no better. In respect to those who have no right or doubtful right and their descendants three courses for a correction of the lists seem to be open. They may be struck off the lists at once; they may be permitted, as a pure act of grace, to continue to receive the annuity for life on the understanding that their title to do so 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 a kind and fair policy dictates.

I lean strongly towards the last of these three courses and have adopted it in making my recommendations in the accompanying reports. For it appears to me that distinctly different treatment is called for by the different circumstances found, which are hereinafter classified.

If either of the last two courses be adopted the lists will be purged of those wrongfully upon them by efflux of time.

The plan of correction suggested, or one similar to it, if not always consistently adhered to, has been in use in the Manitowaning Superintendency - in which half the Indians of the Robinson-Huron Treaty are embraced - for many years, and was clearly understood, and operated with satisfaction to all concerned, prior to 1896 when, with no eye to the fact that many were upon the list who had no right whatever to be and who were intended to disappear from them through time, a rule was laid down, and acted upon, that all male annuitants were entitled to transmit a right to the annuity to the women they married and to the children, issue of such marriages. Claims to the annuity immediately arose from the upsetting of the old understanding: some 180 persons were authorized to be paid, of whom 160 persons were actually paid; and 225 more, with just as much right as they, now ask for the annuity. Many others, no doubt, will follow suit.

In my report of February 9th, 1898, on Robinson-Superior annuity in the Port Arthur Agency, I described the classes which to me then appeared to be entitled to receive the annuity and I am, after another years' experience, unable now to formulate better definitions though I may slightly amend them. In that report I said:

"The following classes have been considered entitled to the annuities if British subjects, provided they have not sacrificed title by continuous foreign residence, under the Act of 1876:-

1st: Persons of Indian blood who belonged to the bands or tribes of chiefs who were parties to the Treaty." prior to the time of the Treaty; "and the lawful descendants of such persons.

2nd: Persons of Indian blood who occupy and use the surrendered tracts as Indians and who belonged to bands or tribes other than those whose chiefs were parties to the Treaty" prior to the time of the Treaty "and the lawful

descendants of such persons.

3rd: Persons who were intermarried with Indians of the surrounding 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.

4th: Persons who were classed as Indians by the Treaty Commissioner and were treated with as such; and the lawful descendants of such persons:

And perhaps;

5th: Persons who intermarried with Indians of the surrounding 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.

6th: Persons who by the enactment of 1859 became Indians; and the lawful descendants of such persons.

I have had some doubt about the last two classes, but in all cases have given the benefit of that to the annuitants and have not recommended that their pay should be stopped."

The maxim "partus sequitur patrem" to govern de[cisions?].

[I] have again, in dealing with the Robinson-Huron lists, tested title by these definitions which were neither approved nor disapproved of by your Department, and have, therefore, had once more to decide as best I could on my own judgment questions cognate to ones which have been submitted for decision to some of our first jurists. In applying these definitions to the two last classes I have considered title under the 5th and 6th classes as non-transmissible.

I now submit that the persons who by application of this test are found to have no title or doubtful title to the annuity may be divided in a broad way into two groups, namely, - (A) those living in association with Indian bands or tribes of the surrendered tract, parties to the Treaty, within the tract; (B) those not living in association with any band or tribe, party to the Treaty, within the tract: and that what has to be considered in their case is, - how far as a matter of grace they shall be allowed personal participation in the benefits of the Treaty which they are not otherwise entitled to enjoy; but which benefits, nevertheless, have been accorded to them,- in some cases for many years.

These two groups I divide into six classes, as follows, namely:-

A (1) Those who in a legal or other sense might or might not be held to be Indians without title to the annuity; first paid, or enumerated, as members of treaty bands in 1850, and who have been since paid (that is to say, paid continuously or whose names have not been removed from the lists for just cause) and their descendants; and

A (2) Those who in a legal or other sense might or might not be held to be Indians, without title to the annuity, first paid between 1850 and 1869, and who have been paid since, and their descendants born prior to 1869. (The year 1869 was the one in which the Act passed declaring that the children of Indians women by other than Indians were not Indians.)

I recommend that persons of these two classes be paid as they were paid in 1895, whilst alive and not debarred by law, but that the right to be paid should be declared to be non-transmissible. (The year 1895 is fixed on arbitrarily, but for the reasons that the payments of that year were the last made before the old principles which governed determination of the right to payments in a large part of the Treaty were disturbed.)

A (3) Those whether Indians or not Indians, in a legal or other sense after the legislation of 1869, without inherited title, paid first since 1869 and their descendants.

I recommend that persons of this class be not again paid. Through having received payments they are simply so much to the good and not being Indians or entitled Indians I see no hardship in depriving them of what Indians alone are entitled to.

B(1) Persons, who in a legal or other sense, might or might not be held to be Indians; without inherited right; first paid in 1850 and who have been paid since and their descendants.

B(2) Persons, who in a legal or other sense, might or might not be held to be Indians; without inherited right; paid between 1850 and 1869, and who have been paid since, and their descendants born prior to 1869.

I recommend that persons of these two classes should be paid for themselves and for such of their descendants of one generation as were paid in 1895 as are alive and not debarred by law, but that the right of all paid be declared strictly non-transmissible.

B (3) Persons who in a legal, or other sense might or might not be held to be Indians, without inherited title first paid since 1869, and their descendants.

I recommend that persons of this class be not again paid.

Some few cases not strictly speaking within these classes may be met with, but if they are, little, if any, difficulty will be found in dealing with them if decisions are given in respect to these.

I may point out here that the right which is claimed by many of the persons within the above-mentioned classes is one which was left undecided upon by the Hon. W. B. Robinson as stated in his despatch of 24th of September, 1850, covering the Treaties (Vide 1st paragraph on page 20 or Morris' "Treaties of Canada with the Indians") viz: the territorial right of half-breeds in the surrendered tract.

