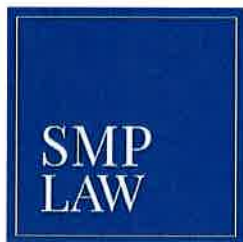


# **ROSEAU RIVER ANISHINABE FIRST NATION**

## **AGRICULTURAL TREATY BENEFITS SPECIFIC CLAIM SUBMISSION**



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## PART I: INTRODUCTION

1. This specific claim submission is provided to the Department of Crown-Indigenous Relations and Northern Affairs, Specific Claims Branch for consideration under Canada’s Specific Claims Policy on behalf of the Roseau River Anishinabe First Nation (the “**First Nation**”), which is recognized by Canada as a “band” within the definition of paragraph 2(1) of the *Indian Act*.<sup>1</sup>
2. This claim relates to the Crown’s failure to fulfill the agricultural treaty benefits owed to the First Nation under the terms of Treaty No. 1 (the “**Claim**”). For the purposes of this submission, treaty benefits include:
  - a) Agricultural implements and tools including:
    - i. a plough and harrow for each Indian settled down on his share of the reserve, and commenced cultivation of his land,<sup>2</sup> and additional ploughs and harrows

<sup>1</sup> RSC, 1985, c I-5 [the *Indian Act*].

<sup>2</sup> Wemyss Simpson, Indian Commissioner, to Joseph Howe, Secretary of State for the Provinces, November 3, 1871, printed in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*, p. 39 [Doc 143]; “...copy of an unsigned list [of outside promises] in Mr Archibald’s handwriting...,” in Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873, pp. 12-13 [Doc 40]. See *Roseau River Anishinabe First Nation – Provision of Benefits Under Treaty 1*, prepared by Joan Holmes and Associates Inc., at page 133 [Holmes Report].

when the Government are satisfied that those already given are used as intended<sup>3</sup>;

- ii. two axes, two spades, and two hoes for each head of family<sup>4</sup>;
- iii. two yoke and chain for oxen<sup>5</sup>; and
- iv. implements to cut crops: scythes or cradles<sup>6</sup>;

b) A buggy to each Chief and the Braves and Councillors of each Chief with the buggies to be the property of the Indians to whom they are given<sup>7</sup>;

c) Farm animals and livestock including:

- i. a cow for each chief<sup>8</sup>; Cows for the Chiefs and Headmen;<sup>9</sup>

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<sup>3</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]; LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27; see Holmes Report at pages 15 and 34.

<sup>4</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>5</sup> Copy of a memo of September 6, 1872, which details the discussion of “wants” from a large deputation from the Pembina Bands and “the substance of” St. John’s replies, in Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873, p. 21. [Doc 40]. See Holmes Report at page 134.

<sup>6</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 16.

<sup>7</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc.9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]; See Holmes Report at page 44.

<sup>8</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>9</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. See Holmes Report at page 14.

- ii. a male and female of “each kind of animal/all animals raised/used by farmers”<sup>10</sup>/“the smaller kinds of animals bred upon a farm” for each Chief, these when the Indians are prepared to receive them;<sup>11</sup>
- iii. a bull for the general use of each Reserve<sup>12</sup>; bulls for the Chiefs and Headmen<sup>13</sup>;
- iv. a boar for each Reserve<sup>14</sup>;
- v. a sow for each Chief<sup>15</sup>; Hogs for Chiefs and Headmen;<sup>16</sup>
- vi. Pigs and hens;<sup>17</sup>
- vii. a yoke of oxen, and a second yoke of oxen “if fair use can be made of them”<sup>18</sup>;
- viii. horses for the Chiefs and Headmen<sup>19</sup>;

<sup>10</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]; Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at pages 13, and 15.

<sup>11</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 12.

<sup>12</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at pages 12.

<sup>13</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>14</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>15</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>16</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>17</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 15.

<sup>18</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at pages 15 and 16.

<sup>19</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

- ix. work oxen for the Chiefs and Headmen<sup>20</sup>;
- x. sheep for the Chiefs and Headmen<sup>21</sup>; and
- xi. turkeys and fowls for the Chiefs and Headmen.<sup>22</sup>

d) Seed wheat, potatoes and garden seeds<sup>23</sup>;

e) A farmer, blacksmith and carpenter<sup>24</sup>; and

[collectively, the **Agricultural Treaty Benefits**”]

3. The following submissions support the First Nation’s Claim that the Crown failed to provide the Agricultural Treaty Benefits contrary to the Crown’s duty to uphold and discharge its treaty obligations. The First Nation’s Claim should be accepted for negotiations and a settlement negotiated to compensate the First Nation for its loss.
4. The failure to fulfill the treaty benefits owed under the terms of Treaty No. 1 falls within clauses (a) and (c) of the Specific Claims Policy and sections 14(1)(a) and 14(1)(c) of the *Specific Claims Tribunal Act*<sup>25</sup>, which both state that a First Nation may file a claim based on:
  - a) a failure to fulfill a legal obligation of the Crown to provide lands or other assets under a treaty or another agreement between the First Nation and the Crown; and

<sup>20</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>21</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>22</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>23</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19; Molyneux St. John, Minutes of the Board of Indian Commissioners, March 13, 1874 [Doc. 58]. LAC RG 10 Vol. 3608 File 3117 Reel C-10105. Some of these benefits reflected terms of Treaty 3, which had been completed in 1873 (i.e., annuity of \$5, ammunition, and agricultural assistance). See Holmes Report at pages 15, 16, 81.

<sup>24</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>25</sup> S.C. 2008, c.22 [the *Specific Claims Tribunal Act*].

- b) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian moneys or other assets of the First Nation.
- 5. This submission includes a summary of the relevant historical facts relating to the Claim. The facts relied upon for this Claim are set out in the following historical report:
  - (a) The April 2022 report entitled *Roseau River Anishinabe First Nation – Provision of Benefits Under Treaty 1*, prepared by Joan Holmes and Associates Inc. (hereinafter the “**Holmes Report**”).

A copy of this report is included with this Claim submission (see **Appendix A**).

- 6. This submission is provided on a without prejudice basis to any claims or submissions the First Nation may make before the Specific Claims Tribunal. The First Nation reserves the right to update, add to, or clarify its submissions upon receipt of or review of additional information, which may become available to the First Nation.

## **PART II: STATEMENT OF FACTS**

### **A. Prelude to Treaty 1**

- 7. In July of 1870, the Lieutenant Governor of the Province of Manitoba, Adams G. Archibald, was instructed to open communication with the Indian<sup>26</sup> Bands occupying the land between Lake Superior and Manitoba for settlement of this land.<sup>27</sup>

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<sup>26</sup> The terms “Indians” and “Indian Bands” are used throughout the Claim as that is the terminology used in the historical documents which form the basis of the Claim.

<sup>27</sup> Ronald C. Maguire, “An Historical Reference Guide to the Stone Fort Treaty (Treaty One, 1871)” (Ottawa: Research Branch, Department of Indian and Northern Affairs, 1980), p. 9 [Doc. 381]. See Holmes Report at page 6.

8. Immediately thereafter, Lieutenant Governor Archibald met with two large Indian delegations at the mouth of Red River and Fort Garry and promised to sign a treaty with them in the spring of 1871.<sup>28</sup>
9. As such, in the spring of 1871, the Indians in Manitoba immediately began pressing Lieutenant Governor Archibald for the promised treaty and also prevented settlers from proceeding beyond the Hudson's Bay Company ("**HBC**") surveys. The Indians even presented Lieutenant Governor Archibald with a statement of resolutions outlining the fines they exact for intrusions.<sup>29</sup>
10. By an Order in Council dated April 17, 1871, Wemyss M. Simpson ("**Commissioner Simpson**"), was appointed Indian Commissioner to negotiate a treaty with "the bands inhabiting the tract between Thunder Bay and the Stone Fort."<sup>30</sup> A later Order in Council dated April 25, 1871 appointed Robert Pither, of the Hudson's Bay Company and S.J Dawson, of the Department of Public Works, to an association with Commissioner Simpson to use their advantages to reach a treaty with the First Nations.<sup>31</sup>
11. After treaty negotiations at Fort Frances with the Anishinaabe failed, Commissioner Simpson travelled to Fort Garry where James McKay, a former Hudson Bay Company trader, replaced S.J Dawson as treaty commissioner, and Lieutenant-Governor Adams Archibald took the lead in the negotiations with the Cree and Saulteaux that resulted in Treaty One.<sup>32</sup>

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<sup>28</sup> Ronald C. Maguire, "An Historical Reference Guide to the Stone Fort Treaty (Treaty One, 1871)" (Ottawa: Research Branch, Department of Indian and Northern Affairs, 1980), p. 9 [Doc. 381]. See Holmes Report at page 6.

<sup>29</sup> Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), p. 40 [Doc 437]. See Holmes Report at page 7.

<sup>30</sup> Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), p. 40 [Doc. 437]. See Holmes Report at page 7.

<sup>31</sup> Order in Council P.C. 1871-0873, April 25, 1871 [Doc.4]. LAC RG 2 Series A-1-a Order-in-Council 1871-0873 Reel C-3297; Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), p. 40 [Doc.437].

<sup>32</sup> Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), p. 40 [Doc. 437].



12. In July of 1871, Commissioner Simpson and James McKay met with Lieutenant Governor Archibald and agreed upon a course of action to extinguish Indian title to all the lands in Manitoba, as constituted at the time.<sup>33</sup>

## **B. Negotiation of Treaty No. 1**

13. On July 25, 1871, a Proclamation was issued to all Indians living within Manitoba to meet with the treaty Commission at Lower Fort Garry.<sup>34</sup> The Commission consisted of Lieutenant Governor Archibald, Commissioner Simpson and James McKay.<sup>35</sup>
14. Negotiation of the written terms of Treaty No. 1 began on July 27, 1871, and lasted for eight days. Approximately 1000 “Indians from all sections of the country to which the invitation extended” were present at the negotiations, as well as a “considerable body of half-breeds and other inhabitants of the country.”<sup>36</sup> Three chiefs, namely, Qu-a-ty-ash, Na-na-wyn-an, and Wa-ko-wish<sup>37</sup> were selected to represent 600 people, 125 of whom were present at the negotiations, and Chief Wa-sus-koo-koon, also known as Rat Liver, was selected as the spokesperson of the three chiefs.<sup>38</sup> At the time of treaty and up to 1887, the three factions of the Roseau River Band under Chiefs Na-na-wa-nan, Ke-we-tay-ash, and Wa-ko-wush were collectively known as the Pembina Bands, as they resided between Pembina and Fort Garry.<sup>39</sup>

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<sup>33</sup> Ronald C. Maguire, “An Historical Reference Guide to the Stone Fort Treaty (Treaty One, 1871)” (Ottawa: Research Branch, Department of Indian and Northern Affairs, 1980), p. 12 [Doc. 381]. See Holmes Report at page 8.

<sup>34</sup> Wemyss M. Simpson, Proclamation, July 18, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 12 [Doc. 7]. See Holmes Report at page 8.

<sup>35</sup> Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), pp. 55 and 57 [Doc. 437]. See Holmes Report at page 8.

<sup>36</sup> Adams G. Archibald, Lieutenant Governor of Manitoba, to the Secretary of State for the Provinces, July 29, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 14 [Doc. 8]. See Holmes Report at page 9.

<sup>37</sup> The spelling of the names of the three Chiefs differs throughout the historical documents and the Holmes Report references herein. As such, the spelling as recorded in the particular historical document and page of the Holmes Report as referenced herein have been utilized at various parts of this submission.

<sup>38</sup> Sheldon Krasowski, *No Surrender: The Land Remains Indigenous* (Regina: University of Regina Press, 2019), p. 61 [Doc. 437]. See Holmes Report at page 9.

<sup>39</sup> See Holmes Report at page 4. The spelling of the names of the three Chiefs differs throughout the historical documents and the Holmes Report. For the purposes of this Claim, the spellings as recorded in the particular historical document and the Holmes Report have been utilized.

15. During the treaty negotiations, Lieutenant Governor Archibald and Commissioner Simpson assured the Indians that they could continue to use their traditional territories for hunting, trapping, fishing, and harvesting, and that they would not be confined to reserves. They left it up to the bands to decide when and if they were to live on reserves and begin farming.<sup>40</sup> Lieutenant Governor Archibald recommended, on the Queen's behalf, that the bands adopt agriculture, but emphasized that they would not be compelled to do so:

But the Queen, though she may think it good for you to adopt civilized habits, has no idea of compelling you to do so. This she leaves to your own choice, and you need not live like the white man unless you can be persuaded to do so with your own free will.<sup>41</sup>

16. On July 29, 1871, Lieutenant Governor Archibald reported that "the Indians were invited to state their wishes as to the reserves, they were to say how much they thought would be sufficient, and whether they wished them all in one or in several places."<sup>42</sup> In response to this invitation, the Indians requested about two-thirds of the province as a reserve. In further response, Lieutenant Governor Archibald and Commissioner Simpson spent the day clarifying the meaning and intention of reserves, stating that the Commissioners proposed to allow the Indians 160 acres for each family of five or in that proportion.<sup>43</sup> Moreover, in his opening address to the Indians, Lieutenant Governor Archibald stated that:

These reserves will be large enough, but you must not expect them to be larger than will be enough to give a farm to each family, where farms shall be required. They will enable you to earn a living should the chase fail, and should you choose to get your living by tilling, you must not expect to have included in your reserve more of hay grounds than will be reasonably sufficient for your purposes in case you adopt the habits of farmer.<sup>44</sup>

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<sup>40</sup> Craft, *Breathing Life into the Stone Fort Treaty*, 2013, p. 51 [Doc. 436]. See Holmes Report at page 9.

<sup>41</sup> "Memorandum of an Address to the Indians by the Lieut.-Governor Manitoba," July 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 16 [Doc. 6]. See Holmes Report at page 9.

<sup>42</sup> Morris, *The Treaties of Canada*, 1880, p. 34 [Doc. 143]. See Holmes Report at page 9.

<sup>43</sup> Adams G. Archibald, Lieutenant Governor of Manitoba, to the Secretary of State for the Provinces, July 29, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 14 [Doc. 8]. See Holmes Report at page 10.

<sup>44</sup> "Memorandum of an Address to the Indians by the Lieut.-Governor of Manitoba," July 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]*, p. 17 [Doc. 6]. See Holmes Report at page 10.

17. Additionally, during the negotiations, Chief Wa-sus-koo-koon detailed a list of demands including clothes for children in the spring and fall, furnished houses, ploughs, cattle, farm implements, buggies for the Chiefs, hunting supplies, and freedom from taxation.<sup>45</sup> Although these demands were met with laughter, there is no indication that the Commission refused them.<sup>46</sup>

### C. The Written Terms of Treaty No. 1

18. Treaty No. 1 was concluded on August 3, 1871 with the Chippewa and Swampy Cree Tribes.<sup>47</sup>
19. The written terms of Treaty No. 1 are limited, and only provided for reserves, maintenance of a school on each reserve, a \$3 gratuity for each Indian, and a \$3 annual annuity for each Indian:

Treaty Benefit	Details
Reserves	Area to be reserved for each band including “so much land on the Roseau River as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families.” <sup>48</sup>
\$3 gratuity	A present of three dollars for each Indian (man, woman, and child) belonging to the signatory bands. <sup>49</sup>
Schools	The maintenance of a school on each reserve “whenever the Indians of the reserve should desire it”. <sup>50</sup>

<sup>45</sup> Craft, *Breathing Life into the Stone Fort Treaty*, 2013, p. 59 [Doc.436]. See Holmes Report at pages 10-11.

<sup>46</sup> Craft, *Breathing Life into the Stone Fort Treaty*, 2013, p. 59 [Doc. 436]. Also see *The Manitoban's* reports on the treaty proceedings, reproduced in D. J. Hall, "A Serene Atmosphere? Treaty 1 Revisited," *Canadian Journal of Native Studies* 4, 2 (1984), p. 355 [Doc. 10]. See Holmes Report at page 11.

<sup>47</sup> Articles of Treaty, August 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 19 [Doc. 10]. See Holmes Report at page 11.

<sup>48</sup> Articles of Treaty, August 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 19 [Doc. 10]. See Holmes Report at page 11.

<sup>49</sup> Articles of Treaty, August 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 20 [Doc. 10]. See Holmes Report at page 11.

<sup>50</sup> Articles of Treaty, August 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 20 [Doc. 10]. See Holmes Report at page 11.

\$3 annuity	An annual payment to each family of five (or in like proportion for smaller or larger families) of \$15 Canadian (i.e., \$3 per person), payment to be made in “such articles as the Indians shall require of blankets, clothing, prints (assorted colors), twine or traps,” or cash if Her Majesty deemed it to be in the best interests of the Indians. <sup>51</sup>
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#### D. The “Outside Promises”

20. In the early post-treaty period, the Indigenous parties to Treaty No. 1 made repeated complaints that they were promised additional articles that were not included in the written text of the treaty.
21. The historical record suggests that the written terms of Treaty No. 1 do not encompass the full scope of the treaty benefits promised to the First Nation. Rather, in addition to the written terms of Treaty No. 1, the full extent of the treaty benefits promised to the First Nation under Treaty No. 1 can be gleaned from the following sources, each discussed in detail below:
  - a) Commissioner Simpson’s November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces;
  - b) The Undated Memorandum of Things Outside of the Treaty which were Promised at the Treaty at the Lower Fort (the “**Memorandum of Outside Promises**”);
  - c) A December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace;
  - d) Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge;
  - e) The Board of Indian Commissioner’s March 1874 Recommendations to the Minister of the Interior;
  - f) April 30, 1875 Order in Council P.C. 424; and
  - g) The First Nation’ September 8, 1875 ratification of Order in Council P.C. 424.

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<sup>51</sup> Articles of Treaty, August 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 20 [Doc. 10]. See Holmes Report at page 11.