I esteem it beyond my province to discuss that righ[t] here - writing as an Indian Department officer on Indian rights - but may, perhaps, en passant hazard the opinion that the value of the half-breeds' title is proportioned to the value of the Indian title, as the extent of their Indian [blo]od and length of occupancy of the Indian tracts is proportioned to full Indian blood and prehistoric occupancy.

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. I am sensible that it may be thought to lean to the side of indulgence of a poor people but I may reiterate what has just been said that annuitants of Indian blood concerned have for the most part some rights and, that, if such rights are not to be otherwise distinguished recognized, such indulgence as lies in the treatment recommended is not by any means extreme or an overflowing of either indulgence or justice.

There is one point upon which I have not touched before but which seems

to me to be of too great importance to be lost sight of whilst principles are being discussed which must govern future payments of the Robinson Treaty annuity. It may be expressed in the questions - Have Indians who possess clear title to the annuity or the descendants of such Indians a right to enjoy the annuity perpetually after association and residence with any band, party to the Treaty, to which they belonged, and with which they associated, has ceased? If they have not such a perpetual right at what stage or after what time of separation from that band is their right to receive the annuity to cease?

Very much could with ease be written upon this subject but I shall not enlarge further upon it here than to point out, (1st) that the promise of annuity in the Treaty was that it should be paid and delivered to the said chiefs and their tribes at a convenient season each year, of which due notice will be given, at such places as may be appointed for that purpose, etc., etc.", and that Indians long absent from their tribes or bands often cease to be regarded as belonging to them by chiefs and other members of the bands; (2nd) that if to some degree association makes members of tribes or bands out of persons not originally members it seems to be logical to suppose that some degree [sic] of disassociation should end membership. (3rd) that stress has been laid by eminent judicial authorities upon the maintenance and continuance of tribal relationship and residence as a factor in determining right to the annuity, and, (4th) that the Indian Act itself provides for termination of membership in case of continuous residence in a foreign country for five years. I mention this last fact because I think, and ha[ve] always done so, that if there is correct principle behind that law it must be that absence and disassociation end band membership, as I have been unable to suppose that a British subject simply because he or she is abroad, no matter what his social state or nationality, is to suffer a sacrifice of rights to property.

So, since Parliament in its wisdom seems to have recognized a principle that disassociation with a band may cause loss of band membership and band rights under certain circumstances and in view of what I have said, I recommend that consideration be given to determine whether the same principle should not be more widely applied so as to act as an offset to the opposite principle which has been operative, viz: that association confers band rights; under which so many persons are on the lists. If such a principle were to be asserted and applied to the lists they would be still further largely reduced.

If the principles which I have suggested are approved or others of their general tenor are adopted it will only remain to classify all the annuitants who are on the lists in accordance with them; to fully instruct superintendents and agents; and insist upon their uniform application in all districts. Then further classification, or correction of imperfections in my classifications can be made as time goes on, and opportunity or need present themselves, and trouble with the Robinson Treaty Annuity lists will become, I sincerely hope, a thing of the past.

The term "half-breed" in all these reports, unless the text indicates otherwise, is used in its colloquial sense, to describe persons of some degree of Indian blood. It is not, therefore, to be reasoned that "half-breeds" are exactly half Indian.

It attach a map of the districts inhabited by the persons whose interests are being dealt with to conveniently illustrate, in case the reports of particulars submitted to the Department are of interest to you, the various tracts, localities and places, alluded to in them.

Respectfully submitting the views contained herein, with grateful acknowledgement of the assistance rendered me by Mr. Scott of the Department, in arriving at much of what may be found to be useful in them,
 ... [signature, etc.]

[Doc. No. 109]

98. Macrae also authored a "Statement showing the grouping of annuitants in each agency or superintendency", which was attached to the above report. He includes as those having doubtful, bad or no title, 74 people who are Robinson-Superior annuitants in the Sault Ste. Marie Agency, and a total of 380 people in the Port Arthur Agency. The statement has been excerpted below:

STATEMENT SHOWING THE GROUPING OF ANNUITANTS IN EACH AGENCY OR SUPERINTENDENCY.

Persons whose title to the annuity has not been exposed to doubt (though in some cases it may be doubtful).....	Parry Sound Suptdcy	Manitowaning Suptdcy	Sault Ste. Marie Agency	Port Arthur Agency	Total in each group	Total annuitants and claimants
Persons whose title to the annuity has not been exposed to doubt (though in some cases it may be doubtful)						4096¥
Persons whose title is in my opinion so bad that I recommend it should not be deemed transmissible	26	150	157	36	369	
Persons whose title is in my opinion so bad that I recommend they should not again be paid	26	271	182o	181*	723	
Persons already struck off or suspended by myself as being U.S. citizens or clearly without title; payments made for persons dead or non-existent, stopped, &c.	1	37	77x	163*	278	
Persons whose claims are recommended for disallowance.....	5	210	10		225	
Persons whose claims are recommended for allowance.....		3			3	
						1598
Total of annuitants (5469) and claimants (225)						5,694

- o 135 R.H. Annuitants
- 47 R.S. "
- x 50 R.H. "
- 27 R.S. "

*Notes: Of these perhaps 200 or 250 were people recommended to be not again paid in my reports of 1897 before the plan of declaring certain titles non-transmissible presented itself might be paid for life without transmissible right.

¥ 63 of these are held by the Manitowaning Superintendency to have non-transmissible title.

[Doc. No. 110]

99. On March 20, 1899, Reginald Rimmer, the Law Clerk at the Department of Indian Affairs, and James A. J. McKenna, Assistant Indian Commissioner and Chief Inspector in the Department of Indian Affairs, reported on disputes between Ontario and the Dominion. Part of their report to Clifford Sifton, Superintendent General of Indian Affairs outlined cases respecting the Robinson Treaties. Case No. 6, excerpted below, pertains to a dispute regarding claims to reserves in the Robinson-Superior Treaty area. In this case, Rimmer and McKenna make reference to an agreement by the Ontario government to grant lots to "half-breeds and Indians" at Michipicoten River:

...
 CASE No. 6.
 Claims for Reserves in the Territory of the Robinson-Superior Treaty No. 60 not Provided for by that Treaty.

These claims appear to have been urged by correspondence with the Crown Lands Department of Ontario at various times from 1884 up to the present time.

We find that by Treaty No. 60, dated September 7, 1850, the chief and principal men of the Ojibway Indians inhabiting the north shore of Lake Superior from Batchewaning Bay to Pigeon River inland to the height of land and the islands in the lake surrendered all their right, title and interest in the whole of the territory excepting the reservations in the schedule thereto, the schedule providing for reserves at Fort William, at Gros Cap, and at Gull River; that Gull River was not surveyed until 1887, when it was so surveyed by a surveyor of this department as to cover an area of four miles square as provided in the treaty; that the department estimated that the roads and water within the tract so surveyed covered 415 acres and concluded that the Indians were entitled to that additional land; that the department caused to be surveyed 135 1/2 acres at Cariboo Island Point and selected 260 acres contained in Jackfish Island on which some Indians had erected houses; that the department has since treated these lands as taken to complete the Gull River reserve and has notified Ontario accordingly; that in 1885 the department caused reserves to be surveyed within the territory surrendered by the treaty at Pic River 800 acres, Pays Plat 605 acres, Red Rock 468 acres, McIntyre Bay 585 acres and north of the territory ceded by Treaty 60 at Long Lake 612 acres; that Ontario was notified but has not confirmed these reserves; that a reserve at Gros Cap had been set aside in accordance with the treaty and one square mile surrendered for sale and sold in 1855 and the proceeds credited to the band; that in 1884 the Indians for whom the Gros Cap reserve was set apart asked that the remainder of the reserve be disposed of and that they be allowed to take up about 200 acres at Michipicoten River; that this request was not granted, but the Indians--or some of them--settled at Michipicoten and that in 1885 the department surveyed 178 acres there as a reserve; that Ontario was notified, but up to the present has failed to confirm, although on May 3, 1898, the Commissioner of Crown Lands informed the department that the land laid out at Michipicoten River was valuable for a townsite which it would not be in the interest of the public to shut up from settlement; that a portion of the site had been laid out and granted; that provision had been made to protect the rights of the Indians; and that there would be no difficulty in making grants of lots to the half-breeds or Indians occupying them. No question has been raised that the

Indians claiming additional reserves were not parties to the treaty.

We conclude:--

1. That in the setting aside of the Fort William, Gros Cap, and Gull River reserves provided for by Treaty 60, the provisions of the treaty in that respect were fully met.
2. That the claim to set aside Cariboo Island Point and Jackfish Island as reserves in lieu of 415 acres, the estimated area of roads and water on the Gull River reserve, is untenable.
3. That in regard to the lands surveyed at Pic River, Pays Plat, Red Rock and McIntyre Bay, neither the department nor the Indians have any legal title to them; and that Ontario will act generously if she recognizes the Indians there as squatters in view of the large reserves which they have under treaty.
4. That with regard to the land surveyed by the department at Michipicoten neither the department nor the Indians have any title; and that the offer of May 3, 1898, of the Commissioner of Crown Lands to protect the Indians is all that can be expected.
5. That the land surveyed at Long Lake cannot be considered as a properly constituted reserve as it is outside treaty limits notwithstanding the fact that the Long Lake Indians have been put on the treaty annuity lists; and that nothing can be done to confirm the department's title to it until the Indian title in the surrounding territory is extinguished.
6. That we agree with the conclusion arrived at by Inspector Macrae in his report of November 3, 1897, that it is not politic to encourage the creation of small reserves for Indians who already share in the benefit of large reserves, as such creation would complicate management and increase the expense of administration.
7. That the application of the department for confirmation for small reserves can only reasonably lead to a claim by Ontario to re-open the whole of the Robinson-Superior Treaty; and that it is not desirable to re-open questions settled in 1850.

We recommend that the Indians settled beyond the limits of their proper reserves be notified that if they persist in remaining off the reserves they must be prepared to take all risks which they run under the Ontario laws and look individually to Ontario for recognition of any rights they may have, and if required by Ontario they must comply with the Provincial Homestead Regulations as squatters under such laws; that Ontario be informed accordingly; and that our request for confirmation of reserves under this heading be withdrawn.

...

[Doc. No. 112-emphasis

added]

100. McKenna and Rimmer's report on Case No. 20, concerned the increased annuities under the Robinson-Superior and Robinson-Huron Treaties and which government was responsible for paying them. In this case, the authors mention the definition of the Arbitrators as to who is an "Indian". The report has been extracted below:

...

CASE No. 20.

Claim on Behalf of the Dominion to Arrears of Augmented Annuities due to the Indians or paid by the Dominion Government to them under Treaties 60 and 61.

This claim arose from the insertion in each of the above treaties of the following words: "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 * * * 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 £1 provincial currency in any one year."

Before the Board of Arbitrators, the Dominion claimed (a) Against the province of Canada arrears of augmented annuities from 1851 to 1867; (b) Against the provinces of Ontario and Quebec conjointly \$95,200 arrears of augmented annuities from 1867 to 1873; (c) Against the provinces of Ontario and Quebec conjointly \$389,106.80 increased annuities actually paid by the Dominion to the Indians since 1874.

The Board of Arbitrators by their award of February 3, 1895, without awarding an amount, decided (par. 6) that the property ceded by the treaties passed to Ontario under sec. 109 of the B.N.A. Act, subject to a trust to pay the increased annuities on the happening after the Union of the event on which such payments depended, and to the interest of the Indians therein to be so paid; the burden of such increased annuities [fel] upon Ontario. On appeal to the Supreme Court of Canada the award of the Arbitrators was varied by substituting for paragraph 6 thereof the words: "The ceded territory mentioned became the property of Ontario under the 109th section of the B.N.A. Act, 1867, absolutely and free from any trust, charge or lien in respect of any of the annuities, as well those presently payable as those deferred and agreed to be paid in augmentation of the original annuities upon the condition in the Treaties mentioned."