**a. Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces**

22. On November 3, 1871, Commissioner Simpson submitted his report on the treaty negotiations with the First Nation to the Secretary of State for the Provinces. However, the written terms of Treaty No. 1 had already been ratified by Order in Council before Commissioner Simpson submitted this report.<sup>52</sup>
23. In his report on the treaty negotiations, Commissioner Simpson described the discussions that took place and the terms that were agreed upon. In addition to the terms included in the written text of the treaty (i.e. the \$3 gratuity, \$3 annuity, reserves, and a school), Commissioner Simpson stated that the following items were promised during the eight days of treaty negotiations between July 24, 1881 and August 3, 1871:

As each Indian settled down upon his share of the Reserve, and commenced the cultivation of his land, he was to receive a plough and harrow. Each chief was to receive a cow and a male and female of the smaller kinds of animals bred upon a farm. There was to be a bull for the general use of each Reserve. In addition to this, each Chief was to receive a dress, a flag and a medal, as marks of distinction, and each Chief with the exception of Bozawequare, the Chief of the Portage Band, was to receive a Buggy, or light spring wagon. Two councillors and two braves of each Band, were to receive a dress, somewhat inferior to that provided for the Chiefs, and the braves and councillors of the Portage Band excepted, were to receive a buggy.<sup>53</sup>

**b. The Memorandum of Outside Promises**

24. Additional items promised under Treaty No. 1 were also set out in an undated handwritten "Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort", dated August 3, 1871 authored by Commissioner Simpson and Indian Agent Molyneux St. John, and witnessed by Lieutenant Archibald and James McKay shortly after

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<sup>52</sup> The Order in Council was ratified on September 12, 1871. See D. J. Hall, "'A Serene Atmosphere'? Treaty 1 Revisited," *Canadian Journal of Native Studies* 4, 2 (1984), pp. 329 and 333 (footnote 13) [Doc. 391]. See Holmes Report at page 12.

<sup>53</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at pages 12-13.

Treaty No. 1 was signed. "This memorandum came to be known as the "Outside Promises", and provided as follows:

For each Chief that signed the Treaty, a dress distinguishing him as Chief.  
For Braves & Councillors of each Chief, a dress, it being supposed that the Braves and Councillors will be two for each Chief.  
For each Chief, except Yellow Quill, a Buggy.  
For the Braves and Councillors of each Chief, except Yellow Quill, a Buggy.  
In lieu of a yoke of oxen for each Reserve, a Bull for each; and a cow for each Chief; a Boar for each Reserve; and a sow for each Chief; and a male and female of each kind of animal raised by farmers, these when the Indians are prepared to receive them.  
A plough and a harrow for each Settler cultivating the ground.  
These animals, and their issue, to be Govt property, but to be allowed for the use of the Indians, under the superintendence & control of the Indian Commissioner.  
The Buggies to be the property of the Indians to whom they are given.<sup>54</sup>

**c. December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace**

25. In December of 1872, several Treaty 1 Chiefs appeared before a Justice of the Peace and stated that Lieutenant Governor Archibald and Commissioner Simpon promised to put articles that were not included in the written text of Treaty No. 1 in a separate paper as follows:

...Governor Archibald and Commissioner Simpson did both promise to the Indians that the things demanded should be given, but said that we will not put all these things in the Treaty Paper, but we will promise to make a separate paper which will do as well, and you will be sure of the things.<sup>55</sup>

...

That these articles enumerated were Agricultural implements for the Chiefs and headmen, waggons, horses, harness and suits of clothing, work oxen, Bulls, Cows, Hogs, Sheep, Turkeys, and fowls, on each reserve, medical aid, a school,

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<sup>54</sup> W. M. Simpson and M. St. John, "Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871," ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143] See Holmes Report at page 13.

<sup>55</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. See Holmes Report at page 14.

and school master, if they wished to take their treaty money in goods they would be supplied at Canada price.<sup>56</sup>

**d. Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge**

26. In February 1873, Agent Molyneux St. John reported to Deputy Superintendent General Spragge. This report, dated February 24, 1873, contained four important sections. First, the report acknowledged that the Memorandum of Outside Promises “expressed our [the Crown’s] understanding of the matter, but it by no means covered the understanding or expectations of the Indians.”<sup>57</sup>
27. Second, the February 1873 Report enumerated other articles that the Indians understood to have been promised under Treaty No. 1:

The Indians claim that each head of a family was to receive, as he settled down on his share of the Reserve, a male and female of all animals used by Farmers. (Horses I think were especially exempted during the discussion about the Buggies). They claim a Plough and a Harrow, a spade [marginalia: 2 spades], and axe [marginalia: 2 axes], and a hoe [marginalia: 2 hoes] for each head of family, a yoke of oxen with yoke and chain. A farmer to teach them to cultivate the land, and a Blacksmith and carpenter to assist them in Building &c. Seed wheat and implements to cut their crops; and other matters.

Clothing for themselves and their families and food when they require it in the winter.

As most, if not all, of these things were spoken of during the negotiations of the Treaty, and as the Indians never understood the line of assent and dissent of the Commissioner, the latter has given, in those cases where he deemed it expedient, such articles as he thought would really benefit the Indians.<sup>58</sup>

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<sup>56</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>57</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See Holmes Report at page 13.

<sup>58</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

28. Each item in this list was also initialled by Alexander Campbell,<sup>59</sup> who became Superintendent General of Indian Affairs and Minister of the Interior in 1873.<sup>60</sup> Some of the marginalia also indicated further agreement with the terms. That is, the number of spades, axes, and hoes were changed to two; comments next to the farmer, blacksmith, and carpenter read “yes, if it can be arranged”; and “yes” is written next to the seed wheat and implements. There is also a comment about the clothing that reads, “as far as understood to be provided – yes [A.C.]”<sup>61</sup>
29. Third, the February 1873 Report also listed 18 demands made by the Pembina Bands at a large deputation in September 1872 regarding:
- [P]loughs & harrows, a farmer, a schoolmaster, dresses [clothing] for children, a copy of the treaty, wood cut on the Reserve last spring, pigs, sheep, hens, another yoke of oxen, sick men, houses, a store at Rivière Marais, hay for oxen, locations to be set aside for 30 families, using wool of sheep, Kewaytayash’s brother-in-law moving from an American band, a reaper, and a surveyor.<sup>62</sup>
30. Of these 18 demands, the following were approved by Alexander Campbell:
- a. additional ploughs and harrows “when the Government are satisfied that those already given are used as intended”;
  - b. a farmer to show them how to plough to be sent in the spring;
  - c. pigs and hens, but not sheep;
  - d. a second yoke of oxen “if fair use can be made of them”; and
  - e. scythes or cradles.<sup>63</sup>

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<sup>59</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>60</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See Holmes Report at page 15.

<sup>61</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>62</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See p. 27. See Holmes Report at page 15.

<sup>63</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at pages 15 and 16.



31. Additional marginalia on the Memorandum of Outside Promises initialed by Alexander Campbell instructed the recipient to supply the pigs and the “male and female of each animal used by a Farmer” to each Chief.<sup>64</sup>
- e. **Board of Indian Commissioner’s March 1874 Recommendations to the Minister of the Interior;**
32. On March 16, 1874, the Board of Indian Commissioners, consisting of the Indian Commissioner, the Lieutenant Governor, and Agent Molyneux St. John, [the “**Board**”], recommended the following settlement of the matter of the “Outside Promises” to the Minister of Interior “as a supplement to their existing annuities & other benefits under the Treaty”:
- a. 1st one plough & harrow for every four families on their actually settling on the Reserve and commencing to farm
  - b. 2nd one axe, two hoes, one spade, a scythe for each head of a family
  - c. 3rd one pair of oxen for every ten families settled on the Reserve
  - d. 4th A cow to every chief not already having received one.
  - e. 5th A Bull for each Reserve if required.
  - f. 6th Tools for building purposes, for each Reserve, of such amount as the Commissioner may deem necessary.
  - g. 7th The Schools to be maintained as provided for by the Treaty, the importance of which is strongly urged.
  - h. 8th The Commissioners to be authorized to employ, from time to time, a Farmer and a Carpenter, for such limited period of engagement as shall be found necessary, to aid the Indians in farming on any Reserve, or in Building on the same.
  - i. 9th A supply of simple medicines to be provided for each Reserve, and placed in the custody of some suitable person.
  - j. 10th Seed Wheat, Potatoes, and garden Seeds.
  - k. 11th Certain Staple articles of goods to be purchased by the Indian Department and kept on stock to be distributed to the Indians at cost price on account of their annuities by local agents.
  - l. 12th Ammunition and twine, fifteen hundred dollars per annum for the Treaty.
  - m. 13th Clothing for chiefs and four officers once every three years.
  - n. 14th A flag and Silver medal for each chief.
  - o. 15th Twenty five dollars to each chief and fifteen dollars to each of four councillors these payments to the chiefs and councillors to be approved by the Chief Indian Agent as to their rank as such, and its continuance.

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<sup>64</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See Holmes Report at page 15.

- p. dependent on their good conduct, and further, that an addition to be made to the annuity of two dollars per head, and that the annuities may be payable semi-annually in the event of sub-agents being appointed and its being found expedient.<sup>65</sup>

**f. April 30, 1875 Order in Council P.C. 424**

- 33. The Board's recommendations did not come to fruition. Instead, the matter of the "Outside Promises" was purportedly settled on April 30, 1875 by Order in Council P.C. 424 [the "**1875 Order in Council**"]. The 1875 Order in Council contained the following clauses:

- A. The Memorandum of Outside Promises was considered part of Treaties 1 and 2, and the Indian Commissioner was instructed to carry out the promises contained therein, if any were outstanding;
- B. Annuity payments were raised from \$3 to \$5 per annum, with Chiefs to receive \$25;
- C. Each Chief and Headmen per band were to receive a suit of clothing every three years;
- D. Each person who received the increased annuity "shall be held to abandon all claim whatever against the Government in connection with the so called 'Outside Promises', other than those contained in the Memo: attached to the Treaty"<sup>66</sup>

**g. Roseau River First Nation' September 8, 1875 ratification of Order in Council P.C. 424.**

- 34. "In order to give as much weight as possible to the proposed new arrangement with the Indians," Lieutenant Governor Morris, the Indian Commissioner, and James McKay visited the Treaty 1 and 2 bands to inform them of the new arrangement proposed by the Government. Each Chief was presented with a copy of the 1875 Order in Council. A second copy of the same was signed by the Chief "as formal acceptance of the new terms".<sup>67</sup>

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<sup>65</sup> Molyneux St. John, Minutes of the Board of Indian Commissioners, March 13, 1874 [Doc. 58]. LAC RG 10 Vol. 3608 File 3117 Reel C-10105. Some of these benefits reflected terms of Treaty 3, which had been completed in 1873 (i.e., annuity of \$5, ammunition, and agricultural assistance). See Holmes Report at pages 16 and 17.

<sup>66</sup> Order in Council P.C. 424, April 30, 1875 [Doc. 68]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108.

<sup>67</sup> [David Laird, Minister of the Interior,] to the Lieutenant Governor of the Northwest Territories, July 7, 1875 [Doc. 72]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 17.

35. The Roseau River First Nation signed its acceptance of the 1875 Order in Council on September 8, 1875.<sup>68</sup>
36. Notably, however, Lieutenant Governor Morris was instructed that it was not necessary to print a copy of the Memorandum of Outside Promises with the 1875 Order in Council presented to the Chiefs.<sup>69</sup> As such, the evidence suggests that the Chiefs were not provided with the Memorandum of Outside Promises prior to accepting the 1875 Order in Council even though it purported to make the Memorandum of Outside Promises part of Treaty No. 1 and extinguish any claims not contained in the Memorandum of Outside Promises. All the while, the Crown was aware that the Memorandum of Outside Promises “expressed our [the Crown’s] understanding of the matter, but it by no means covered the understanding or expectations of the Indians.”<sup>70</sup>

#### **E. Survey and Establishment of IR 2**

37. Since several benefits under Treaty No. 1 were to be received once an individual or family settled on the reserve, records of how many individuals and families were settled on the reserve at any point in time are crucial to determining whether the First Nation received its full entitlement to benefits under Treaty No. 1.
38. As such, records indicating the considerable delays in the survey and establishment of the reserve are likewise important, because they hindered members of the First Nation from settling on the reserve when they wanted to do so. As recognized by Indian Commissioner J.A.N. Provencher, these delays caused “a good deal of inconvenience” for the members of the First Nation who wished to settle on the reserve, and cultivate the land.<sup>71</sup>

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<sup>68</sup> Chiefs and Headmen, Roseau River, September 8, 1875, in Canada, *Indian Treaties and Surrenders From 1680 to 1890*.—In two volumes, Vol. I (Ottawa: Brown Chamberlin, Queen’s Printer, 1891), pp. 290-291 [Doc. 11]; and A. E. St. Louis, Archivist, Indian Affairs Branch, Department of Citizenship and Immigration, March 23, 1954 [Doc. 327]. LAC RG 10 Vol. 8594 File 1/1-11 Pt. 2 Reel C-14225. See Holmes Report at page 18.

<sup>69</sup> [David Laird, Minister of the Interior,] to the Lieutenant Governor of the Northwest Territories, July 7, 1875 [Doc. 72]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at pages 16 and 17.

<sup>70</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc.40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See Holmes Report at page 13.

<sup>71</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]. See Holmes Report at page 26.

39. 1872 is the first known year that members of the First Nation indicated their desire to settle on the reserve, and begin cultivating and harvesting the land. However, records indicate that as of June 1877, the reserve boundaries had still not been defined.<sup>72</sup>
40. The following table sets out the timeline of the events leading up to the eventual survey and establishment of the reserve:

Date	Record of Event
March 1872	F. T. Bradley wrote to the Lieutenant Governor of Manitoba and explained that members of the Roseau River First Nation had visited him and complained that their reserve had not yet been surveyed, and that timber was being cut on the land set apart for them. As instructed by the Lieutenant Governor, Bradley subsequently visited Roseau River to investigate the complaints, and found them to be correct. As such, Bradley assured the First Nation that a surveyor would be commissioned to set out the boundaries of their reserves immediately. <sup>73</sup>
March - April 1872	M. McFadden conducted a survey of part of the reserve, however, the outlines of the reserve still had not been defined by the fall of 1872. <sup>74</sup>
April – June 1872	Chiefs Che-we-te-as, Wa-ko-wash, and Ma Ma-tah-com-tup wrote to the Lieutenant Governor of Manitoba and indicated that two families wished to settle on the reserve in the spring of 1872, with a view to raising some corn and potatoes, and asked that the families be provided with oxen, ploughs, and seed. <sup>75</sup>
September 1872	Agent Molyneux St. John met with a deputation from the Pembina Bands, at which time the Bands indicated that there were 34 families who desired to take up their locations on the reserve at once. <sup>76</sup>

<sup>72</sup> John Black to J. A. N. Provencher, June 8, 1877 [Doc. 115]. LAC RG 10 Vol. 3626 File 5763 Reel C-10109. See Holmes Report at page 22.

<sup>73</sup> F. T. Bradley to the Lieutenant Governor of Manitoba, March 10, 1872 [Doc. 22]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See pp. 11 and 14. See Holmes Report at page 19.

<sup>74</sup> M. McFadden, "Field Notes of survey of the South West part of Indian Reserve, Roseau River, Manitoba," April 8, 1872 [Doc. 30]. Natural Resources Canada FB272 CLSR MB; see also G. McMicken to J. C. Aikins, July 31, 1872 [Doc. 34]. LAC RG 10 Vol. 3579 File 609 Reel C-10102. See Holmes Report at page 20.

<sup>75</sup> Chief Che-we-te-as, Chief Wa-ko-wash, and Ma-Ma-tak-com-tup, to the Lieutenant Governor of Manitoba and the North West Territories, April 1872 [Doc. 28]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See Holmes Report at page 25.

<sup>76</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 26.

January 1873	Lieutenant Governor Morris strongly recommended that the reserves for the Indians of Manitoba and the Northwest Territories under Treaties 1 and 2 be surveyed “with as little delay as possible ... so soon as the season will admit of it.” <sup>77</sup>
March 14, 1873	In his annual report for the 1871-72 fiscal year, dated March 14, 1873, Deputy Superintendent of Indian Affairs William Spragge, stated that the reserves “specified in the treaties entered into in 1871, are about to be surveyed under a requisition made by the Department for that purpose....” <sup>78</sup>
1873	In his annual report for 1873, Indian Commissioner J.A.N. Provencher noted that “a good deal of inconvenience” was experienced due to the reserves not having yet been surveyed, but that by the end of the year the surveys were all complete so those difficulties should be diminished. <sup>79</sup>
1874	A statement of “Indian Reserves in the Province of Manitoba and the North West Territories” published in the Annual Report for 1874, which listed the Roseau River Indian Reserve (mistakenly referred to as IR 3), noted that it contained 13,554 acres. <sup>80</sup> In addition, a quarter section was reserved from Township 3, Range 4 East, where “sub-chief Wakowash has made his improvements.” <sup>81</sup>
1875	Indian Commissioner Provencher reported that the Pembina Bands, under the three Chiefs who were party to Treaty 1 and numbering 480 souls, contended that their reserve as surveyed “is not in conformity to the conventions of the Treaty, and they claim the grant of the land on both sides of the Rosseau River, running east.” Provencher stated that the requested lands had already been set aside for Halfbreed claims, or for settlers who had already taken possession, so the request could not be granted. <sup>82</sup>

<sup>77</sup> Secretary of State for the Provinces to J. C. Aikin, Secretary of State of Canada, January 9, 1873 [Doc. 38]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. See Holmes Report at page 21.

<sup>78</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, *Annual Report on Indian Affairs for the year ended 30th June, 1872* (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 21.

<sup>79</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]. See Holmes Report at page 26.

<sup>80</sup> “Indian Reserves in the Province of Manitoba and the North West Territories” in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 101 [Doc. 62]. See Holmes Report at page 21.

<sup>81</sup> J. S. Dennis, Surveyor General, to J. A. N. Provencher, Indian Commissioner, April 6, 1875 [Doc. 67]. LAC RG 10 Vol. 3558 File 29 Reel C-10098. See Holmes Report at page 21.