On appeal, the Judicial Committee of the Privy Council recommended that the judgment of the Supreme Court be affirmed. The effect is that Ontario and Quebec are conjointly liable for the increased annuities in the years in which they can be paid without incurring loss.

By Order of January 7, 1898, the Board of Arbitrators defined an Indian entitled to share under the treaties, and directed that, with reference to the period before the Union, the onus of showing that the names of any individuals entitled to be reckoned were improperly omitted from such lists should be on the Indians or those who act for them; and that with reference to the period after Confederation the burden of showing that the names of any Indians so added since the Union to such lists were rightly added shall be on the Government of Canada.

The Arbitrators' definition of an Indian was not in accordance with any statutory definition; and the Accountant by his memorandum of February 22, 1899, on file 5,045-4 shows the great difficulty and expense likely to accrue if a fresh list is to be settled for the purpose of adjustment of accounts between the Dominion and the province and in view of the extent to which the burden of proof lies on the Dominion he recommends by the said memorandum acceptance of \$144,868 in respect of the claim under Treaty 61 up to and inclusive of 1898; and by memorandum of February 8, 1899, the sum of \$17,229 in settlement of the claim under Treaty 60. These figures are based upon Ontario's admission as to the years in which the increased annuities can be paid without loss. After years of litigation it

has become evident that this question must be finally adjusted in an amicable manner, or the Dominion is likely to be involved in an expenditure which will vastly outweigh the benefit likely to accrue to her.

As this question is shown to be one in which Quebec is jointly interested with [Ont]ario, it has been considered that it should be settled apart from questions pending between the Dominion and Ontario alone; and with the approval of the Honourable the Superintendent General, Mr. Scott's memoranda, above referred to, have been transmitted to Mr. Hogg, Q.C., counsel for the Dominion, with the hope that he will be able to arrange with the counsel for the provinces an amicable adjustment upon the terms suggested by Mr. Scott, which appear to be in the interest of all parties, rather than prolonged litigation.

...

[Doc. No. 111]

101. On April 24, 1899, McKenna also wrote a memorandum to Sifton making suggestions regarding Macrae's report of February 18 of the same year. He made several suggestions, which appear below:

I have discussed with Mr. Macrae and Mr. Scott the former's report on the Robinson-Superior and Robinson-Huron Treaties.

The object of Mr. Macrae's enquiry and report is - apart from any question between the Dominion and Ontario or any decision of the arbitrators - to lay down principles by the application of which the lists as they stand may be purged of unentitled annuitants.

I think that the principles set forth in Mr. Macrae's report of the 18th February last [indexed above] may be safely adopted and acted upon in considering claims which are made for admission as Treaty annuitants, and that they may be adopted and acted upon in the purging of the list, with this understanding that when it is a question of striking off persons who are on the lists they are to be applied liberally and with the consideration in view that it is better to leave on the lists persons who are unentitled than to create dissatisfaction among [sic] the Indians. I know that Mr. Macrae has had this consideration in view, and the Accountant, Mr. Scott, is impressed with its importance; but I think it well to emphasize the point by repeating it. Even if fewer are now removed from the lists than might be, the application of the rule that certain persons who have simply what may be called "acquired rights" shall be regarded as having only a non-transmissible title will in time purge the lists.

As it will be necessary to take the greatest care in reforming the lists, I would suggest that Mr. Macrae should accompany the Agent in making the next payment. Should Mr. Macrae be engaged on another mission, I think it would be well to have Mr. Scott go in his place, for as accountant he is familiar with the lists and has to deal with them.

[Doc. No. 113]

VI. Non-transmissible Titles

102. On June 1, 1899, D. C. Scott and J. A. Macrae again revised the Robinson Treaty paylists with a view to creating non-transmissible titles, rather than striking large numbers of individuals off the lists entirely. In their memorandum on the subject, they provide their reasons for doing so and they indicate that those included on the lists of 1895 would continue to be paid either as non-transmissible or as having title, with the exception of a few "stoppages". This memo is quoted below:

The under-signed have read the memorandum of 24th April by Mr McKenna [indexed above], approved by the Superintendent General, and have revised the Robinson Annuity Lists, and dealt with claims to the annuity in accordance with the principles approved.

It was left to them to decide what amount of liberality should be shewn towards persons on the list in applying those principles, and Mr Scott and Mr. McKenna agreeing, it has been decided not to interfere with payments to persons paid prior to 1895 (unless on other grounds than that they have no title), but that all such persons should be paid for life only, and that no others should acquire title through them - That is to say their title to the annuity is to be granted them, but a non-transmissible title. Mr Macrae has regarded this course as being rather too lenient, and has expressed his opinion elsewhere, but has joined in following it for the revision of the Lists.

The year 1895 is fixed as a limit, as this was the last year in which the pay-list stood undisturbed, and the indulgence now extended lies in conceding a life interest to the annuity to persons born between 1869 and 1895, instead of, as suggested by Mr Macrae, conceding such an interest to those only who were born before 1869. In 1895 began investigation and revision which was carried out in 1897 and 1898.

It will be seen from this that it has been preferred to create non-transmissible titles rather than give any cause for present dissatisfaction. The course is not oppressive to the present annuitants, as it assures the payment to them during their life time, nor is it an injustice to their descendants, as they did not inherit, and never enjoyed the annuity. The course is beneficial to the Government, as by its adoption the payment to Indians and other persons who have no inherited title ceases by the lapse of time, and the saving beginning with a small per-centage of the amount paid to such person & by certain stoppages, gradually increases until it represents a saving of the total of the amount paid to such person viz \$454400 per ann. paid to 1136 souls.

We have now, together, gone carefully over the evidence in hand and classified the annuitants, making out amended pay-lists to shew who have transmissible and who have non-transmissible title, and are notifying claimants whose claims have been disallowed, of the reason of such disallowance. The present results of revision are & will be to [illegible] word of 1361 unentitled persons who claim or are paid annuity.

It remains to complete amendment of the Pay-list by visiting the different districts and applying uniformly the principles which have not become clearly fixed during previous inspections, but which have not been established; and this course has already been approved of by the Minister. It is expected that a further, and larger number of annuitants will be found to have non-transmissible title.

But Mr Macrae's experience has demonstrated beyond question that it is impossible for one officer to be present at the payments in all the districts concerned in one season, and as it is deemed to be of the utmost importance to deal with all the annuitants similarly during one season we recommend that Mr Scott should be present at the payments in the Fort William and Sault Agencies, and Mr Macrae at those in the Parry Sound[,] Manitowaning and Thessalon Agencies. It is our opinion that in no other way can the amendment of the lists be lucidly and correctly made, the matter be wound up at an early date, and the Agent and Indians be brought to an understanding of the principles upon which they are being dealt with, and we think that unless this recommendation is approved confusion and almost interminable correspondence will result.

[Doc. No. 114]

103. A note of around the same time indicates that a revision took place in the previous totals of those to be given non-transmissible titles and those to be taken off the paylists. Under the Fort William Band, these totalled 146 and 12, respectively [See Doc. No. 115.].
104. On June 5, 1899, another memorandum was written, likely by the same individuals, (Scott and Macrae) and it lists the groups into which annuitants under the Robinson Treaties had been divided. This memo reads as follows:

The under-signed have carefully considered the principles laid down in Mr Macrae's report of 18th February last [indexed above] upon Robinson Treaty annuitants, which report was supported by a memorandum of Mr McKenna of 24th April last, approved by the Minister; and [sic], governed in the exercise of a discretion left to them under the last named approved memorandum, have revised the list in the manner explained in their joint memorandum of the 1st June, current [indexed above].

It seems to be necessary to now codify, as plainly as possible, the rules which have governed action, not only for the sake of immediate clearness, but for the guidance and knowledge of those who in the future may be called upon to re-examine cases of claims which we have dealt with, or to decide similar claims. This may best be done by classifying those who are to continue to receive annuity, and those who are not longer to continue to do so.

The classes fall into three groups.

Group A. Entitled persons.

Group B. Persons not entitled but accorded non-transmissible title.

Group C. Persons not entitled and struck from the list.

Group A.

Consists of persons whose title we consider unassailable, descending in the male line perpetually. They are: -

Class 1. Persons of Indian blood who belong to the Bands or tribes of Chiefs who were parties to the Treaty, and the lawful descendants of such persons.

Class 2. 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 Treaties, and the lawful descendants of such persons.

Class 3. Persons not of Indian blood, who were intermarried with Indians of the surrendered tract, who themselves occupied and used that tract as Indians prior prior [sic] to the Treaties, and were attached by residence and common interest to any Indian society or community within that tract, and the lawful descendants of such person.

Class 4. Persons who were classed as Indians by the Treaty Commissioner and were treated with as such; and the lawful descendants of such persons.

Group B.

Consists of those persons whose titles we have considered as non-transmissible or expiring with themselves. They are:-

Class 5. Persons who inter-married 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 any of the lawful descendants of such persons who were on the lists in 1895.

Class 6. Persons who by the enactment of 1859 became Indians and the lawful descendants of such persons who were on the lists in 1895.

Class 7. Indians and other persons who have no absolute and inherent title to annuity, but who were on the paylists in 1895, whether they are resident upon Indian Reserves or non-resident.

Group C.

Consists of all person belonging to the following classes, and these have been struck from the lists. They are:-

Class 8. Illegitimates born after 1895.

Class 9. Persons not entitled whose names were added after 1895.

Class 10. Person who have resided for five years continuously in a foreign country without the consent of the Superintendent General, or his Agent.

Class 11. Fictitious persons.

It is to be distinctly understood that in future no claim to the the [sic] annuity preferred on behalf of any person who is not on the lists will be entertained unless it comes within one of the Classes of "Group A".

It is to be fully recognized that the Classes comprised in "Group B" are composed of persons who are not entitled to annuity, but are now permitted to continue to receive it for life, only because it has once been accorded to them. But it need not be argued that persons similarly circumstanced, but who have never been granted the annuity, should now be granted it. Therefore claims made by persons not on the lists, who would fall into Group B, may be dismissed.

If any persons on the lists, whose title has not been impugned, belongs to Group "B" or "C" the Department should in all cases be advised.

[Doc. No. 116]

105. The annuity paylists for the Michipicoten, Fort William, Nipigon, Pays Plat, Pic and Red Rock Bands for 1899 demonstrate that some of those who had been listed in Macrae's report of February 18, 1899, to be left off, were paid. The paylists indicate that several of the individuals identified by Macrae were given a "Title

Nontransmissible" stamp. Most of those known as "halfbreeds" but not specifically identified as such on the paylists were given non-transmissible title [See Docs. Nos. 117, 118, 119, 120, 121 and 122.].

106. In 1900, correspondence took place regarding a request from a couple at Michipicoten who wished to be taken off the paylist, the man being of Scotch and Native blood [See Doc. No. 124.]. The question was referred to Rimmer [See Doc. No. 125.] and the reply given was that "the mere fact of not receiving Annuity money would not remove either of you from your legal status as Indians" [See Doc. No. 126.].
107. On the Long Lake Band's paylist for 1900, those listed on Macrae's 1898 list to be left out were paid and identified as "Title nontransmissible". As well, additional persons were identified with the same stamp [See Doc. No. 127.].
108. On February 4, 1903, David Laird, Indian Commissioner for Manitoba, Keewatin and the Northwest Territory, wrote to J. A. J. McKenna regarding a family of "Halfbreeds" who were receiving annuities under the Robinson Treaty. Laird identified these family members as "Treaty Indians". His letter is excerpted below:

I beg to inform you that the Department recently requested me to verify certain statements regarding the family of one Mrs. Catherine Begg who lives at Mapleton, Man. and who claims annuity money for herself and children as Robinson Treaty Indians. Mrs. Begg claims that her family consists of the following children, viz:-

Duncan F. Begg.
Mary Ann "
John G. "
Robt. Js. "

In making enquiries I find that John George Begg referred to above is married and living at Rat Portage. Now what I wish to bring to your notice is that in Dec. 1901 one John George Begg, of Rat Portage, applied to me for a statement showing whether or not any of his children were receiving annuities with their mother, Juliette Sturgeon Eye, John George Begg's wife, No. 450 of the Islington Band of Indians. A similar request was made on behalf of Begg on the 25th. Feb. 1902 by Messrs Bradshaw, Richards & Affleck, Barristers of this city, presumably with a view to filing an application for scrip. My reply was in both cases that Juliette received annuity only for herself.