<sup>82</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 40 [Doc. 86]. See Holmes Report at page 21.

February 1877	Rat Liver, also known as Wa-sus-koo-koon, wrote a letter requesting “some document, or other other [sic] evidence by which they may show that the point from Marias up to the Roseau, is included in their reserve.” The spokesperson indicated that other parties are trying to claim it, but this point was promised to them by Governor Archibald, who had also promised to send surveyors to draw out the lines. <sup>83</sup>
June 1877	The reserve boundaries had still not been defined, which caused issues in locating the school house. <sup>84</sup>
1883	Although no information has been found on the final survey and/or confirmation of IR2, in his annual report for 1883, Indian Agent Francis Ogletree described the Roseau River Reserve as consisting of 13,544 acres. <sup>85</sup> The exact same acreage as in 1874 implies that the reserve was unchanged from 1874.

41. Additionally, there was a faction of the First Nation that lived at the Roseau Rapids. This faction made significant improvements to the Rapids, prior to and after Treaty 1; however, the Rapids were not considered part of the Band’s reserve.
42. As of 1885, the Crown was aware that great dissatisfaction existed among the Indians at the Rapids because of the Crown’s failure to give them a reserve at the rapids. In the spring of 1885, Agent Ogletree wrote that:

[t]here is a very strong feeling...that the Government is not carrying out the terms of the treaty with them in not giving them the Reserve at the Rapids... I strongly recommend that some person of influence be sent among them to settle these disputes about Reserves for all time to come.<sup>86</sup>

<sup>83</sup> Rat Liver to Unknown, February 9, 1877 [Doc. 110]. LAC RG 10 Vol. 3558 File 29 Reel C-10098. See Holmes Report at page 22.

<sup>84</sup> John Black to J. A. N. Provencher, June 8, 1877 [Doc. 115]. LAC RG 10 Vol. 3626 File 5763 Reel C-10109. See Holmes Report at page 22.

<sup>85</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883* (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 22.

<sup>86</sup> Francis Ogletree, Indian Agent, to E. McColl, Inspector of Indian Agencies, May 21, 1885 [Doc. 165]. LAC RG 10 Vol. 3713 File 20888 Reel C-10125. See Holmes Report at page 22-23.

43. In 1886 Agent Ogletree stated that the Indians resident at the Roseau Rapids were anxious to be granted a reserve there, and were willing to give up their claim to the reserve on the mouth of the river.<sup>87</sup>
44. On August 29, 1888, Chief Nashwashooke and seven other “Councillors and Indians of the Chippewa Tribe now residing at or near the Rapids of the said Rosseau River,” signed an agreement with the Superintendent General of Indian Affairs, as represented by Agent Ogletree to surrender their interest and claim in the Indian reserve at the junction of the Roseau and Red Rivers. In exchange they were to be granted the whole of Section 11 and the SE ¼ of Section 10, Township 3, Range 4, East of the Principal Meridian.<sup>88</sup>
45. The “Roseau River Rapids Reserve” is discussed as a separate “reserve” for the first time in Agent Ogletree’s 1896 annual report, although the vital statistics, occupations, and other headings are still combined with the “Roseau River Reserve Proper.”<sup>89</sup> Roseau River Rapids IR 2A appears in a published “Schedule of Indian Reserves in the Dominion” in 1897, and is shown to have an area of 1.25 square miles.<sup>90</sup>

## **F. Early Agricultural Activity on Roseau River IR 2**

46. Since many of the benefits under Treaty No. 1 were to be provided to individuals and families settled on the reserve *and* cultivating the land, records of how many individuals and families were cultivating the land at any point in time are crucial to determining whether the First Nation received its full entitlement to benefits under Treaty No. 1.
47. Moreover, since additional treaty benefits such as ploughs and harrows were to be provided when the government was satisfied that those already provided were being used as intended,

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<sup>87</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 24, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1886* (Ottawa: MacLean, Roger & Co., 1887), p. 44 [Doc. 174]. See Holmes Report at page 23.

<sup>88</sup> Chief Nashwashooke and others, Roseau Rapids, Agreement, August 29, 1888 [Doc. 184]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 23.

<sup>89</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, July 22, 1896, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1896* (Ottawa: S. E. Dawson, Queen’s Printer, 1897), p. 129 [Doc. 224]. See Holmes Report at page 23.

<sup>90</sup> Roseau River IR 2 is listed with an area of 20.86 square miles in this schedule. “Schedule of Indian Reserves in the Dominion” in Canada. *Annual Report of the Department of Indian Affairs for the year ended 30th June 1897*. Ottawa: S. E. Dawson, Queen’s Printer, 1898, p. 343 [Doc. 225]. See Holmes Report at pages 23 and 24.

records as to the use made of the implements that were provided are also important for determining whether the First Nation received its full entitlement to the Treaty No. 1 benefits.

48. The below section sets out records pertaining to:
  - a. the number of individuals and families cultivating the land on Roseau River IR2 from 1872 – 1898; and
  - b. the use made of the implements that were provided.
49. Records indicate that the First Nation notified the Crown of its desire to take up agriculture on the reserve as early as 1872 and requested the Crown to provide the agricultural implements and tools necessary for same. Records indicate that these early requests were not fulfilled.
50. In a petition dated circa 1872, the signatories stated, “[w]e would humbly ask how are we to live this winter we are poor .... And ... we would [ask] if you are able in any way assist us to make a living for ourselves during the coming winter.”<sup>91</sup> Another letter dated circa 1872, addressed the matter of the Band’s livelihood by noting that the hunt had failed and that the Band was starving.<sup>92</sup>
51. As mentioned above, in April 1872, the Chiefs wrote to the Lieutenant Governor of Manitoba indicating that two families wished to settle on the reserve in the spring of 1872 to raise corn and potatoes, and asking for oxen, ploughs, and seed. The Lieutenant Governor’s Private Secretary assured the Chiefs, among other things, that the Indian Commissioner would come in the spring of 1872 to give them the aid promised at the time of the treaty.<sup>93</sup> Records indicate that the Chiefs’ request was not fulfilled by June of 1872, when in a letter to Superintendent James F. Graham, Agent Ogletree wrote that “The Chiefs

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<sup>91</sup> Nasha Kee Peenais et al., Roseau River, to A. G. Archibald, Lieutenant Governor of Manitoba, circa 1872 [Doc. 14]. LAC MG 27 IC 10 Reel M-5539. See Holmes Report at page 25.

<sup>92</sup> Kee wee ti ash to A. G. Archibald, Lieutenant Governor of Manitoba, circa 1872 [Doc. 15]. LAC MG 27 IC 10 Reel M-5539. See Holmes Report at page 25.

<sup>93</sup> Henri Bouthillier, Private Secretary of the Lieutenant Governor, to Ke-we-ty-ash, Ma-ko-wash, and Mama-tah-com-tup, April 13, 1872 [Doc. 31]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See Holmes Report at page 25.



present say they have no oxen and wished to inform you that they cannot farm without them”.<sup>94</sup>

52. When Indian Agent Molyneaux St. John visited the three Pembina Bands in the summer of 1873, he noted they had made “some little progress towards cultivating the ground” and stated his opinion that “the greater part of the Indians of Manitoba would be converted into actual settlers” given some rearrangement of the terms of the treaty.<sup>95</sup>
53. In his annual report for 1873, Indian Commissioner J.A.N. Provencher noted the “astonishing progress” of some bands, adding that “[o]ne-half at least of the Bands of St. Peter, Pembina, Fort Alexander and Fairford are in the meantime addicted to agriculture.” Notably, as explained above, Provencher noted that “a good deal of inconvenience” was experienced due to the reserves having not yet been surveyed.<sup>96</sup>
54. In November 1877 the Department of Indian Affairs sent a circular letter to Agents in Manitoba and the Northwest Territories requesting that they submit information respecting among other things, the extent to which the Indians were cultivating the land.<sup>97</sup> In Response to the circular, on November 21, 1877, Geo. Newcomb, Indian Agent at Emerson wrote that:

Two or three of the Indians have from four to six acres, but the balance of those who have built houses have as yet only a small garden patch varying from a ¼ to an acre and a half, upon which they grow potatoes and corn. The Indians on the Reserve at Rosseau Rapids appear to be making better attempts at farming than those at the mouth of the River, one Indian having quite a stock of cattle (his own private property) and has raised quite a crop of wheat and Barley this year. A good number on both reserves have built houses.<sup>98</sup>

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<sup>94</sup> Francis Ogletree, Indian Agent, to James F. Graham, Superintendent, June 17, 1882 [Doc. 151]. LAC RG 10 Vol. 3768 File 33579 Reel C-10135. See Holmes Report at page 34.

<sup>95</sup> Molyneaux St. John, Indian Agent, Winnipeg, to Colonel J. A. Provencher, Indian Commissioner, October 22, 1873, in Canada, Annual Report of the Department of the Interior for the year ended 30th June, 1874 (Ottawa: MacLean, Roger & Co., 1875), p. 60 [Doc. 48]. See Holmes Report at page 26.

<sup>96</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, Annual Report of the Department of the Interior for the year ended 30th June, 1874 (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]. See Holmes Report at page 26.

<sup>97</sup> L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to George Newcomb, Indian Agent, Emerson, et al., November 6, 1877 [Doc. 120]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at pages 27 and 27.

<sup>98</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 27.

55. In his annual report on his inspection of the Manitoba Superintendency for 1878, E. McColl stated that the general progress of the Indians in agriculture was “extremely gratifying.” He pointed to their decreasing dependence on hunting and noted the good use they had made of the implements at their disposal:

**Numerous instances can be cited where the members of Bands with ploughs and harrows, but without cattle or horses, have actually harnessed themselves and ploughed and harrowed their fields—ingenious use of ropes and portage straps. In other cases they have made train dogs do the work of the ox and the horse rather than make no use of the implements provided. They use the grub hoe very successfully in the absence of more suitable implements in the cultivation of their garden patches, from a fraction to six or seven acres in extent. Excellent crops of wheat and other grain have been raised on some of the Reserves by the use of no other implement.**<sup>99</sup>

[Emphasis added]

56. In 1879, Inspector E. McColl reported that the “Rosseau River bands” comprising Newcomb’s agency, “have a very superior reserve for farming and grazing purposes, but notwithstanding this advantage there are only a few families cultivating the soil to any extent.”<sup>100</sup> McColl repeated this sentiment the following year, stating, “[t]his reserve is very fertile, and, if properly husbanded, would produce abundance of food for the sustenance of man and beast, but I regretted to notice that so few houses and gardens had been made within the past year.”<sup>101</sup>
57. In 1882, Indian Superintendent Graham commented that, although the Roseau River First Nation “have one of the best reserves within the Superintendency, very few of them reside on the reserve or cultivate the soil.”<sup>102</sup> Inspector McColl reported that in 1882, “only about

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<sup>99</sup> E. McColl, Inspector of Indian Agencies and Reserves, to the Superintendent General of Indian Affairs, December 31, 1878, in Canada, Report of the Deputy Superintendent General of Indian Affairs [1878], p. 54 [Doc. 134]. McColl did not report on any specific bands. See Holmes Report at page 27.

<sup>100</sup> E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, December 31, 1879, in Canada, Report of the Deputy Superintendent-General of Indian Affairs, 1879, p. 60 [Doc. 142]. See Holmes Report at page 28.

<sup>101</sup> E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, November 25, 1880, in Canada, Annual Report of the Department of Indian Affairs for the year ended 31st December, 1880 (Ottawa: MacLean, Roger & Co., 1881), p. 58 [Doc. 144]. See Holmes Report at page 28.

<sup>102</sup> James F. Graham, Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, November 22, 1882, in Canada, Annual Report of the Department of Indian Affairs for the year ended 31st December, 1882 (Ottawa: MacLean, Roger & Co., 1883), p. 156 [Doc. 158]. See Holmes Report at page 28.

a dozen” of the 150 families belonging to the Roseau River First Nation were cultivating or residing on the reserve. He noted that only a few families were ever seen in the area, except at annuity payment time, and reported that there was “no progress in farming” on the Roseau River Reserve, with only a few small patches of land under cultivation. McColl did note, however, that Chief Nanawanan and his followers, “living at the rapids,” had made considerable improvements, including “nine houses and five stables and large gardens which they claim were cultivated before treaty was made with them.”<sup>103</sup>

58. In his annual report for 1884, the Superintendent General noted a “marked improvement” in the First Nation. He reported, “[t]hese Indians appear to be now desirous of following agriculture. It is only within the last year that they have shown any disposition to cultivate land.”<sup>104</sup> In 1885, Agent Ogletree reported that 9 acres were broken in 1884.<sup>105</sup>
59. In 1885 Agent Ogletree provided a detailed report on the progress of agricultural activities on the Roseau River Reserve that year. He reported that 20 acres were broken and that:

The Rosseau River bands put down this year the following quantities of seed on the reserve: sixteen bushels of wheat, six bushels of barley, seventy-five bushels potatoes, five pounds of turnip seed, two pounds carrot seed and three pounds of onion seed, also one bushel of beans, and at the time I was making the payments the crops looking remarkably well.<sup>106</sup>

60. In terms of the portion of the Band residing at the Rapids, Ogletree reported that they had put down 70 bushels of potatoes, 15 bushels of wheat, five bushels of barley, and garden

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<sup>103</sup> E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, November 28, 1882, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1882* (Ottawa: MacLean, Roger & Co., 1883), p. 154 [Doc. 159]. See Holmes Report at page 28.

<sup>104</sup> John A. Macdonald, Superintendent General of Indian Affairs, to Marquess of Lansdowne, Governor General of Canada, January 1, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), pp. xxxv-xxvi [Doc. 164]. See Holmes Report at page 29.

<sup>105</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 19, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1885* (Ottawa: MacLean, Roger & Co., 1886), pp. 43-44 [Doc. 171]. See Holmes Report at page 29.

<sup>106</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 19, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1885* (Ottawa: MacLean, Roger & Co., 1886), p. 43 [Doc. 171]. See Holmes Report at page 29.

seeds in 1885, but that he had not visited the area and could not report on how those crops looked.<sup>107</sup>

61. In 1886, Ogletree reported that twenty more acres had been broken and sowed with wheat that year, but that he expected the crops to be light that year due to the extreme dry season.<sup>108</sup> In 1889, he reported that there were only eleven Indians “who did anything” with respect to putting in the crops, “and but five of them helped to harrow the wheat and make the fence.”<sup>109</sup>
62. In 1890, Agent Ogletree reported that only three Indians were assisting with the crop on the reserve, although the yield was 2,400 bushels of wheat and 360 of potatoes.<sup>110</sup> He reported that by 1894 there was only one man farming on the “reserve proper,” as well as the Chief and two other men resident at the Rapids. He further reported that thirty-three acres were under crop on the reserve by the sole farmer, in addition to 94 acres “cropped by the department”, and that the Indians at the Rapids had some wheat, potatoes, and corn under crop.<sup>111</sup> In 1898, Inspector Marlatt reported that the main reserve had 90 acres under crop and the reserve at the Rapids had 65 acres under crop as grain land.<sup>112</sup>

## **G. Provision of Treaty Benefits to the Roseau River Anishinabe First Nation**

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<sup>107</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 19, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1885* (Ottawa: MacLean, Roger & Co., 1886), pp. 43-44 [Doc. 171]. See Holmes Report at pages 29 and 30.

<sup>108</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 24, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1886* (Ottawa: MacLean, Roger & Co., 1887), p. 43 [Doc. 174]. See Holmes Report at page 30.

<sup>109</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 16, 1889, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1889* (Ottawa: Brown Chamberlin, Queen's Printer, 1890), p. 45 [Doc. 192]. See Holmes Report at pages 30 and 31.

<sup>110</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 18, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890* (Ottawa: Brown Chamberlin, Queen's Printer, 1891), pp. 30-31 [Doc. 199]; and E. McColl, Superintending Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, November 18, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890*, p. 198 [Doc. 200]. See Holmes Report at page 31.

<sup>111</sup> Francis Ogletree, Indian Agent, Portage la Prairie, to the Superintendent General of Indian Affairs, August 22, 1894, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1894* (Ottawa: S. E. Dawson, Queen's Printer, 1895), p. 49 [Doc. 221]. See Holmes Report at page 31.

<sup>112</sup> S. R. Marlatt, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, October 1, 1898, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1898* (Ottawa: S. E. Dawson, Queen's Printer, 1899), p. 76 [Doc. 233]. See Holmes Report at page 32.

a. *Agricultural Implements and Tools*

63. The following table sets out the number of agricultural implements and tools provided to the First Nation based on the records discussed in this section:

Date Provided	Plough	Harrow	Spade	Axe	Hoe	Chain for oxen	Scythes or cradles
1872				12	12		
October 5, 1875	3			36	36		18
November 4, 1876	4			15	24		
1877	1	4				3 sets	10
May 26, 1878	4	4					20
1878-1879	2	2				4 sets	
1885							
1890				12			12
<b>Total</b>	<b>14</b>	<b>10</b>	<b>0</b>	<b>75</b>	<b>72</b>	<b>14</b>	<b>60</b>

64. In his Annual Report for the 1871-72 fiscal year, Deputy Superintendent of Indian Affairs, William Spragge commented on the purchase of 50 ploughs and 50 harrows by Commissioner Simpson “to be delivered to such Indians as were prepared to enter upon the cultivation of land.” However, Spragge did not provide any additional information on the recipients of these implements.<sup>113</sup>

<sup>113</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, Annual Report on Indian Affairs for the year ended 30th June, 1872 (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 34.