Begg lately sent in an application for commutation of his wife's annuity and being suspicious that he is the son of Mrs. Catherine Begg above referred to and a Robinson Treaty Indian. I wrote Mr. Inspector Leveque to ascertain where this man originally came from, the names of his parents, &c. but Begg refused to furnish the information asked for. Mr. Leveque,

however, was in a position to give me the following particulars: John Geo. Begg was brought up at Mapleton near Lower Fort Garry, Man. He is the son of Charles Begg, now deceased, is a Halfbreed of about 43 years of age. Mr. Leveque then goes on to give the number of brothers and sisters which corresponds with the information I obtained regarding the children of Catherine Begg, which is as follows,- Duncan Finlayson Begg, married and at present living at Warroad, Kinn.

Mary Ann, married to one Isbister and living at Mapleton.
John George, married and living at Rat Portage.
Robert James, married and living at Mapleton.
Mrs. Begg claims annuity for the above children.

I am also informed that Begg has another sister, Margaret, widow of the late George Mitchell, living at Rat Portage, but this woman is reported not to be in Treaty.

The above information may be useful in case John Geo. Begg, son of Charles Begg, deceased, and Catherine Begg, put in an application for scrip, as he is a Treaty Indian.

[Doc. No. 128]

109. On February 19, 1903, Laird instructed the Indian Agent at Sault Ste. Marie, W. L. Nichols, to withhold the Begg family's payment for that year if he doubted their entitlement to annuities. Laird's letter reads as follows:

Referring to my letter of the 4th. instant, respecting the family of Catherine Begg, a Robinson Treaty Indian, I beg to enclose herewith for your information copies of letters to and from Mr. J.A.J. McKenna, Halfbreed Commissioner, dated respectively the 4th. and 10th. instant which explain themselves. If you think the Beggs referred to in these letters are identical and you are in doubt as to their right to receive Robinson Treaty money you had better withhold the payment for this year, if it has not already been made and refer the whole matter to the Department at Ottawa.

[Doc. No. 129]

110. In a letter dated September 5, 1906, and addressed to the Indian Agents in the Robinson Treaty agencies, J. D. McLean, Secretary for the Department of Indian Affairs, indicated that the Department wished to ascertain how many children there were of parents with non-transmissible title. McLean requested a list including the father's name, the band and band number and the number of children born since 1895. The generic letter has been extracted below:

The Department is desirous of ascertaining how many children there are, the offspring of Indian parents whose title to receive Robinson Treaty annuity money is non-transmissible, belonging to your Agency. You should therefore prepare and forward a list giving in each case the father's

name, band and band number, and the children now living (boys and girls shown separately) born since 1895.

If you can not [sic] furnish this information without seeing the Indian parents interested you should make a special note on the subject and take the matter up at the annuity payments for 1907.

The Department awaits a report now in the matter.

[Doc. No. 130]

111. The Indian Agent at Port Arthur, Neil McDougall, sent McLean a list dated September 2, 1907. On this list, the agent included the people whose title to annuities under the Robinson Treaties was non-transmissible, and listed their children born since 1895. The list is quoted below:

List of children, whose title to receive Robinson Treaty is NON-TRANSMISSIBLE born since 1895

Fort William Band

	Boys	girls
9 Bouchi Mrs. Gordon	-	-
20 Ducharme Mrs	-	-
36 Cadieux Mrs H	-	1
40 McKay Mrs	-	-
44 Michaud Mrs H	-	-
60 Perrault Mrs J	-	-
61 Bannan Andrew	2	2
65 St Germain Mrs	4	
67 Singleton Joe	1	2
68 Singleton Alex	2	
69 Singleton Lucy	0	0
98 Bulanger Mrs M	1	2
106 Loudit Moses	-	-
107 Loudit Geo	-	1
113 McCoy Moses	-	-
124 Scott Alex	-	-
1[2?]8 Scott Henry	2	1
133 Dick Mrs Thos	1	2
134 Bannan Peter	2	1
135 McCoy Alex	1	1
136 Bouchi Xavier	-	1
139 McVicar Mrs G	-	-
141 Dick Mrs B	1	-
142 Fonton Mrs D	-	-
148 OConnor Joe	-	-
161 Johnston Mrs W	2	1
162 Johnston Mrs J	2	3
163 Pine Mrs A	-	-
164 Miller Albert	-	-
166 Cadieux T Louis	-	-
170 Nico Mary J	1	-
172 Pritchard Mrs W	-	-
178 Dick Mrs G	-	2
	22	20

Red Rock Band		
5 Boucher Joseph	-	1
6 " Louis	-	-
7 " Louisa M	1	-
8 " Jimmy	2	-
9 " Michel	3	1
10 " Nicholas	-	-
13 Deschamps Pierre	-	-
16 LaRonde Mrs Alex	2	-
17 " Mrs Chas	1	-
22 Mickleson Mrs	-	-
29 Kwakwawasens Julia	1	1
40 Watt Mrs	-	-
58 Waskabow	-	-
62 Deschamps Dennis	-	-
63 LaRonde Cath	-	-
66 Boucher Moiose	-	1
67 Blais Mrs J A	2	2
69 Julian Paulin	2	2
83 Boucher Joe Jr	3	2
88 Deschamps Michel	1	2
91 Boucher Thomas	1	-
92 Absekum Maggie	-	1
96 Michelson Frank	-	1
	19	14

NEPIGON BAND

18 Boucher Gilbert	-	-
34 Nindaba	-	-
41 Morriseau J B	-	1
126 Frederick Mrs P	2	2
143 King Michel	1	-
	3	3

Pic Band

30 Desmoulin J B	-	-
31 " Duncan	2	3
32 " Thomas	-	1
35 " David	-	-
48 Morriseau Antoine	-	-
79 Gagnon Mrs	-	-
81 Desmoulin John	1	3
85 Morriseau Joe Jr	1	-
98 McLaurin Mrs J	-	-
103 Finlayson Stephen	-	-
104 Morriseau Henry	-	-
106 Desmoulin Ignace	-	-
108 " Abraham	1	1
	5	8

Pays Plat Band

7 Lesage	-	-
9 Musquash Julia	-	-
16 Auger Paul	0	0
18 Musquash Louis	1	
	1	0

Long Lake Band

85 Finlayson Nicol	1	-
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	boys	girls
Fort William Band	22	20
Red Rock "	19	14
Nepigon "	3	3
Pic "	5	8
Pays Plat "	1	0
Long Lake "	1	0
	51	45

[Doc. No. 132]

112. In a letter dated October 22, 1907, and addressed to the Secretary (McLean), McDougall added another girl to the list he had sent in of the children born to parents with non-transmissible title [See Doc. No. 133.].
113. In a 1908 list showing the number of persons paid annuities under the Robinson Treaties, the number of families and individuals with non-transmissible title is also listed. The numbers of families with non-transmissible title total 39 for Fort William (66 individuals), 24 for Red Rock (53 individuals), one for Nipigon (12 individuals), 14 for Pic (27 individuals), two for Pays Plat (8 individuals), four for Long Lake (11 individuals) and 16 for Michipicoten (30 individuals) [See Doc. No. 134.].
114. On August 6, 1908, J. D. McLean again wrote to the Indian Agents whose agencies covered Robinson Treaty territory. In this letter, he provides instructions on how to indicate on the paylists those whose title to the Robinson annuities were non-transmissible:

With reference to your pay-lists of the distribution of Robinson Treaty annuity money, I beg to say that it has been found that in some instances confusion has occurred in regard to the entry therein of the names of Indians show title to receive annuity is non-transmissible. In order to obviate such errors in future I have to inform you that when you prepare your pay-lists, according to bands, as is usual, you should enter first very carefully, the names and numbers of all Indians whose title to Robinson Treaty money is transmissible. You should then leave a clear space in the pay-list, and write across the pay-list the following heading:- "Indians of the ----- Band whose title to R.T. Annuity is non-transmissible." You should then give below the names and numbers of all such persons. The Department desires to warn you that in no case should you change an Indian's number when making this alteration in the form of entry in the pay-list.

[Doc. No. 135]

VII. A Change in Policy

115. In a memorandum dated August 29, 1916, F. H. Paget, the Accountant for the Department of Indian Affairs, indicated to D. C. Scott, at this time Deputy Superintendent General of Indian Affairs, that complaints had been made in the Port Arthur agency by the children of those with non-transmissible title (born after 1895). He intimated to Scott that there were complications which had arisen when these children married and he suggested that they be put on the annuity paylists.

Paget's letter is excerpted below:

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 1895, was made at the recent payment of the Robinson Treaty Annuities that I attended last month.

This was the fourth occasion since 1911 that I have been present when these payments were made and each time the Indians have complained, grievously, of the payment having been withheld from them for these children. I therefore decided at the recent payments to represent to the Department the Indians' complains and so informed them. Besides causing general discontent amongst the Indians, the non-payment of these children is causing confusion in connection with the pay-lists at the present time and is bound to increase from year to year. Children who have not been paid since 1895 have grown up, many of them without the knowledge that their parents were not paid for them, and they are marrying others who have been paid and will continue to be paid, but payment is not made to the Father or his children because his name is not on any list and thus you have the name of the Mother of a family on the pay-list although they are all living on the reserve in the same way as other Indians. On several occasions young men have come forward and asked to be given tickets in their own names as they had married and desired to draw the annuity for themselves and their wives instead of their father drawing their money. When informed that their fathers never had been paid for them, they expressed surprise and said it was news to them.

From every point of view it would be good policy for the Department to pay these people in future, but not to pay any arrears, and I beg to recommend this strongly to the consideration of the Department.

If payment is made to these persons in future many complications which otherwise are bound to arise in the future will be avoided. It is most desirable that this vexed question be disposed of for all time by the officials of the Department, who are at present in charge of affairs, as they are thoroughly conversant with every phase of it, rather than defer it for some future occasion, when it will be much more difficult for those then in charge, to settle, as the undersigned is of the opinion that sooner or later this question will become a live one and will have to be settled, if contentment amongst the Indians is to reign.

[Doc. No. 136]

116. On September 27, 1916, Scott replied to Paget that the Minister had agreed that those children of parents with non-transmissible title were to be treated "as having a right to the Robinson Treaty annuity as a matter of policy." He added that an

estimate of the expenditure involved would have to be prepared first. Scott's memorandum is quoted below:

I 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 non-transmissible list as having a right to the Robinson Treaty annuity as a matter of policy. The Minister was, however, 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. In the meanwhile we will not take any definite action in informing the agents of the proposed change.

[Doc. No. 137]

117. On October 11, 1916, McLean again requested information from the Indian Agents whose agencies lay within Robinson Treaty territory. He asked that a list be prepared of the children whose parents' names were on the non-transmissible lists and he requested information as to family members. The Secretary's form letter appears below:

The Department is desirous of obtaining a list giving the number of living children who are not paid Robinson Treaty whose parents names are on the non-transmissible lists at the present time or have been on such lists. If any of the sons of Indians on the non-transmissible lists have married, their wives and their children should be included in the return, unless the wife is already in receipt of annuity. If any of the daughters of Indians on the non-transmissible lists have married white men or non-treaty Indians or Half-breeds the children of such parents must not be included in the return, although the mother should be, if she was not previously in receipt of annuity. As you know the children take the status of their father according to law.