65. In August 1872, Commissioner Simpson reported that the Pembina Band had declared “their intention of living in peace and harmony with the white man and by degrees adopting his habits of agriculture.” Seeing that some of them were preparing to cultivate the land in the spring, Simpson gave the reserve a yoke of oxen “in addition to the other things promised them, as without these, what we have already given them would be more or less useless.”<sup>114</sup> Simpson did not specify what the other items were. However, a statement of cattle and implements indicates that 12 hoes and 12 axes were distributed to the First Nation in 1872.<sup>115</sup>
66. An Estimate of implements to be provided to the Indians of Treaties 1 and 2 in 1874 indicates that there was a total of 1,069 heads of families, with 800 estimated to commence to cultivate the land that year. The Estimate indicated that the following implements would be required: 800 ploughs, 1,600 spades, 1,600 axes, 800 harrows, 1,600 hoes, and 400 scythes, for a total cost of \$46,300.<sup>116</sup> However, Indian Commissioner Provencher subsequently stated that he felt one plough and harrow to every four families “should be sufficient to enable them to start in agricultural pursuits,” which would reduce the requisition considerably.<sup>117</sup> The actual expenditures on agricultural implements and farming stock for Treaties 1 and 2 in the 1874-75 fiscal year, according to the published returns, was \$10,572.04.<sup>118</sup>
67. In May 1875, Indian Affairs accountant Robert Sinclair commented on Commissioner Provencher’s “excessive” estimate of the agricultural implements and cattle required under Treaties 1, 2, and 3 for the 1875-76 fiscal year. Provencher required, for Treaties 1 and 2, 120 ploughs, 120 harrows, 1,000 hoes, 1,000 spades, 600 axes, 350 scythes, in addition to cattle and harness totalling \$2,970. Sinclair noted in his memorandum that the Indians under Treaties 1 and 2 had already received 52 ploughs, 51 harrows, 1,596 hoes, 1,000 spades,

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<sup>114</sup> Wemyss M. Simpson to W. Spragge, Deputy Superintendent General of Indian Affairs, August 19, 1872 [Doc. 36]. LAC RG 10 Vol. 3580 File 683 Reel C-10188. See Holmes report at page 34.

<sup>115</sup> “Statement of Cattle and Implements distributed in the years 1872-73-74 as showing by letters 1, 2, 3, 4, 5, 6, herewith attach [sic] Treaties Nos. [1 & 2],” January 28, 1878 [Doc. 124]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes report at page 38.

<sup>116</sup> “Estimate for Implements for Indians of Treaties Nos. 1 and 2 as per letter of Instruction from Deputy Superintendent Spragge – dated 18th July 1873,” circa 1874 [Doc. 51]. LAC RG 10 Vol. 3607 File 3023 Reel C-10105. See Holmes report at page 35.

<sup>117</sup> J. Provencher, Indian Commissioner, to the Minister of the Interior, February 16, 1874 [Doc. 55]. LAC RG 10 Vol. 3607 File 3023 Reel C-10105. See Holmes report at page 35.

<sup>118</sup> “Return D (5) Manitoba” in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 73 [Doc.70]. See Holmes report at page 35.

1,085 axes, 150 scythes, and cattle & harness in the amount of \$1,380. If Provencher's requisition should be carried out, Sinclair noted, the total distributions under the treaty (based on a total of 4,500 Indians, or 900 families) would amount to 1 plough and 1 harrow to every 5 families; over 3 hoes, over 2 spades, and nearly 2 axes to each family; and more than one scythe to every two families.<sup>119</sup>

68. In July 1875, Commissioner Provencher submitted a request to the Minister of the Interior for additional tools to be provided to the Indians of Treaties 1 and 2. He stated that they wished to build houses for their families and barns and stables for their cattle, but were prevented from doing so by want of tools. Provencher stated that \$498.92 in tools had been provided last summer, and made "very good use of, but this quantity is getting too small for the growing demands." He requested an additional \$500, to be charged to the grant for agricultural implements. The Superintendent General of Indian Affairs approved Provencher's request, "provided care is taken to give the tools to those Indians only who are likely to make good use of them."<sup>120</sup>
69. In a letter to the Minister of the Interior dated November 4, 1875, Provencher noted that the Indians' "rather primitive system of agriculture" utilized more hoes than ploughs, so more of the former had been distributed and few ploughs. He included in his estimates a quantity of 200 hoes, "though they will have then received the full quantity that they are entitled to." The number of ploughs, likewise, was reduced.<sup>121</sup>
70. In his annual report for 1875, Indian Commissioner Provencher stated that the practice "of distributing agricultural implements, some tools and some cattle, has met the requirements of the Indians, and nothing more will be claimed by them." He further indicated, "[t]he use

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<sup>119</sup> R. [Sinclair], Department of Indian Affairs, May 10, 1875 [Doc. 69]. LAC RG 10 Vol. 3614 File 4116 Reel C-10107. See Holmes Report at page 35.

<sup>120</sup> Department of Indian Affairs to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 76]. LAC RG 10 Vol. 3624 File 5134 Reel C-10109. See Holmes Report at pages 35 and 36.

<sup>121</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 6-9. See Holmes Report at page 36.

they make of these articles, and the care they give to the cattle, exonerates the Government from all further responsibility.”<sup>122</sup>

71. Despite Provencher’s statements that the Government’s treaty obligations had been met, Lieutenant Governor Alexander Morris wrote the Minister of the Interior in October 1876 stating that “only a very small proportion of the Indians who are cultivating” had received the plough and harrow to be provided under the memorandum attached to Treaty 1.<sup>123</sup>
72. In November 1877, the Department of Indian Affairs sent a circular letter to Agents in Manitoba and the Northwest Territories, requesting that they submit information respecting the number of cattle, implements, etc. given to the Indians under the treaty, the number of implements purchased for their agency still remaining on hand, the amount of stock in possession of the Indians and how well they are cared for, the extent to which the Indians are cultivating the land, the probable quantity of implements required during the coming season, and whether the Indians are satisfied with the manner in which the treaty is being carried out.<sup>124</sup> In response to the circular, on November 21, 1877, Geo. Newcomb, Indian Agent to the First Nation, provided the following information regarding implements to the Indians of Rosseau River:

[Marginalia: The no. of cattle and implements given to the Indians under Treaty]  
The following were given this year  
1 cross plough, 3 breaking ditto, 4 Harrows, 8 setts Whippetrees, 1 Harrow  
Whippetree, 3 setts [sic] Trace chains, 10 scythes & snaiths,  
And the Indians inform me that they received previously 8 cows, 11 oxen and 1  
Bull 9 ploughs 6 Harrows, 9 setts Whippetres 9 setts Trace chains, and 18  
scythes & snaiths.<sup>125</sup>

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<sup>122</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at page 36.

<sup>123</sup> Alex. Morris, Lieutenant Governor, to the Minister of the Interior, October 26, 1876 [Doc. 100]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 36.

<sup>124</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>125</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.



73. On May 28, 1878, James F. Graham, the new Acting Superintendent of the Manitoba Superintendency, submitted several statements of agricultural implements, tools, cattle, etc. that had been provided to bands under Treaties 1 and 2 from the date of treaty to December 31, 1877.<sup>126</sup> The distributions of agricultural implements and tools to the “Pembina Band” according to these statements from August 3, 1871 to December 31, 1877 are set out in the table below:

Date	Plows	Harrows	Hoes	Scythes	Axes
October 5, 1875	3		36	18	36
November 4, 1876	4		24		15
November 20, 1876					
May 26, 1878	4	4		20	
<b>Total</b>	<b>11</b>	<b>4</b>	<b>60</b>	<b>38</b>	<b>51</b>

74. In his annual report for 1879, acting Indian Superintendent Graham listed additional implements which had been distributed to the bands in the Manitoba Superintendency that year, including 48 ploughs, 52 harrows, 156 hoes, 70 spades, 218 axes, 92 scythes and snaiths, 56 scythe stones, four grindstones, 1 chest of tools, 2 crosscut saws, and 1 hay fork. The distribution of these items to individual bands is not known.<sup>127</sup>
75. In the 1878-79 fiscal year, the Roseau River Reserve was provided with two breaking ploughs, four sets of trace chains, four sets of whiffletrees, and two harrows at a total cost of \$95.60.<sup>128</sup>

<sup>126</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>127</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, December 31, 1879, in Canada, *Report of the Deputy Superintendent-General of Indian Affairs, 1879*, p. 59 [Doc. 141]. See Holmes Report at page 38.

<sup>128</sup> “B. – Indians of Manitoba and the North-West,” June 30, 1884, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), Part II, p. 143 [Doc. 163]. See Joan Holmes Report at page 40.

76. In 1884, the statement of departmental expenditures on agricultural implements in the Treaty 1 area includes an entry for “Implements for Roseau River band,” totaling \$11.85<sup>129</sup>; however, the type of implements is not stated and it is unknown whether they were provided as a treaty benefit.
77. In 1886, Agent Ogletree reported that the “Roseau River Bands” received “an excellent lumber waggon, and several smaller implements”<sup>130</sup> At the request of Agent Ogletree, in 1889 the First Nation was provided with a seeder.<sup>131</sup> In 1890, the First Nation was provided with 12 axes, one double wagon, and 12 scythes, amounting to \$110.24. An additional \$24.23 was expended by Agent Ogletree on repairs to the Band’s implements.<sup>132</sup>
78. In 1891 a deputation from the Roseau Rapids met with Inspector McColl with respect to several requests for implements and cattle. They stated they had only received three ploughs, only one of them was fit for use, and that one required two yoke of oxen to draw it. Inspector McColl stated in a letter to Agent Ogletree:

If these representations are correct the distributions made to the different Bands not only of cattle but also of ploughs and other articles was most irregularly done, as our Statement shows that the Roseau River Band collectively received in excess of Treaty stipulations, whereas this Band did not receive their quota of those articles.<sup>133</sup>

**b. *Buggies for Chiefs and Braves and Councillors***

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<sup>129</sup> “B. – Indians of Manitoba and the North-West,” June 30, 1884, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), Part II, p. 143 [Doc. 163]. See Joan Holmes Report at page 40.

<sup>130</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 24, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1886* (Ottawa: MacLean, Roger & Co., 1887), p. 43 [Doc. 174]. See Joan Holmes Report at page 40.

<sup>131</sup> “Manitoba Superintendency – Details,” June 30, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890* (Ottawa: Brown Chamberlin, Queen’s Printer, 1891), Part II, p. 49 [Doc. 198]. See Joan Holmes Report at page 40.

<sup>132</sup> “Manitoba Superintendency – Details,” June 30, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890* (Ottawa: Brown Chamberlin, Queen’s Printer, 1891), Part II, p. 49 [Doc. 198]. See Joan Holmes Report at page 40.

<sup>133</sup> E. McColl, Inspector of Indian Agencies, to F. Ogletree, Indian Agent, April 17, 1891 [Doc. 201]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Joan Holmes Report at page 41.

79. The following section outlines the limited records that exist relating to the provision of buggies and wagons to Chiefs, Braves, and Councillors of the First Nation.
80. Commissioner Simpson's statement of account for 1872 includes a payment on December 24, 1872 for freight of 11 wagons transported by steamer to Pembina, but there is no indication as to which bands or Chiefs were to receive them.<sup>134</sup>
81. In his annual report for the 1871-72 fiscal year, Deputy Superintendent of Indian Affairs William Spragge commented on the delivery of "various presents" under Treaties 1 and 2, including "light express waggons for the chiefs and councillors of the bands who were parties to these treaties...."<sup>135</sup>
82. Upon the purported settlement of the "Outside Promises" in 1875, Commissioner Provencher addressed the Minister of the Interior on the subject of the provision of buggies to Chiefs and Councillors. He stated that this would involve "a large outlay of money, for which no provision was made in the estimates proposed by me for this fiscal year," noting that he would not take any action on the matter until given special authorization to do so. Marginalia on Provencher's letter initialled by E.A. Meredith indicates that the required buggies should be provided for in next year's estimates.<sup>136</sup> However, on August 2, 1875, the Deputy Minister of the Interior informed Provencher that the Superintendent General of Indian Affairs considers buggies "quite unnecessary for the Indians," and recommended that Provencher induce the Chiefs and Councillors entitled to receive them to take agricultural implements or tools instead.<sup>137</sup>

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<sup>134</sup> Wemyss Simpson, "Indian Department Cash Account 1872," February 22, 1873 [Doc. 39]. LAC RG 10 Vol. 3598 File 1407 Reel C-10103. See p. 9. See Holmes Report at page 44.

<sup>135</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, *Annual Report on Indian Affairs for the year ended 30th June, 1872* (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 44.

<sup>136</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, July 19, 1875 [Doc. 74]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 44.

<sup>137</sup> Deputy Minister of the Interior to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 77]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 44.

83. In a letter to the Minister of the Interior dated November 4, 1875, Commissioner Provencher noted that the April 30, 1885 Order in Council P.C. 424 required that a buggy be given to “each Brave from Treaties Nos. 1 and 2, amounting to 64.” He informed the Minister:

**According to your instructions, I have refrained myself as far as possible to mention the fact to them and I hope that only few will be required,** but as the amount is to be expended in some other way I have placed it in the Estimates.<sup>138</sup>

[Emphasis added]

84. In 1879-80, \$800 was set aside in the Estimates for the purchase of wagons for bands in Treaties 1 and 2, but none of this amount was used; the Auditor General’s report notes “not purchased.”<sup>139</sup>
85. Little additional correspondence has been found on the provision of buggies to the Chiefs and Councillors in Treaty 1, and in particular to the First Nation; however, an 1897 statement of “Agricultural and Industrial Statistics” indicates that there were 31 buggies in the Portage la Prairie Agency by that year, in addition to close to 200 wagons, carts, and sleighs.<sup>140</sup> However, the records do not distinguish whether these items were purchased/otherwise obtained by the First Nations in the agency, or were provided by the Crown as a benefit under Treaty No. 1.

**c. *Livestock and Farm Animals***

86. This section outlines the records relating to the provision of livestock and farm animals under Treaty No. 1.

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<sup>138</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 6-9. See Holmes Report at page 45.

<sup>139</sup> Canada, *Report of the Auditor General on Appropriation Accounts of the year ended 30th June, 1879* (Ottawa: MacLean, Roger & Co., 1880), p. 201 [Doc. 139]. See Holmes Report at page 45.

<sup>140</sup> “Agricultural and Industrial Statistics” in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1897* (Ottawa: S. E. Dawson, Queen’s Printer, 1898), pp. 426-427 [Doc. 227]. See Holmes Report at page 45.

87. In August 1872, Commissioner Simpson gave the First Nation a yoke of oxen “in addition to the other things promised them, as without these, what we have already given them would be more or less useless.”<sup>141</sup>
88. Indian Superintendent Graham commented in 1882 that a yoke of cattle would be given to the Roseau River First Nation next spring “to encourage them in husbandry.”<sup>142</sup>
89. In his annual report for the 1871-72 fiscal year, Deputy Superintendent of Indian Affairs William Spragge noted that Commissioner Simpson had purchased several head of farming stock, which were “delivered to the chiefs for whom they were intended.”<sup>143</sup> Spragge does not provide any additional information on the recipients of this stock, but does state that more will be provided:

And it is proposed to continue to provide stock for such others as are entitled to receive such animals, under agreements made by the late Lieutenant Governor in conjunction with Commissioner Simpson, so soon as the local officers of the Department are in a position to state that the chiefs have made arrangements for taking care of them.<sup>144</sup>

90. The statement of Indian Affairs expenditures in Manitoba and the Northwest Territories for the 1872-73 fiscal year includes \$630.39 for “cattle and oxen.”<sup>145</sup>

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<sup>141</sup> Wemyss M. Simpson to W. Spragge, Deputy Superintendent General of Indian Affairs, August 19, 1872 [Doc. 36]. LAC RG 10 Vol. 3580 File 683 Reel C-10188. See Holmes Report at page 62.

<sup>142</sup> James F. Graham, Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, November 22, 1882, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1882* (Ottawa: MacLean, Roger & Co., 1883), p. 156 [Doc. 158]. See Holmes Report at page 67.

<sup>143</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, *Annual Report on Indian Affairs for the year ended 30th June, 1872* (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 62.

<sup>144</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, *Annual Report on Indian Affairs for the year ended 30th June, 1872* (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 62.

<sup>145</sup> “Return E (2) – Statement of Special Payments, Contingent and Incidental Expenditure by the Indian Branch, Department of the Secretary of State for the Provinces, during the year ended the 30th June, 1873, from the funds of Manitoba and the North West Territories” in Canada, *Report of the Indian Branch of the Department of the Minister of the Interior, for the year ended 30th June, 1873* (Ottawa: I. B. Taylor, 1874), p. 21 [Doc. 46]. See Holmes Report at page 62.

91. An extract from a "Supply Book", dated November 27, 1873, provides Estimates for livestock to be provided to bands in Treaties 1 and 2 under the terms of the "Outside Promises," for reserves, Chiefs, and 745 individual settlers, as follows:

Under Memo called "Outside Promises" they should have further

1 Bull for each Reserve = 13 Bulls

1 Cow for each Chief = 13 Cows

1 Boar for each Reserve = 13 Boars

1 Sow for each Chief = 13 Sows

also

For each Settler

2 Pigs [\$]12

2 Sheep [\$]8

2 Chickens [\$]2 \$22.00 ea.

to 745 persons = \$16,280.00<sup>146</sup>

92. An Estimate by Commissioner Provencher of cattle and animals to be provided to the Indians of Treaties 1 and 2 in 1874 included the following: 15 boars, 15 cows, 1,600 pigs, 800 couples of fowls, and 10 yokes of oxen, for a total of \$12,875.22. However, marginalia on the Estimate reads "no provision" and it is unclear whether these animals were provided. The actual expenditure on farming stock for the fiscal year ending June 30, 1874, was \$500.<sup>147</sup>
93. As explained above, in his annual report for 1875, Indian Commissioner Provencher stated that the practice "of distributing agricultural implements, some tools and some cattle, has met the requirements of the Indians, and nothing more will be claimed by them." He further indicated, "The use they make of these articles, and the care they give to the cattle, exonerates the Government from all further responsibility."<sup>148</sup> In his Estimates for 1875-76,

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<sup>146</sup> "Extract from Supply Book, in Indian Office at Ottawa," November 27, 1873 [Doc. 49]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. The total cost for the animals to be provided to individual settlers appears to be incorrect:  $\$22 \times 745 = \$16,390$ . See Holmes Report at page 63.

<sup>147</sup> "Return D (4) – Indians of Manitoba and the North-West" in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 31 [Doc. 61]. See Holmes Report at page 63.

<sup>148</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at page 63.

Provencher provided for all the animals remaining to be distributed in accordance with the Order in Council, including 30 pigs and 200 other animals.<sup>149</sup>

94. Despite Provencher's statements that the Government's treaty obligations had been met, Lieutenant Governor Alexander Morris wrote the Minister of the Interior in October 1876 observing that the memorandum attached to Treaty 1 "is very wide in its terms as regards animals." Morris expressed his opinion that "each kind of animal raised by farmers" should include stallions and mares. He proposed that Provencher be asked to provide "an accurate statement of all cattle and implements, already delivered to the Bands, cultivating the soil, together with an Estimate of the quantities of cattle, animals, and implements required to fulfil the terms of the revised Treaties, and make provision for there [*sic*] distribution next season."<sup>150</sup> Provencher was subsequently instructed to provide the requested information.
95. In September 1876, Provencher wrote to the Minister of the Interior and informed him that some of the bands had expressed a desire to have cattle instead of the smaller farm animals that were promised in the Memorandum of Outside Promises. Provencher therefore asked what value or quantity of cattle would be considered appropriate to substitute for the smaller farm animals.<sup>151</sup>
96. Deputy Minister of the Interior E.A. Meredith responded to Provencher on October 7, 1876, providing the Superintendent General's approval of the substitution, noting however, that cattle should only be given to bands that "would make good use of, and take care of them." Meredith also instructed Provencher not to provide the whole value of the animals promised at one time, and to estimate himself the proper value of the smaller animals promised.<sup>152</sup> As noted above, the total cost of the small animals had been estimated at \$22 in 1873,<sup>153</sup> and

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<sup>149</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See p. 14. See Holmes Report at pages 63 and 64.

<sup>150</sup> [E. A. Meredith] to Alexander Morris, Lieutenant Governor of Manitoba, November 6, 1876 [Doc.101]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 64.

<sup>151</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, September 25, 1876 [Doc. 98]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 64.

<sup>152</sup> E. A. Meredith, Deputy Minister of the Interior, to J. A. N. Provencher, Acting Indian Superintendent, October 7, 1876 [Doc. 99]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. See Holmes Report at page 64.

<sup>153</sup> "Extract from Supply Book, in Indian Office at Ottawa," November 27, 1873 [Doc. 49]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. See Holmes Report at page 64.

Provencher's proposal to the Minister of the Interior did not differ from that previous estimate. Provencher valued the small animals as follows:

2 pigs @ \$6.00 each \$12.00

2 sheeps @ \$4.00 " \$8.00

2 chickens @ \$1.00 " \$2.00

The total \$22.00 being the amount to which each family cultivating the land might be entitled to under this head.<sup>154</sup>

97. Provencher stated that it was not intended to give each band the full amount now, but proposed that a "very small proportion only might be allowed every year, or as the Indians may be in need of."<sup>155</sup> In providing explanations for some of his account for 1876, Provencher explained to the Minister of the Interior that the accounts for cattle "represent the value of smaller animals promised to the Indians by the Treaty 1." He noted that he procured younger cattle, "as the value and not the quantity only is promised to the Indians," and this would enable them to get a greater number.<sup>156</sup>
98. Provencher was instructed on December 26, 1876, to provide an estimate of the number of Indians of Treaties 1 and 2 entitled to the smaller animals under the "Outside Promises," and what sum would be required to "discharge the whole obligation of the Govt [*sic*] in this particular." The Department estimated that about 745 people were entitled to receive cattle in lieu of the smaller animals, and suggested that one-fourth of the aggregate amount be discharged each year for four years.<sup>157</sup>
99. A statement of account with J. B. Lapointe indicates that three cows and one yoke of oxen were provided to the "Roseau Reserve Indians" on November 20, 1876.<sup>158</sup>

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<sup>154</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 2, 1876 [Doc. 104]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>155</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 2, 1876 [Doc. 104]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>156</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 5, 1876 [Doc. 105]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>157</sup> L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to J. A. N. Provencher, Acting Indian Superintendent, Manitoba Superintendency, December 26, 1876 [Doc. 107]; and Rob. Sinclair, Department of Indian Affairs, Memorandum, December 19, 1876 [Doc. ]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>158</sup> The Indian Department in account with J. B. Lapointe, November 20, 1876 [Doc. 103]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 64.



100. In November 1877, the Department of Indian Affairs sent a circular letter to Agents in Manitoba and the Northwest Territories, requesting that they submit information respecting the number of cattle, implements, etc. given to the Indians under the treaty, the number of implements purchased for their agency still remaining on hand, the amount of stock in the possession of the Indians and how well they are cared for, the extent to which the Indians are cultivating the land, the probable quantity of implements required during the coming season, and whether the Indians are satisfied with the manner in which the treaty is being carried out.<sup>159</sup>

101. On November 21, 1877, Geo. Newcomb responded the circular. He did not list any distributions of cattle in 1877, but noted that “the Indians inform me that they received previously 8 cows, 11 oxen and 1 bull”<sup>160</sup> and that the Band complained “that they were promised some pigs, sheep, and chickens which have not yet been given.”<sup>161</sup> With respect to stock in the present possession of the Roseau River First Nation, Newcomb reported:

Of original stock, 2 oxen have died, and 3 have been killed leaving 8 cows, 6 oxen and 1 bull, and they have about 8 head of young stock including calves. As far as I have seen and can learn, the stock is well taken care of.<sup>162</sup>

102. On May 28, 1878, James Graham, the new Acting Superintendent of the Manitoba Superintendency, submitted a statement of cattle and other animals that were provided to the Pembina Bands from the date of treaty to December 31, 1877, as represented in the table below.<sup>163</sup>

Date	Bulls	Cows	Oxen	Pigs
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<sup>159</sup> L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to George Newcomb, Indian Agent, Emerson, et al., November 6, 1877 [Doc. 120]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at pages 26 and 27.

<sup>160</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>161</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 66.

<sup>162</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 65.

<sup>163</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 66.

October 5, 1875		3	[8?]	
November 20, 1876		3	2	
July 28, 1878			1	
<b>Total</b>	<b>0</b>	<b>6</b>	<b>11</b>	<b>0</b>

103. Acting Indian Superintendent Graham also stated in his annual report for 1879 that 87 head of cattle were supplied in the Manitoba Superintendency that year to the “different bands entitled to them” and that all bands in Treaties 1 and 2 had now received their quota of cattle.<sup>164</sup> Inspector McColl noted in his 1880 annual report that the Roseau River First Nation possessed two bulls.<sup>165</sup> However, it is not clear whether the bulls were provided as a treaty benefit or whether the First Nation purchased or raised the bulls themselves.
104. On January 8, 1881, Deputy Superintendent General L. Vankoughnet requested that Indian Superintendent Graham provide a statement showing the number of cattle supplied to the Treaty 1 and 2 bands in lieu of the smaller animals set out in the memorandum of “Outside Promises.”<sup>166</sup> Graham responded on January 19, enclosing a “Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881,” which indicated that the Roseau River First Nation had been supplied with six cows and eight oxen between 1875 and 1877. In his cover letter, Graham remarked that he was not aware of any cattle that had been supplied to bands in lieu of the smaller animals, except to one band in Treaty 2. Graham also commented that, as many of the bands have received more cattle than they were entitled to under treaty, as shown in the attached

<sup>164</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, December 31, 1879, in Canada, *Report of the Deputy Superintendent-General of Indian Affairs, 1879*, p. 59 [Doc. 141]. See Holmes Report at page 67.

<sup>165</sup> “Supplement to Inspector McColl’s Report, giving Additional Information regarding the Indians of Manitoba and Keewatin, their Education, Religion, Farming Implements, &c.,” November 25, 1880, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1880* (Ottawa: MacLean, Roger & Co., 1881), pp. 64-65 [Doc. 145]. See Holmes Report at page 67.

<sup>166</sup> L. Vankoughnet, Deputy Superintendent General of Indian Affairs, to James F. Graham, Indian Superintendent, Manitoba Superintendency, January 8, 1881 [Doc. 147]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 67.

statement, it was up to the Department of Indian Affairs to decide whether “they be considered full, or part, compensation for the smaller animals mentioned in Memorandum attached to the Treaty.”<sup>167</sup>

105. In September 1883, Francis Ogletree, Indian Agent for the Portage la Prairie Agency, reported that under instructions from the Department, he purchased a yoke of oxen, “which was loaned to them to enable them to break more land.”<sup>168</sup> It is not clear whether the yoke of oxen was provided to the “Roseau River Bands” or the “Rapids Indians”.<sup>169</sup>
106. Despite the Roseau Rapids portion of the band not being resident on the Roseau River Reserve, Agent Ogletree reported in 1885 that he had purchased a yoke of oxen “for those Indians who are living at the rapids, in the spring, in lieu of a bull and one cow still due to them under treaty stipulations.”<sup>170</sup>
107. In 1886 Agent Ogletree reported that the First Nation “were supplied with the remainder of their cattle,” receiving “four very good cows and four calves with them.”<sup>171</sup> The statement of departmental expenditures for cattle provided in the Treaty 1 area indicates that the four cows cost \$232.<sup>172</sup>
108. In 1891 a deputation from the Roseau Rapids met with Inspector McColl with respect to several requests for implements and cattle. They stated they had only received one cow, two oxen, and no bull. Inspector McColl stated in a letter to Agent Ogletree, “If this statement is

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<sup>167</sup> Jas. F. Graham, Indian Superintendent, to the Superintendent General of Indian Affairs, January 19, 1881 [Doc. 149]; and “Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881,” January 19, 1881 [Doc. 148]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 67.

<sup>168</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883* (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 29.

<sup>169</sup> See Holmes Report at page 29.

<sup>170</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 19, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1885* (Ottawa: MacLean, Roger & Co., 1886), pp. 43-44 [Doc. 171]. See Holmes Report at page 30.

<sup>171</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, August 24, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1886* (Ottawa: MacLean, Roger & Co., 1887), p. 43 [Doc. 174]. See Holmes Report at page 68.

<sup>172</sup> “C. – Indians of Manitoba and the North-West,” June 30, 1887, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1887* (Ottawa: MacLean, Roger & Co., 1888), Part II, p. 154 [Doc. 177]. See Holmes Report at page 68.

correct they certainly are entitled to three cows and one bull yet and the other two Bands must have been supplied with more oxen and cows than they were entitled to.” Inspector McColl asked Ogletree to report on this, and other matters, at once.<sup>173</sup> Agent Ogletree reported back to McColl on April 20, denying the claims of the Roseau Rapids Band and stating that they had received two oxen and two<sup>174</sup> cows “after the first treaty was made with them.” The Roseau Rapids Band had also received a yoke of oxen in 1885 in lieu of the two bulls still owed them, as authorized by Inspector McColl, for which he had a receipt signed by the Chief. Ogletree also stated that in 1886 he had delivered four cows to the Roseau River Bands “two<sup>175</sup> of which were taken to the Rapids so that according to my information those Indians received with the exception of the bull more cattle than they were entitled to.”<sup>176</sup>

109. In 1894, the portion of the Band residing at Roseau Rapids received two yoke of oxen “purchased by the Department for them.”<sup>177</sup> This expenditure amounted to \$190.00 including harness and whiffletree, but it is unclear whether these oxen were provided as a treaty benefit.<sup>178</sup>
110. As of 1898 there were no sheep, pigs, or poultry listed in the possession of the Portage la Prairie Agency.<sup>179</sup> The first indication of pigs in the Portage la Prairie Agency is in a statement of “Agricultural and Industrial Statistics” published in the annual report for the

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<sup>173</sup> E. McColl, Inspector of Indian Agencies, to F. Ogletree, Indian Agent, April 17, 1891 [Doc. 201]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 68.

<sup>174</sup> In a subsequent letter, Agent Ogletree corrected this is read two oxen and *one* cow. Francis Ogletree, Indian Agent, Portage la Prairie, to E. McColl, Inspector of Indian Agencies, April 30, 1891 [Doc. 203]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 68.

<sup>175</sup> In a subsequent letter, Agent Ogletree corrected this is read *one* cow. Francis Ogletree, Indian Agent, Portage la Prairie, to E. McColl, Inspector of Indian Agencies, April 30, 1891 [Doc. 203]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 68.

<sup>176</sup> Francis Ogletree, Indian Agent, Roseau River, to E. McColl, Inspector of Indian Agencies, April 20, 1891 [Doc. 202]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at pages 68 and 69.

<sup>177</sup> Francis Ogletree, Indian Agent, Portage la Prairie, to the Superintendent General of Indian Affairs, August 22, 1893, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1893* (Ottawa: S. E. Dawson, Queen’s Printer, 1894), p. 44 [Doc. 213]. See Holmes Report at page 69.

<sup>178</sup> Canada, *Report of the Auditor General for the year ended 30th June, 1894* (Ottawa: S. E. Dawson, 1895), p. F-13 [Doc. 220]. See Holmes Report at page 69.

<sup>179</sup> “Agricultural and Industrial Statistics,” June 30, 1898, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 30th June 1898* (Ottawa: S. E. Dawson, Queen’s Printer, 1899), p. 478 [Doc. 232]. See Holmes Report at page 69.

year ending June 30, 1901, which lists two breeding sows and nine pigs, but does not specify which band(s) they were in the possession of.<sup>180</sup>

111. In his inspection report for 1910, S. J. Jackson stated that the Roseau River reserves had 48 horses, 99 head of cattle, 20 pigs, and 70 head of poultry.<sup>181</sup> This is the first mention of the First Nation having pigs or poultry on either reserve, and it is unknown whether these animals were given under treaty, purchased/raised by the First Nation themselves, or provided for in another way.

**d. *Seed Wheat, Potatoes and Garden Seed***

112. The following section sets out the records relating to the provision of seed wheat, potatoes and garden seed to the First Nation.
113. In 1875, Commissioner Provencher reported to the Minister of the Interior that the crops had failed that year and the Indians were unable to provide for seed grain. He included in his Estimates for 1875-76 an amount of \$700 for seed grain, which he hoped would be forwarded early enough to reach all the bands that need it before the end of the winter.<sup>182</sup>
114. In 1876, the Department provided seed grain in the amount of \$1,109.52, assistance which Provencher reported “prevented great sufferings at St. Peter’s, the Portage and Roseau River.”<sup>183</sup>
115. In 1878, the Department’s statement of expenditures under Treaty 1 included \$1,220.36 for wheat, barley, potatoes, peas, and garden seeds.<sup>184</sup> In 1879-80 \$1,500 had been set aside in

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<sup>180</sup> “Agricultural and Industrial Statistics,” June 30, 1901, in Canada, *Annual Report of the Department of Indian Affairs for the year ended June 30 1901* (Ottawa: S. E. Dawson, King’s Printer, 1901), Part II, p. 209 [Doc. 238]. See Holmes Report at page 69.

<sup>181</sup> S. J. Jackson, Inspector of Indian Agencies, to Frank Pedley, Deputy Superintendent General of Indian Affairs, November 30, 1910, in Canada, *Annual Report of the Department of Indian Affairs for the year ended March 31 1910* (Ottawa: C. H. Parmelee, King’s Printer, 1910), p. 95 [Doc. 274]. See Holmes Report at page 69.

<sup>182</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 13-14. See Holmes Report at page 81.

<sup>183</sup> J. A. N. Provencher, Acting Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, February 1, 1877, in Canada, *Report of the Deputy Superintendent General of Indian Affairs* [1877], p. 36 [Doc. 109]. See Holmes Report at page 81.

<sup>184</sup> “B. – Indians of Manitoba,” June 30, 1878, in Canada, *Report of the Deputy Superintendent General of Indian Affairs* [1878], p. 182 [Doc. 126]. See Holmes Report at page 81.

the Estimates for the purchase of seed grain for bands in Treaties 1 and 2, but none of this amount was used; the Auditor General's report notes "not required."<sup>185</sup>

116. When Indian Superintendent Graham issued instructions to the new Indian Agent for the First Nation, J.E. Têtu, in December 1880, he included the following comments concerning seed:

You are expected to instruct the Indians under your Agency in farming. You will see the seed grain given them by the Department properly distributed and that the same been sewn, and properly harvested, and impress upon them the necessity of reserving sufficient seeds for sewing [*sic*] their ground each subsequent spring as the terms of the Treaty provide that seed grain be supplied once for all by the Department.<sup>186</sup>

[emphasis added]

117. The statement of Indian Affairs expenditures on seed grain in the Treaty 1 area for the 1881-82 fiscal year included \$156.12 for seed grain and potatoes for the Roseau River Reserve, and \$7.22 for garden seeds.<sup>187</sup> In September 1883, Agent Ogletree reported that the First Nation was supplied with 100 bushels of seed potatoes and a quantity of garden seeds last spring; 70 bushels of seeds were planted on the reserve, and the remaining 30 given to the "Rapids Indians."<sup>188</sup>
118. In 1883, Ogletree informed the Indians at the Roseau Rapids that no more seed would be supplied until they settled on the reserve, and recommended to the Indian Superintendent

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<sup>185</sup> Canada, *Report of the Auditor General on Appropriation Accounts of the year ended 30th June, 1879* (Ottawa: MacLean, Roger & Co., 1880), p. 201 [Doc. 139]. See Holmes Report at page 81.

<sup>186</sup> Jas. F. Graham, Indian Superintendent, to J. E. Têtu, Indian Agent, December 22, 1880 [Doc. 146]. LAC RG 10 Vol. 3722 File 24233 Reel C-10126. See Holmes Report at pages 81 and 82.

<sup>187</sup> "E. – Indians of Manitoba and the North-West," June 30, 1882, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1882* (Ottawa: MacLean, Roger & Co., 1883), Part II, p. 136 [Doc. 153]. See Holmes Report at page 82.