I would like to know whether you can obtain this information accurately [sic] at the present time; if so, it would be satisfactory, but otherwise the Department will expect you to obtain it at the next annuity payments.

Enclosed is a form [attached] for use in obtaining the information.

[Doc. No. 138]

118. W. R. Brown, the Indian Agent for the Port Arthur Agency, replied to McLean on October 14 of the same year. He indicated that he could obtain an accurate list around Christmas time, but stated generally that "You may figure however that there will not be more than one hundred in this agency. Many of these people have better titles than some who are paid at present." [See Doc. No. 139.]

119. On December 30, 1916, Brown reported on those in his agency with non-transmissible titles. He listed "the total number of those to be added if this change is made" as comprising 22 boys and 18 girls in the Fort William Band, 16 boys and 16 girls in the Red Rock Band, three boys and one girl in the Nipigon Band, one boy and two girls in the Pays Plat Band, 10 boys and nine girls in the Pic Band, and two boys and two girls in the Long Lake Band; totalling 54 boys and 48 girls [See Doc. No. 140.].
120. The 1919 paylists for the Fort William and Long Lake Bands indicates that, although no individual is identified as having non-transmissible title, most of those listed on Macrae's 1898 list to be left out were not listed [See Docs. Nos. 142 and 143.].
121. On the payroll for the Michipicoten Band for 1919, the annuitants formerly shown with "non-transmissible title" were paid [See Docs. Nos. 144 and 148.]. Some of the annuities formerly identified as such in the Pays Plat and Pic Bands were not listed [See Docs. Nos. 145 and 146.].
122. For the Red Rock Band, the 1919 payroll indicates that the families of most of the persons listed on Macrae's 1898 list as cut out were paid, along with their probable descendants. Four others, however, were not listed [See Doc. No. 147.].
123. In a memorandum dated April 14, 1925, F. H. Paget wrote to D. C. Scott regarding a family who was receiving Robinson Treaty annuities. He detailed that the father was French Canadian and that the family had been paid annuities and their titles had been made non-transmissible. Paget alluded to the need to first recognize these "half-breeds" as having "Indian" status so that they may be enfranchised. His memo is excerpted below:

The Boissineau family should never have been paid Robinson Treaty Annuity as Indians. The questions, as to this title was thoroughly investigated by late Inspector MacCrae, and it was found that they were on the father's side French Canadian, and as an Indian takes the status from his father, none of the members of these families should have been paid, but at the time of investigation it was considered a hardship to deprive them of this annuity after being recognized as Indians, so it was decided to leave their names on the list and to make their titles non-transmissible.

The records do not show that any persons by the names of Joseph or Emery Boissineau were ever paid. According to Emery Boissineau's own statement his father was a French Canadian, and as previously stated, as a

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person takes the status from his father, his claim to be recognized and paid as an Indian should not be entertained, even though he may have been paid, as he claims, annuity fifty-three years ago, though the records here do not establish the same.

Many Indians whose titles were in dispute have recently been granted enfranchisement. This apparently has stirred up in the bosom of other half-breeds a desire to receive similar treatment if the Department would only acknowledge their status as Indians.

[Doc. No. 149]

APPENDIX A

GENERAL MÉTIS POLICY

Shortly after Confederation, in 1870, the Dominion of Canada acquired the territory known as Rupert's Land from the Hudson's Bay Company. During the same year, following the Métis Rebellion, the *Manitoba Act*, which created the Province of Manitoba, was enacted. A section of this Act provided for the issuance of land to the Métis in compensation for the extinguishment of their aboriginal rights.

Subsequent legislation provided for scrip (in the form of either a land grant or money) to be issued to heads of families, and later to the children of these heads of families.¹⁰

Treaties One and Two followed on the heels of the Manitoba Act. In short order, Métis from other areas of the country outside of Manitoba began to assert their rights to compensation. The federal government¹¹ dealt with such requests based on a geographical basis at first. Claims were considered from Métis living in the North West Territory (now Saskatchewan and Alberta) and later from Métis living in Keewatin (now the northern parts of Manitoba and Ontario). The Métis were given two options: either to take treaty and become part of a First Nation or to receive scrip and become citizens. The cut-off dates on which the government based residency requirements were also gradually extended.¹²

In Treaty Three¹³, a group of Métis at Rainy River and Rainy Lake were admitted separately into treaty by an adhesion in 1875.¹⁴ They were also granted their own reserve and elected their own Chief.¹⁵ The Métis' inclusion came about mainly at the insistence of the Chiefs who had signed the treaty.¹⁶ By 1876, the Treaty Three

¹⁰ Legislation encompassing the various allocations to Métis include: 33 Vic., Cap. 42 1868; 33 Vic., Cap. 3 1870; 33 Vic., Cap. 37 1873; 37 Vic., Cap 20 1874; 46 Vic., Cap 17. See also paper by Elizabeth Snider entitled "Settlement of Metis Claims in Treaty 1-11 area," DIA, CHRC, S-57: 1975.

¹¹ The federal department responsible for Métis claims was the Department of the Interior, which was created in 1873. See 36 Vict. 1873, Cap. 4.

¹² In order to be eligible for scrip, "Halfbreeds" were required to have been living within the set territory at a certain date. Anyone who was born after this date was ineligible for scrip. Likewise, anyone living outside of the territory encompassed by treaty on that date was also ineligible.

¹³ Signed in 1873.

¹⁴ See "Index to Secondary Documents", Doc. No. S76.

¹⁵ See "Index to Secondary Documents", Doc. No. S80.

¹⁶ See "Index to Secondary Documents", Doc. No. S57.

"Halfbreeds" agreed to join Little Eagle's Band (as their reserves were located side by side).¹⁷

¹⁷ See "Index to Secondary Documents", Docs. Nos. S86 and S87. This agreement to join Little Eagle's Band occurred only after the Rainy Lake Métis had asked to either be granted their own reserve or to be given homesteads. [See Docs. Nos. S88 and S89.]