<sup>188</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883* (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 82.

that the gardens be dealt with as improvements and the Indians induced “to surrender their claims for a trifling amount.”<sup>189</sup>

119. The statement of departmental expenditures on seed grain for the Treaty 1 area for the 1885 calendar year included an entry for “Seed for Rosseau River band,” totalling \$53.87.<sup>190</sup>
120. In 1886 Agent Ogletree reported that he supplied the First Nation with 145 bushels of potatoes (75 on the reserve at the mouth of the river, and 70 at the rapids), as well as 20 bushels of wheat and five bushels of barley for the Indians at the Rapids. Ogletree noted that the Indians preferred to dig snake root and generally “neglected the hoeing and fencing of the crops.” He recommended that they not be supplied with any more seed “until they show a desire to take care of them.”<sup>191</sup>
121. Deputy Superintendent General L. Vankoughnet, writing in the spring of 1891 in response to a letter from the Inspector of Indian Agencies, stated that Mr. Agent Ogeletree may use his own discretion in supplying seed potatoes to the Roseau River Indians at the expense of the government.<sup>192</sup>
122. Statements of departmental expenditures on field and garden seeds continue to list provisions to the Portage la Prairie Agency until at least 1919.<sup>193</sup>

**e. *Farming Instructor, Carpenter, and Blacksmith***

123. The limited historical records pertaining to the provision of a farming instructor, blacksmith, and carpenter indicate are discussed below.

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<sup>189</sup> Francis Ogletree, Indian Agent, to James G. Graham, Indian Superintendent, June 11, 1883 [Doc. 161]. LAC RG 10 Vol. 3558 File 29 Reel C-10098. See Holmes Report at page 29.

<sup>190</sup> “E. – Indians of Manitoba and the North-West,” June 30, 1885, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1885* (Ottawa: MacLean, Roger & Co., 1886), Part II, p. 152 [Doc. 166]. See Holmes Report at page 82.

<sup>191</sup> Francis Ogletree, Indian Agent, to the Superintendent General of Indian Affairs, October 29, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1887* (Ottawa: MacLean, Roger & Co., 1888), p. 48 [Doc. 175]. See Holmes Report at page 82.

<sup>192</sup> E. McColl, Inspector of Indian Agencies, to L. Vankoughnet, Deputy Superintendent General of Indian Affairs, May 2, 1891 [Doc. 204] LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at pages 82 and 83.

<sup>193</sup> “Auditor General’s Report, 1918-1919” in Canada, *Annual Report of the Department of Indian Affairs for the year ended March 31, 1919* (Ottawa: J. de Labroquerie Taché, King’s Printer, 1920), p. I-16 [Doc. 306]. See Holmes Report at page 83.

124. At a meeting held on March 23, 1877, the Roseau River First Nation requested that a farmer be employed “to reside on the Reserve to oversee and teach them the different branches of Agriculture.” The Band also requested that a house be built for the farmer and his family, and requested that Daniel Harlow be appointed to the position.<sup>194</sup>
125. In 1898 the Department appointed two Farming Instructors in the Portage la Prairie Agency, including one to be stationed on the Roseau River Reserve. The proposed instructor was stated to be a “halfbreed resident on the reserve.”<sup>195</sup> These instructors were not provided as treaty benefits by the Department; in his letter approving Inspector Marlatt’s proposal, Secretary McLean stated that the instructors’ salaries were to be paid “by an assessment on the products of the Indians of ten cent, which will be funded here for this purpose.”<sup>196</sup>
126. There are no records that would suggest a blacksmith and carpenter was ever provided to the First Nation at any time.

#### **H. The Population of Roseau River Anishinabe First Nation Between 1871 – 1985**

127. As of March 1872, the First Nation estimated its population at 1000 people. In a March 1872 letter, F.T. Bradley, a customs officer and justice of the peace, wrote to the Lieutenant Governor of Manitoba in relation to a visit from members of the First Nation:

I have not seen Mr. de Montaigne, the gentleman appointed to enumerate the Indians, **but learn from the Indians that their tribe must number 1000 souls, placing it at the lowest figure**, and as there was no final agreement as to the exact locality of their Reserve on the River it was understood by them to include two miles on either side of the River, and extending to a point called “Le Bois Percé” which is supposed to be situated about 15 miles from the junction of Roseau River with Red River.

According to my calculation, supposing the Indians to number 1000 people and also supposing the “Bois Percé” to be fifteen miles distant, a grant of 1 1/6 miles

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<sup>194</sup> John Scott, Presbyterian Missionary, March 23, 1877 [Doc. 113]. LAC RG 10 Vol. 3558 File 29 Reel C-10098. See Hoomes Report at page 46.

<sup>195</sup> J. D. McLean, Secretary, Department of Indian Affairs, to the Deputy Minister, March 2, 1898 [Doc. 229]. LAC RG 10 Vol. 3983 File 162550-1 Reel C-10168. See Hoomes Report at page 46.

<sup>196</sup> J. D. McLean, Secretary, Department of Indian Affairs, to S. R. Marlatt, Inspector, Portage la Prairie Inspectorate, March 17, 1898 [Doc. 230]. LAC RG 10 Vol. 3983 File 162550-1 Reel C-10168. See Hoomes Report at page 46.



in breadth on either side of the River would give them the desired number of acres according to their Treaty.<sup>197</sup>  
[Emphasis added]

128. During this visit, in March 1872, F.T. Bradley assured the First Nation that a census of their Band would be taken immediately and that a surveyor would be commissioned to set out the boundaries of their reserves.<sup>198</sup> There is no evidence that this census was ever taken.
129. In contrast, in a memorandum dated March 1872, Deputy Superintendent of Indian Affairs W. Spragge estimated the population of the “Band of which Nashakepenais, Nanawananaan, Kewetaash, & Wakowash are Chiefs” at the much lower figure of 218 persons.<sup>199</sup>
130. Further, in April 1872, M. McFadden visited the Roseau River Reserve and reported on the boundaries desired by the Indians. A tracing of the survey plan indicated that the reserve was to the extent required for 500 families.<sup>200</sup>
131. In his annual report for 1883, Indian Agent Francis Ogletree stated that the Roseau River Band consisted of 149 heads of families, with three Chiefs and 12 Councillors.<sup>201</sup> Additionally, in his annual report for 1875, Indian Commissioner Provencher reported that the Pembina Bands under the three Chiefs who were party to Treaty 1 numbered 480 souls.<sup>202</sup>

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<sup>197</sup> F. T. Bradley to the Lieutenant Governor of Manitoba, March 10, 1872 [Doc. 22]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See pp. 7-8. Marginalia next to Bradley’s calculation reads: “Paylist of Aug 1871 gives 181 [families?] Red River Band 1166.” See Holmes Report at page 19.

<sup>198</sup> F. T. Bradley to the Lieutenant Governor of Manitoba, March 10, 1872 [Doc. 22]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See pp. 11 and 14. See Holmes Report at page 19.

<sup>199</sup> W. Spragge, Deputy Superintendent General of Indian Affairs, “Memo in connection with the Official letter of 8 March 1872 relative to surveys of Indian Reserves made under Treaties Nos. 1 & 2 in the Province of Manitoba and North West Territories,” March 23, 1872 [Doc. 24]. LAC RG 15 Series D-II-1 Vol. 228 File 755 (1872) Reel T-12176. See Holmes Report at page 20.

<sup>200</sup> Lindsay Russell, Inspector of Surveys, Tracing, April 23, 1872 [Doc. 33]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See Holmes Report at page 20.

<sup>201</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883 (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 22.

<sup>202</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, Annual Report of the Department of the Interior for the year ended 30th June, 1875 (Ottawa: MacLean, Roger & Co., 1876), p. 40 [Doc. 86]. See Holmes Report at page 21.

132. The following chart summarizes the population of the First Nation between 1871 and 1985, based, *inter alia*, on treaty annuity paylists and Department of Indian Affairs Annual Reports:

Year	Population based on paylists, by the number paid	Population based on Annual Reports <sup>203</sup>	Population based on other sources	Number of families, based on paylists <sup>204</sup>	Number of Chiefs (paylist)	Number of Headmen (paylist)
1871	364 (paid gratuity) 309 (paid first annuity)	309		107	2	0
1872	312	312	218 <sup>205</sup>	84	3	3 Councillors + 3 Braves
1873	309	309		84	0	0
1874	45 + 332 = 377	309		15 + 85 = 100	0	0
1875	457	380		99	3	0
1876	564			114	1	12
1877	522			109	3	12
1878	571			122	3	12
1879	571			124	3	12

<sup>203</sup> The figures in this column reflect the total population given each year in the Annual Reports, comprising individuals “on reserve” and absent. Figures provided in the Annual Reports often reflect the population totals from the year prior to publication. Although the Annual Reports from 1880–1892 provide figures for the year in which they were published (since the reports for those years were published in December), the Annual Reports from 1893–1929 actually reflect figures for the year prior to their publication (since these reports were published in either March or June and before annuity payments were made for that year). For example, the population of 250 listed under Roseau River in the 1895 Annual Report actually reflects the Band population for the year 1894 and is therefore entered as such in the table. The census records for 1939, 1944, 1949, 1954, and 1959 reflect population figures for the same years in which they were published. See Docs. 1872-04-00 [1], 1873-06-30 [2], 1874-06-30 [3], 1875-06-30 [3], 1880-11-25 [2], 1892-06-30 [1], 1893-06-30 [1], 1894-06-30 [1], 1895-06-30 [1], 1896-06-30 [1], 1897-06-30 [2], 1898-06-30 [1], 1899-06-30 [2], 1900-06-30 [2], 1901-06-30 [2], 1902-06-30 [4], 1903-06-30 [1], 1904-06-30 [1], 1905-06-30 [7], 1906-06-30 [2], 1907-06-30 [2], 1908-03-31 [2], 1909-03-31 [2], 1910-03-31 [2], 1911-03-31 [3], 1912-03-31 [3], 1913-03-31 [3], 1914-03-31 [1], 1915-03-31 [1], 1916-03-31 [1], 1917-03-31 [1], 1939-12-31 [1], 1949-12-31 [1], 1954-12-31 [1], 1959-12-31 [1]. See Holmes Report at page 107.

<sup>204</sup> No documentation to date has been found stating the Department’s definition of a family unit. In preparing the table, each head of family paid was considered head of a “family” unit. The numbers of families thus provided indicate the maximum number of families within the Band for each given year. All families that were present and paid annuities for that year are included in the calculations. Family names that were listed on the payroll, but whose members were not recorded as paid that year, were not counted. See Holmes Report at page 107.

<sup>205</sup> A. G. Archibald, Lieutenant Governor of Manitoba, to F. T. Bradley, March 23, 1872 [Doc. 25]. LAC MG 27 IC 10 Reel M-5539. See Holmes Report at page 107.

1880	548	548		117	3	12
1881	563			117	3	12
1882	583			119	3	11
1883	558			119	3	11
1884	586			125	3	11
1885	431			102	3	11
1886	231			94	3	12
1887	260			95	3	12
1888	281			104	3	12
1889	263			96	3	12
1890	254			89	3	12
1891	252	252 <sup>206</sup>		92	3	12
1892	241	241		92	3	12
1893	249	249		90	3	12
1894	250	250		91	3	12
1895	251	251		93	3	12
1896	255	261		98	3	12
1897	261	264		88	3	12
1898	239	244		81	3	12
1899	220	250		80	3	12
1900	236	244		84	3	12
1901	220	218		81	3	11
1902	209	217		81	3	9
1903	201	196		76	3	10
1904	194	186		74	3	10
1905	186	183		73	3	10
1906	183	183		74	3	10
1907	181	181		70	3	9
1908	175	175		69	3	8
1909	181	181		68	3	9
1910	186	186		69	3	7
1911	188	188		66	3	7
1912	186	186		67	3	7
1913	197	197		68	3	7
1914	200	200	195 <sup>207</sup>	73	3	7
1915	198	198		69	1	6
1916	200	200		64	2	6
1917	210			65	2	6
1918	206			64	2	6
1919	187			59	2	4
1920	186			60	2	4

<sup>206</sup> The population as published in the Department of Indian Affairs Annual Reports for the years 1891-1917 includes the portion of the Band resident at Roseau Rapids (IR 2A). See Holmes Report at page 109.

<sup>207</sup> F. Paget, Accountant, to Duncan C. Scott, Deputy Superintendent General of Indian Affairs, April 20, 1914 [Doc. 293]. LAC RG 10 Vol. 7600 File 10127-5 Reel C-11568. See Holmes Report at page 111.

1921	171			52	2	4
1922	181			55	2	4
1923	191			55	2	4
1924	195			55	2	4
1925	201			53	1 <sup>208</sup>	3
1926	204			56	1	3
1927	208			58	1	2
1928	209			57	1	2
1929	208			59	1	2
1930	208			59	0 <sup>209</sup>	3
1931	214			64	1	2
1932	215			65	1	2
1933	206			64	1	2
1934	220			67	1	2
1935	222			65	1	2
1936	233			66	1	2
1937	239			65	1	1 <sup>210</sup>
1938	246 <sup>211</sup>			71	1	1
1939	250	242		70	1	0 <sup>212</sup>
1940	257			75	1	0 <sup>213</sup>
1941	255			79	1	2
1942	255			82	1	2
1943	261			82	1	2
1944	265			79	1	2
1945	274			85	1	2

<sup>208</sup> Though Pierre Laroque is indicated as a Chief on the payroll, the family of six was paid \$30.00 and the remarks note that he was deposed by Order in Council on November 26, 1924. For a letter from the secretary of the Department to the Indian Agent regarding this deposal, see: J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to A. Ogletree, Indian Agent, Portage la Prairie Agency, January 7, 1925 [Doc. 313] LAC RG 10 Vol. 7939 File 32-127 Reel C-13510. For a letter that states that no appointment would be made for a new Chief unless a "progressive Indian" was selected, see: J. D. McLean, Assistant Deputy and Secretary, Department of Indian Affairs, to A. Ogletree, Indian Agent, Portage la Prairie Agency, April 15, 1925 [Doc. 314]. LAC RG 10 Vol. 7939 File 32-127 Reel C-13510. See Holmes report at page 112.

<sup>209</sup> Tom Henry was appointed by Chief following the annuity payments that year. See: A. F. MacKenzie, Acting Assistant Deputy and Secretary, Department of Indian Affairs, to E. McPherson, Indian Agent, July 12, 1930 [Doc. 315]. LAC RG 10 Vol. 7939 File 32-125 Pt. 2 Reel C-13509. See Holmes Report at page 113.

<sup>210</sup> For a letter that indicates that one of the councillors passed away in 1937, see: Chief James [Rouen] to Unknown, February 17, 1937 [Doc. 316]. LAC RG 10 Vol. 7939 File 32-125 Pt. 2 Reel C-13509. See Holmes Report at page 114.

<sup>211</sup> Total shown on payroll is 242 but payment for a family of four on Ticket No. 258, originally marked absent, was later handwritten in. See Holmes Report at page 114.

<sup>212</sup> For a document that states that the last remaining Councillor of the Band passed away, see: E. McPherson, Indian Agent, to the Secretary, Indian Affairs Branch, Department of Mines and Resources, May 9, 1939 [Doc. 317]. LAC RG 10 Vol. 7939 File 32-125 Pt. 3 Reel C-13509. See Holmes Report at page 114.

<sup>213</sup> Joe Pierre and Pierre Laroque were confirmed as Councillors for the Roseau River Band on July 10, 1940, the day that annuities were paid. See respectively: Joe Pierre, Declaration, July 10, 1940 [Doc. 319]; and Pierre Laroque, Declaration, July 10, 1940 [Doc. 320]. Both on LAC RG 10 Vol. 7939 File 32-125 Pt. 3 Reel C-13509. See Holmes Report at page 114.

1946	280			90	1	2
1947	290			90	1	2
1948	301			96	1	2
1949	303	328		94	1	2
1950	332			109	1	2
1951	334			106	1	2
1952	324			105	1	2
1953	353			126	1	3
1954	382	385		116	1	3
1955	383			118	1	3
1956	404			127	1	3
1957	428			138	1	3
1958	448			140	1	3
1959	471	492		144	1	3
1960	494			152	1	3
1961	486			145	1	6
1962	503			148	1	5
1963	No Records Available					
1964	No Records Available					
1965	No Records Available					
1966	No Records Available					
1967	No Records Available					
1968	No Records Available					
1969	No Records Available					
1970	630			203	1	3
1971	616			209	1	3
1972	621 <sup>214</sup>			209	1	3
1973	672			243	1	4
1974	681			259	1	4
1975	685			268	1	4
1976	736			335	1	4
1977	752 <sup>215</sup>			312	1	4
1978	759 <sup>216</sup>			305	1	4
1979	761 <sup>217</sup>			309	1	3

<sup>214</sup> The first page of this payroll appears to be missing. The totals provided on the final page indicate that 645 people were paid annuities, and that four Councillors were paid salaries. See Holmes Report at page 116.

<sup>215</sup> Paylist total states number paid as 744. Our total includes people on the last five pages of the payroll who had their payments "trans to savings accts. Ottawa," but they are not included in the family count. See Holmes Report at page 116.

<sup>216</sup> Paylist total states number paid as 752. Our total includes people on the last seven pages of the payroll who had their payments "trans to savings accts Ottawa," but they are not included in the family count. See Holmes Report at page 117.

<sup>217</sup> Paylist total states number paid as 670. Our total includes people on the last eight pages of the payroll who had their payments sent to savings accounts in Ottawa, but they are not included in the family count. Also note that the payroll recapitulation states two Councillors were paid, but we identified three: Nos. 506 Carl Roberts, 455 Alphonse Laroque, and 559 Larry Henry. See Holmes Report at page 117.

1980	800 <sup>218</sup>			329	1	4
1981	801 <sup>219</sup>			327	1	4
1982	813 <sup>220</sup>			316	1	4
1983	814 <sup>221</sup>			331	1	4
1984						
1985	839			397	1	3

### PART III: FIRST NATION'S CLAIMS

133. The Roseau River Anishinabe First Nation claims that Canada owes an outstanding lawful obligation, within the Specific Claims Policy, to the First Nation, as a result of breaches of Treaty No. 1 and breaches of fiduciary obligations, for the following reasons:

- a. **Breach of Treaty:** The First Nation claims that the Crown breached its treaty obligations in failing to provide the First Nation with the full entitlement of Agricultural Treaty Benefits owed under the terms of Treaty No. 1; and
- b. **Breach of Fiduciary Obligations:** The First Nation claims that the Crown breached its fiduciary obligations in failing to provide all of the Agricultural Treaty Benefits promised in Treaty No. 1, and by failing to implement the treaty promise in a method which would uphold the Crown's honourable obligations to the First Nation.

### PART IV: LEGAL ANALYSIS

#### A. Breach of Treaty No. 1

<sup>218</sup> Paylist total states number paid as 707. Our total includes individuals on the last ten pages of the paylist who had their payments sent to savings accounts, but they are not included in the family count. See Holmes Report at page 117.

<sup>219</sup> Paylist total states number paid as 712. Our total includes individuals on the last nine pages of the paylist who had their payments sent to savings accounts in Ottawa, but they are not included in the family count. See Holmes Report at page 117.

<sup>220</sup> Paylist total states number paid as 711. Our total includes individuals on the last nine pages of the paylist who had their payments sent to savings accounts in Ottawa, but they are not included in the family count. See Holmes Report at page 117.

<sup>221</sup> Family count does not include the individuals paid on the last 10 pages of this paylist who had their money paid to savings, though they are included in the population total. See Holmes Report at page 117.

134. The First Nation claims that the Crown owed lawful obligations to the First Nation as a result of Treaty No. 1, and that the Crown breached these obligations when it failed to provide the First Nation with the treaty benefits it was owed.

135. The legal basis for this Claim therefore turns, in part, on the proper interpretation of Treaty No. 1 setting out a promise by the Crown to provide treaty benefits to the First Nation.

a. **Principles of Treaty Interpretation**

136. In *R v Sioui*<sup>222</sup>, the Supreme Court of Canada explained that what characterizes a treaty is “the intention to create obligations, the presence of mutually binding obligations and a certain measure of solemnity”<sup>223</sup>

137. According to *Sioui*, when determining whether a document constitutes a valid treaty, the Courts should adopt a liberal, flexible, and generous attitude and formalities should be treated as of “secondary importance in deciding on the nature of a document containing an agreement with the Indians.”<sup>224</sup>

16 Our courts and those of our neighbours to the south have already considered what distinguishes a treaty with the Indians from other agreements affecting them. The task is not an easy one. In *Simon v. The Queen*, [1985] 2 S.C.R. 387, this Court adopted the comment of Norris J.A. in *R. v. White and Bob* (1964), 50 D.L.R. (2d) 613 (B.C.C.A.) (affirmed in the Supreme Court (1965), 52 D.L.R. (2d) 481), that **the courts should show flexibility in determining the legal nature of a document recording a transaction with the Indians. In particular, they must take into account the historical context and perception each party might have as to the nature of the undertaking contained in the document under consideration.** To the question of whether the document at issue in *White and Bob* was a treaty within the meaning of the *Indian Act*, Norris J.A. replied (at pp. 648-49):

The question is, in my respectful opinion, to be resolved not by the application of rigid rules of construction without regard to the circumstances existing when the document was completed nor by the tests of modern day draftsmanship. In determining what the intention of Parliament was at the time of the enactment of s. 87 [now s. 88] of the *Indian Act*, Parliament is to be taken to have had in mind the common

<sup>222</sup> *R v Simon*, [1985] 2 SCR 387, 1985 CarswellNS 226, at paras 24-30 [*Simon*].

<sup>223</sup> *R v Sioui*, [1990] 1 SCR 1025, 1990 CarswellQue 103, at para 43 [*Sioui*].

<sup>224</sup> *Sioui*, at para 45.

understanding of the parties to the document at the time it was executed.

17 As the Chief Justice said in *Simon, supra*, treaties and statutes relating to Indians should be liberally construed and uncertainties resolved in favour of the Indians (at p. 410). In our quest for the legal nature of the document of September 5, 1760, therefore, **we should adopt a broad and generous interpretation of what constitutes a treaty.**<sup>225</sup>

[Emphasis added]

138. As stated by Cory J in *R v Badger*<sup>226</sup>, regarding the sanctity of the rights enshrined in treaties:

...it must be remembered that the treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. See *R v. Sioui*, [1900] 1 S.C.R. 1025, at p. 1063; *Simon v. The Queen*, [1985] 2 S.C.R. 387, at p. 401.<sup>227</sup>

139. The First Nation submits that Treaty No. 1 is sacred agreement which is the foundation of the relationship between the Crown and the First Nation. Thus, the correct interpretation of the terms of Treaty 1 and the common intention of the parties to it are fundamental to this Claim.

140. The principles of treaty interpretation are well established. They evolved through a series of Supreme Court of Canada cases including but not limited to *Nowegijick v The Queen*<sup>228</sup>, *R v Simon*, *R v Badger*, and *R v Marshall*<sup>229</sup>.

141. In *Nowegijick*, Dickson J., as he was then, opined that treaties should be liberally construed in favour of the First Nation, stating:

It is legal lore that, to be valid, exemptions to tax laws should be clearly expressed. It seems to me, however, that treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians. If the statute contains language which can reasonably be construed to confer tax exemption that construction, in my view, is to be favoured over a more technical construction which might be available to deny exemption. In

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<sup>225</sup> *Sioui*, at paras 16-17.

<sup>226</sup> *R v Badger*, [1996] 1 SCR 771, 1996 CarswellAlta 587 at para 41 [*Badger*].

<sup>227</sup> *Badger* at para 41.

<sup>228</sup> [1983] 1 SCR 29, 1983 CarswellNat 123 [*Nowegijick*].

<sup>229</sup> *R v Marshall*, [1999] 3 SCR 456, 1999 CarswellNS 262 [*Marshall*].



*Jones v. Meehan*, 175 U.S. 1 (1899), it was held that Indian treaties “must be construed, not according to the technical meaning of their words, but in the sense in which they would naturally be understood by the Indians”.<sup>230</sup>

142. These principles have been affirmed by numerous subsequent decisions, including that of *R v Simon*, wherein Dickson C.J. noted the “generally accepted view that Indian treaties should be given a fair, large and liberal construction in favour of the Indians.”<sup>231</sup>

143. In *Mitchell v Peguis Indian Band*<sup>232</sup>, the Supreme Court of Canada observed that there are two elements of liberal treaty interpretation to be found in the above passage taken from the *Nowegijick* decision:

... (1) ambiguities in the interpretation of treaties and statutes relating to Indians are to be resolved in favour of the Indians, and (2) aboriginal understandings of words and corresponding legal concepts in Indian treaties are to be preferred over more legalistic and technical constructions. In some cases, the two elements are indistinguishable, but in other cases the interpreter will only be able to perceive that there is an ambiguity by first invoking the second element.<sup>233</sup>

144. In *Badger*, Cory J. summarized the principles of interpretation with respect to treaties as follows:

At the outset, it may be helpful to once again set out some of the applicable principles of interpretation. First, it must be remembered that a treaty represents an exchange of solemn promises between the Crown and the various Indian nations. It is an agreement whose nature is sacred. See *R. v. Sioui*; *Simon v. The Queen*. Second, the honour of the Crown is always at stake in its dealing with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of “sharp dealing” will be sanctioned. See *Sparrow, supra*; *R. v. Taylor*. Third, any ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the Indians. A corollary to this principle is that any limitations which restrict the rights of Indians under treaties must be narrowly construed. See *Nowegijick v. The Queen*; *Simon, supra*; *Sioui, supra*; and *Mitchell v. Peguis Indian Band*. Fourth, the onus of proving that a treaty or aboriginal right has been extinguished lies

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<sup>230</sup> *Nowegijick* at para 25.

<sup>231</sup> *Simon* at para 24.

<sup>232</sup> *Mitchell v Peguis Indian Band*, [1990] 2 SCR 85 at para 13, 1990 CarswellMan 209 (SCC) (WL) [*Peguis*]

<sup>233</sup> *Peguis* at para 13.

upon the Crown. There must be “strict proof of the fact of extinguishment” and evidence of a clear and plain intention on the part of the government to extinguish treaty rights. See *Simon, supra*; *Sioui, supra*; *Calder v. Attorney-General of British Columbia*.<sup>234</sup>

145. Cory J. further emphasized in *Badger* that when considering a treaty, a court must take into account the context in which the treaties were negotiated, concluded, and committed to writing, stating as follows:

Treaties and statutes relating to Indians should be liberally construed and any uncertainties, ambiguities or doubtful expressions should be resolved in favour of the Indians. In addition, when considering a treaty, a court must take into account the context in which the treaties were negotiated, concluded and committed to writing. The treaties, as written documents recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement... ..The treaties were drafted in English by representatives of the Canadian government who, it should be assumed, were familiar with common law doctrines. Yet, the treaties were not translated in written form into the languages (here Cree and Dene) of the various Indian nations who were signatories. Even if they had been, it is unlikely that the Indians, who had a history of communicating only orally, would have understood them any differently. As a result, it is well settled that the words in the treaty must not be interpreted in their strict technical sense nor subjected to rigid modern rules of construction. Rather, they must be interpreted in the sense that they would naturally have been understood by the Indians at the time of the signing. This applies, as well, to those words in a treaty which impose a limitation on the right which has been granted.<sup>235</sup>

146. In *Badger*, Cory J. further emphasized the significance of verbal promises made during treaty negotiations on treaty interpretation:

The Indian people made their agreements orally and recorded their history orally. Thus, **the verbal promises made on behalf of the federal government at the times the treaties were concluded are of great significance in their interpretation.**<sup>236</sup>

[Emphasis added]

147. In *Marshall*, Binnie J., writing for the majority of the Supreme Court of Canada emphasized the importance of using extrinsic evidence to interpret treaties even absent ambiguities on

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<sup>234</sup> *R v Badger*, at para 41.

<sup>235</sup> *Ibid* at para 52 [citations omitted].

<sup>236</sup> *Badger* at para 55.

the face of the treaty and held that the Courts should consider extrinsic evidence that shows whether the entire agreement was reduced to writing and whether the parties intended that the written treaty would be the exclusive record of the agreement:

9 The Court of Appeal took a strict approach to the use of extrinsic evidence when interpreting the Treaties of 1760-61. Roscoe and Bateman J.J.A. stated at p. 194: "While treaties must be interpreted in their historical context, extrinsic evidence cannot be used as an aid to interpretation, in the absence of ambiguity". I think this approach should be rejected for at least three reasons.

10 **Firstly, even in a modern commercial context, extrinsic evidence is available to show that a written document does not include all of the terms of an agreement.** Rules of interpretation in contract law are in general more strict than those applicable to treaties, yet Professor Waddams states in *The Law of Contracts* (3rd ed. 1993), at para. 316:

**The parol evidence rule does not purport to exclude evidence designed to show whether or not the agreement has been "reduced to writing", or whether it was, or was not, the intention of the parties that it should be the exclusive record of their agreement. Proof of this question is a pre-condition to the operation of the rule, and all relevant evidence is admissible on it.** This is the view taken by Corbin and other writers, and followed in the *Second Restatement*.

...

11 **Secondly, even in the context of a treaty document that purports to contain all of the terms, this Court has made clear in recent cases that extrinsic evidence of the historical and cultural context of a treaty may be received even absent any ambiguity on the face of the treaty.** MacKinnon A.C.J.O. laid down the principle in *Taylor and Williams, supra*, at p. 236:

**... if there is evidence by conduct or otherwise as to how the parties understood the terms of the treaty, then such understanding and practice is of assistance in giving content to the term or terms.**

The proposition is cited with approval in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 87, and *R. v. Sioui*, [1990] 1 S.C.R. 1025, at p. 1045.

12 **Thirdly, where a treaty was concluded verbally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written terms,** per Dickson J. (as he then was) in *Guerin v. The Queen*, [1984] 2 S.C.R. 335. Dickson J. stated for the majority, at p. 388:

Nonetheless, the Crown, in my view, was not empowered by the surrender document to ignore the oral terms which the Band understood would be embodied in the lease. The oral representations form the backdrop against

which the Crown's conduct in discharging its fiduciary obligations must be measured. They inform and confine the field of discretion within which the Crown was free to act. After the Crown's agents had induced the Band to surrender its land on the understanding that the land would be leased on certain terms, it would be unconscionable to permit the Crown simply to ignore those terms.

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14 ... "Generous" rules of interpretation should not be confused with a vague sense of after-the-fact largesse. The special rules are dictated by the special difficulties of ascertaining what in fact was agreed to. **The Indian parties did not, for all practical purposes, have the opportunity to create their own written record of the negotiations. Certain assumptions are therefore made about the Crown's approach to treaty making (honourable) which the Court acts upon in its approach to treaty interpretation (flexible) as to the existence of a treaty** (*Sioui, supra*, at p. 1049), **the completeness of any written record (the use, e.g., of context and implied terms to make honourable sense of the treaty arrangement: *Simon v. The Queen*, [1985] 2 S.C.R. 387, and *R. v. Sundown*, [1999] 1 S.C.R. 393), and the interpretation of treaty terms once found to exist** (*Badger*). **The bottom line is the Court's obligation is to "choose from among the various possible interpretations of the common intention [at the time the treaty was made] the one which best reconciles" the Mi'kmaq interests and those of the British Crown** (emphasis added) (*Sioui, per Lamer J.*, at p. 1069). **In *Taylor supra*, the Crown conceded that points of oral agreement recorded in contemporaneous minutes were included in the treaty** (p. 230) and the court concluded that their effect was to "preserve the historic right of these Indians to hunt and fish on Crown lands" (p. 236). The historical record in the present case is admittedly less clear-cut, and there is no parallel concession by the Crown.<sup>237</sup>

[Emphasis added]

148. In *Marshall*, Binnie J. went on to further explain the need to give balanced weight to the First Nation's perspective of the treaty and to consider the recorded history of the negotiations, where the treaty document does not accord with these documents, especially when the recorded history suggests more favourable terms than the treaty document:

**The trial judge's view that the treaty obligations are all found within the four corners of the March 10, 1760 document, albeit generously interpreted, erred in law by failing to give adequate weight to the concerns and perspective of the Mi'kmaq people, despite the recorded history of the negotiations, and by giving excessive weight to the concerns and**

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<sup>237</sup> *Marshall*, at paras 9-12, 14.

perspective of the British, who held the pen. (See *Badger* , at para. 41, and *Quebec (Attorney General)* , at p. 1036.) The need to give balanced weight to the aboriginal perspective is equally applied in aboriginal rights cases: *Van der Peet*, at paras. 49-50; *Delgamuukw*, at para. 81.

20 While the trial judge drew positive implications from the negative trade clause (reversed on this point by the Court of Appeal), such limited relief is inadequate where the British-drafted treaty document does not accord with the British-drafted minutes of the negotiating sessions and more favourable terms are evident from the other documents and evidence the trial judge regarded as reliable. Such an overly deferential attitude to the March 10, 1760 document was inconsistent with a proper recognition of the difficulties of proof confronted by aboriginal people, a principle emphasized in the treaty context by *Simon* , at p. 408, and *Badger* , at para. 4, and in the aboriginal rights context in *Van der Peet*, at para. 68, and *Delgamuukw* , at paras. 80-82. The trial judge interrogated himself on the scope of the March 10, 1760 text. He thus asked himself the wrong question. His narrow view of what constituted "the treaty" led to the equally narrow legal conclusion that the Mi'kmaq trading entitlement, such as it was, terminated in the 1780s. Had the trial judge not given undue weight to the March 10, 1760 document, his conclusions might have been very different<sup>238</sup>

[Emphasis added]

149. Further on this issue of interpreting documentation regarding treaty negotiations, in *R v Taylor*<sup>239</sup>, the Ontario Court of Appeal held that this extrinsic evidence, like the treaties, should not be analyzed in minute detail:

23 With respect to the oral representation made in answer to the “hope” expressed by the Indians that they would not be prevented from hunting and fishing, it is argued that that representation was only to advise the Indians that they were to have an equal right with all others and was not a preservation of special rights. The transcript of the Minutes cannot and should not be analyzed in minute detail. The use of certain words and their conciliatory tone only serve to emphasize the disparity in the positions of the two parties to the treaty, but do not lessen the force of the request nor the right to be attached to the assurance - quite the contrary.<sup>240</sup>

[Emphasis added]

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<sup>238</sup> *Marhsall* at paras 19-20.

<sup>239</sup> 1981 CarswellOnt 641, [1981] 3 CNLR 114 [*Taylor*].

<sup>240</sup> *Taylor* at para 23.

150. Additionally, in *Marshall*, Binnie J., explained that ambiguities in the words or phrases of a treaty should not be interpreted to the prejudice of the First Nation if another construction is reasonably possible:

In more recent times, as mentioned, the principle that the honour of the Crown is always at stake was asserted by the Ontario Court of Appeal in *Taylor and Williams*, *supra*. In that case, as here, the issue was to determine the actual terms of a treaty, whose terms were partly oral and partly written. MacKinnon A.C.J.O. said for the court, at pp. 235-36:

The principles to be applied to the interpretation of Indian treaties have been much canvassed over the years. In approaching the terms of a treaty quite apart from the other considerations already noted, the honour of the Crown is always involved and no appearance of "sharp dealing" should be sanctioned. Mr. Justice Cartwright emphasized this in his dissenting reasons in *R. v. George*, ... [1966] S.C.R. 267 at p. 279, where he said:

We should, I think, endeavour to construe the treaty of 1827 and those Acts of Parliament which bear upon the question before us in such a manner that the honour of the Sovereign may be upheld and Parliament not made subject to the reproach of having taken away by unilateral action and without consideration the rights solemnly assured to the Indians and their posterity by treaty.

Further, **if there is any ambiguity in the words or phrases used, not only should the words be interpreted as against the framers or drafters of such treaties, but such language should not be interpreted or construed to the prejudice of the Indians if another construction is reasonably possible**: *R. v. White and Bob* (1964), 50 D.L.R. (2d) 613 at p. 652 (B.C.C.A.); affirmed [1965] S.C.R. vi.349.<sup>241</sup>

[Emphasis added]

151. The overarching principles relating to the interpretation of treaties and the rights that flow therefrom are well summarized in the more recent Supreme Court of Canada decision in *Quebec (AG) v Moses*:

This Court has stated many times that Aboriginal treaties are to be interpreted broadly, flexibly and generously (*R. v. Badger*, [1996] 1 S.C.R. 771 (S.C.C.), at paras 76-78; *R. v. Sundown*, [1999] 1 S.C.R. 393 (S.C.C.), at para. 24; *Sioui*, at p. 1043; *Simon*, at p. 404. See also Sullivan, at p. 513). In *Marshall*, McLachlin

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<sup>241</sup> *Marshall* at para 51.

J. (as she then was), dissenting but not on this point, provided what is now the most frequently-cited summary of the relevant interpretive principles, as they have been developed by this Court (at para. 78):

This Court has set out the principles governing treaty interpretation on many occasions. They include the following.

1. Aboriginal treaties constitute a unique type of agreement and attract special principles of interpretation: *R. v. Sundown*, [1999] 1 S.C.R. 393, at para. 24; *R. v. Badger*, [1996] 1 S.C.R. 771, at para. 78; *R. v. Sioui*, [1990] 1 S.C.R. 1025, at p. 1043; *Simon v. The Queen*, [1985] 2 S.C.R. 387, at p. 404. See also: J. [Sákéj] Youngblood Henderson, “Interpreting *Sui Generis* Treaties” (1997), 36 Alta. L. Rev. 46; L. I. Rotman, “Defining Parameters: Aboriginal Rights, Treaty Rights, and the *Sparrow* Justificatory Test” (1997), 36 Alta. L. Rev. 149.
2. Treaties should be liberally construed and ambiguities or doubtful expressions should be resolved in favour of the aboriginal signatories: *Simon*, *supra*, at p. 402; *Sioui*, *supra*, at p. 1035; *Badger*, *supra*, at para. 52.
3. The goal of treaty interpretation is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of both parties at the time the treaty was signed: *Sioui*, *supra*, at pp. 1068-69.
4. In searching for the common intention of the parties, the integrity and honour of the Crown is presumed: *Badger*, *supra*, at para. 41.
5. In determining the signatories’ respective understanding and intentions, the court must be sensitive to the unique cultural and linguistic differences between the parties: *Badger*, *supra*, at paras. 52-54; *R. v. Horseman*, [1990] 1 S.C.R. 901, at p. 907.
6. The words of the treaty must be given the sense which they would naturally have held for the parties at the time: *Badger*, *supra*, at paras. 53 et seq.; *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 36.
7. A technical or contractual interpretation of treaty wording should be avoided: *Badger*, *supra*; *Horseman*, *supra*; *Nowegijick*, *supra*.
8. While construing the language generously, courts cannot alter the terms of the treaty by exceeding what “is possible on the language” or realistic: *Badger*, *supra*, at para. 76; *Sioui*, *supra*, at p. 1069; *Horseman*, *supra*, at p. 908.
9. Treaty rights of aboriginal peoples must not be interpreted in a static or rigid way. They are not frozen at the date of signature. The interpreting court must update treaty rights to provide for their modern exercise. This involves determining what modern practices are reasonably incidental to

the core treaty right in its modern context: *Sundown, supra*, at para. 32; *Simon, supra*, at p. 402.<sup>242</sup>

The rationale behind this interpretive approach is that the negotiation of historical treaties was marked by “significant differences” in the signatories languages, concepts, cultures and world views. This meant that the Crown and the Aboriginal signatories had fundamentally different understandings of the exact nature of their agreements (L.I. Rotman, “Taking Aim at the Canons of Treaty Interpretation in Canadian Aboriginal Rights Jurisprudence” (1997), 46 U.N.B. L.J. 11, at p. 20). Because of these contextual factors, Aboriginal treaties are to be interpreted in light of the contexts in which they were signed, and that interpretation must be both liberal and dynamic so as to avoid the freezing of rights, while any ambiguity is to be resolved in favour of the Aboriginal signatories.<sup>243</sup>

152. In terms of the honour of the Crown, in the context of treaty interpretation, the same is invoked in the following circumstances:

The honour of the Crown “is not a mere incantation, but rather a core precept that finds its application in concrete practices” and gives rise to different duties in different circumstances”: *Haida Nation*, at paras. 16 and 18. It is not a cause of action itself; rather, it speaks to how obligations that attract it must be fulfilled...

(3) The honour of the Crown governs treaty-making and implementation: *Province of Ontario v. Dominion of Canada*, (1895), 25 S.C.R. 434, at p. 512, per Gwynne J., dissenting; *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 (CanLII), 2005 SCC 69, [2005] 3 S.C.R. 388, at para. 51, leading to requirements such as honourable negotiation and the avoidance of the appearance of sharp dealing (*Badger*, at para. 41); and

(4) The honour of the Crown requires the Crown to act in a way that accomplishes the intended purposes of treaty and statutory grants to Aboriginal peoples: *R. v. Marshall*, 1999 CanLII 665 (SCC), [1999] 3 S.C.R. 456, at para. 43, referring to *The Case of The Churchwardens of St. Saviour in Southwark (1613)*, 10 Co. Rep. 66b, 77 E.R. 1025, and *Roger Earl of Rutland’s Case (1608)*, 8 Co. Rep. 55a, 77 E.R. 555; *Mikisew Cree First Nation*, at para. 51; *Badger*, at para. 47.

Thus, the duty that flows from the honour of the Crown varies with the situation in which it is engaged. What constitutes honourable conduct will vary with the circumstances.<sup>244</sup>

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<sup>242</sup> *Ibid* at para 78.

<sup>243</sup> *Quebec (AG) v Moses*, 2010 SCC 17, 2010 CarswellQue 4341 at para 107.

<sup>244</sup> *Manitoba Métis Federation Inc v Canada (AG)*, 2013 SCC 14 , at paras 73-75.



153. Importantly in the context of this Claim, in *Marshall*, Binnie J. explained that honour of the Crown requires that where the written text of the treaty is incomplete or deficient, the Court may imply terms into the treaty to produce a sensible result that accords with the intent of both parties:

43 **The law has long recognized that parties make assumptions when they enter into agreements about certain things that give their arrangements efficacy. Courts will imply a contractual term on the basis of presumed intentions of the parties where it is necessary to assure the efficacy of the contract**, e.g., where it meets the "officious bystander test": *M.J.B. Enterprises Ltd. v. Defence Construction* (1951) Ltd., [1999] 1 S.C.R. 619 (S.C.C.) at para. 30. (See also: "Moorcock" (The) (1889), 14 P.D. 64 (Eng. C.A.); *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] 1 S.C.R. 711 (S.C.C.); and see generally: *Waddams*, *supra*, at para. 490; *Treitel*, *supra*, at pp. 190-94.) Here, if the ubiquitous officious bystander had said, "This talk about truckhouses is all very well, but if the Mi'kmaq are to make these promises, will they have the right to hunt and fish to catch something to trade at the truckhouses?", the answer would have to be, having regard to the honour of the Crown, "of course". **If the law is prepared to supply the deficiencies of written contracts prepared by sophisticated parties and their legal advisors in order to produce a sensible result that accords with the intent of both parties, though unexpressed, the law cannot ask less of the honour and dignity of the Crown in its dealings with First Nations.** The honour of the Crown was, in fact, specifically invoked by courts in the early 18th century to ensure that a Crown grant was effective to accomplish its intended purpose: *St. Saviour in Southwark* (Churchwardens case) (1613), 10 Co. Rep. 66b, 77 E.R. 1025 (Eng. K.B.) at p. 67b and p. 1026, and *Rutland's (Earl) Case* (1608), 8 Co. Rep. 55a, 77 E.R. 555 (Eng. K.B.) at p. 56b and pp. 557-58.

44 **An example of the Court's recognition of the necessity of supplying the deficiencies of aboriginal treaties is *Quebec (Attorney General)*, *supra***, where Lamer J. (as he then was) considered a treaty document that stated simply that the Huron tribe "are received upon the same terms with the Canadians, being allowed the free Exercise of their Religion, their Customs, and Liberty of trading with the English". Lamer J. found that, **in order to give real value and meaning to these words, it was necessary that a territorial component be supplied**, as follows, at p. 1067:

The treaty gives the Hurons the freedom to carry on their customs and their religion. No mention is made in the treaty itself of the territory over which these rights may be exercised. There is also no indication that the territory of what is now Jacques-Cartier park was contemplated. However, for a freedom to have real value and meaning, it must be possible to exercise it somewhere. [Emphasis added.]

Similarly, in *Sundown*, *supra*, the Court found that the express right to hunt included the implied right to build shelters required to carry out the hunt. See also *Simon*, *supra*, where the Court recognized an implied right to carry a gun and ammunition on the way to exercise the right to hunt. **These cases employed the concept of implied rights to support the meaningful exercise of express rights granted to the first nations in circumstances where no such implication might necessarily have been made absent the *sui generis* nature of the Crown's relationship to aboriginal people.** While I do not believe that in ordinary commercial situations a right to trade implies any right of access to things to trade, I think **the honour of the Crown requires nothing less in attempting to make sense of the result of these 1760 negotiations.**<sup>245</sup>

[Emphasis added]

154. In *Sioui*, Lamer J. writing for the Supreme Court of Canada, further explained that where the treaty is silent on a point necessary to give efficacy to the treaty, the Court should interpret the deficiency with the same generous approach applied to treaty interpretation generally, having regard to the historical context:

...In his intervention the Attorney General of Canada argues that the respondents' claim is essentially a territorial one and that in order to establish their rights, the respondents must show a connection between the rights claimed and their exercise in a given territory. He is of the view that the document in the present case does not connect the freedom of exercise of religion, customs and trade with the English to any territory.

111 In my view, **the treaty essentially has to be interpreted by determining the intention of the parties on the territorial question at the time it was concluded. It is not sufficient to note that the treaty is silent on this point. We must also undertake the task of interpreting the treaty on the territorial question with the same generous approach toward the Indians that applied in considering earlier questions.** Now as then, we must do our utmost to act in the spirit of *Simon*.<sup>246</sup>

[Emphasis added]

155. In sum, treaties must be given a fair, large and liberal interpretation, and strict construction of treaty language must be avoided. Treaties should be interpreted to determine the intention of the parties at the time of the treaty, having regard to the written text and the broader

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<sup>245</sup> *Marshall* at paras 41-44.

<sup>246</sup> *Sioui*, at paras 110-111.

historical context. Finally, any exercise of treaty interpretation requires that the honour of the Crown is maintained.

**b. *Treaty Benefits as Collective Rights***

156. The First Nation further notes that the benefits promised by the Crown under Treaty No. 1 are collective in nature and were intended to benefit the First Nation as a whole. While treaty rights are inherently collective in nature, they are often necessarily exercised on a day-to-day basis by individual members of signatory bands; this, however, does not change the essential collective nature of the right. This position finds clear support in the jurisprudence.
157. In the Supreme Court of Canada decision *Behn v Moulton Contracting Ltd.*<sup>247</sup>, LeBel J. affirmed that treaty rights are collective rights, although they can have both collective and individual aspects:

33 The Crown argues that claims in relation to treaty rights must be brought by, or on behalf of the Aboriginal community. This general proposition is too narrow. It is true that Aboriginal and treaty rights are collective in nature: see *R. v. Sparrow*, [1990] 1 S.C.R. 1075, at p. 1112; *Delgamuukw*, at para. 115; *R. v. Sundown*, [1999] 1 S.C.R. 393, at para 36; *R. v. Marshall v. Canada*, [1999] 3 S.C.R. 533, at paras. 17 and 37; *R. v. Sappier*, 2006 SCC 54, [2006] 2 S.C.R. 686, at para. 31; *Beckman*, at para. 35. However, certain rights, despite being held by the Aboriginal community, are nonetheless exercised by individual members or assigned to them. These rights may therefore have both collective and individual aspects. Individual members of a community may have a vested interest in the protection of these rights. It may well be that, in appropriate circumstances, individual members can assert certain Aboriginal or treaty rights as some of the interveners have proposed.<sup>248</sup>

158. The Specific Claims Tribunal recently addressed the issue of the collective rights of a First Nation in the *Beardy's & Okemasis Band No. 96* decision.<sup>249</sup> In that decision, the Crown argued that the Tribunal lacked jurisdiction to hear a claim as annuities were payable to individual members of the band and therefore, the Claim was not by a First Nation for “its losses”, as provided for in the *Specific Claims Tribunal Act*, section 14(1). In rejecting this

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<sup>247</sup> *Behn v Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 SCR 227 [*Moulton Contracting*].

<sup>248</sup> *Moulton Contracting* at para 33.

<sup>249</sup> *Beardy's & Okemasis Band #96 and #97 v Her Majesty the Queen in Right of Canada*, 2015 SCTC 3 at para 301 [*BOFN*].

argument, the Specific Claims Tribunal noted that the ancestors of the Beardsy's & Okemasis First Nation entered Treaty 6 as a collective, and "...did not present themselves as a legally distinct corporate or statutory body." The Tribunal further elaborated:

[305] As a collective has no legal identity distinct from its membership, and is in fact and law the aggregate of its members, the payment of an annual sum in cash to each member is in effect a payment to the collective. This is reflected in the definition of "band" in the *Indian Act*, 1880 as a "body of Indians...who share alike in the distribution of any annuities..."

[306] The phrase "share alike" contemplates the existence of a common asset, cash, delivered annually and distributed in equal portions to each member of the body of Indians. Under Treaty 6, the cash amount is determined annually by multiplying the number of band members by \$5.00. The treaty mechanism for the performance of the Crown's obligation to the collective is the delivery of a \$5.00 banknote to each of the individuals that comprise the collective.<sup>250</sup>

159. The Tribunal continued as follows:

[314] Treaty 6 provides for annual payments to all future generations of members of the collective. This could not be a promise to the unborn. They do not exist, at least in the corporeal sense. It is a promise to the collective comprised of the members, collectively, as it is constituted at every moment in time.

[315] The entitlement to the payment ceases when a member of the collective is removed from the band list. While an individual who is no longer on the band list may remain a *de facto* member of the community, he or she would no longer be recognized by the government as a member of the band constituted under the *Indian Act*, 1880. Under the system of administration and governance imposed on indigenous peoples by the *Indian Act*, 1880, the entitlement of the individual to the annual payment is lost, as it is not owed to the individual but to the collective as then constituted.

[316] The annual payment sustains the collective by providing cash, meagre as it is, to each member. This is the intent of the provision for the annual payment required by Treaty 6 as partial consideration for the cession of a collective interest in the land. The failure to pay the required money to an entitled individual is a loss to the collective.<sup>251</sup>

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<sup>250</sup> *Ibid* at para 305.

<sup>251</sup> *Ibid* at paras 314 to 316.

160. Recently in *Watson v Canada*,<sup>252</sup> the Federal Court made explicit reference to “agricultural supplies” as a collective benefit provided for under Treaty No. 4:

299 Under *Treaty 4*, bands represented by their signatory chiefs were the units through which many treaty benefits flow. Treaty benefits to bands included reserves, payments to band leadership, a school, and agricultural supplies. These rights are collectively held by the signatory band or its successor. ...<sup>253</sup>

161. The plain language of the terms of the Memorandum of Outside Promises, which comprises part of Treaty No. 1, support the position that the benefits were intended to be collective in nature. Specifically, the Memorandum of Outside Promises states: “In lieu of a yoke of oxen for each Reserve, a Bull for each...”<sup>254</sup>, suggesting the promise was made to the group of Band members as a collective, not as individuals.

162. As a final point on this issue, the First Nation would also note that the non-economic items at issue promised specifically to chiefs and braves and councillors under the treaty are also collective in nature. In particular, the promise to provide buggies was not tied to an individual but rather to the positions of chief and braves and councillors as an office. Once one ceased to be chief of the collective, there was no entitlement to a buggy.

**c. *Incomplete Crown Record to Favour the First Nation***

163. Many of the historical records relevant to this Claim including those regarding the benefits promised and provided to the First Nation are silent, ambiguous, and/or contradictory.

164. The recent decision of *Madawaska Maliseet First Nation*<sup>255</sup> provides helpful guidance for claims, such as the current Claim, where Crown record keeping is minimal or does not exist.

165. In *Madawaska Maliseet First Nation*, the Specific Claims Tribunal noted that Canada’s argument that reserve creation had not occurred and its support for that argument was

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<sup>252</sup> *Watson v Canada*, 2020 FC 129 at para 229, 2020 CarswellNat 145 (WL) [*Watson*].

<sup>253</sup> *Watson* at para 229.

<sup>254</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 13.

<sup>255</sup> *Madawaska Maliseet First Nation and Canada (Minister of Indian Affairs and Northern Development), Re*, 2017 SCTC 5 at para 306, 2017 CarswellNat 9985 (WL) [*Madawaska*].

implicated by a number of other relevant factors, with two of those factors relating to poor record keeping:

- i. a long history of very poor government record keeping, including, missing and altered records of origin; and
- ii. numerous references in some of the Schedules where there is either no reference as to why those particular reserves received recognition or reporting that those reserves were being recognized, in spite of the fact that there was “no government record”.<sup>256</sup>

166. In making its decision, the Specific Claims Tribunal found that where records were incomplete or missing, any ambiguity must be resolved in favour of the First Nation:

[368] I find that the Honour of the Crown in this instance, where the record is incomplete and important key documents which could shed further light on this question are missing as a result of Crown mismanagement of these important documents, requires that any ambiguity on this question, should it exist, must be resolved in favour of the Maliseet Madawaska.<sup>257</sup>

167. *Madawaska Maliseet First Nation* postulates that any gaps or ambiguities in the evidentiary record must be interpreted in favour of the First Nation. This interpretation also accords with the Crown’s fiduciary duties, which topic will be discussed later in this submission.

**d. Shortfall in Provision of Agricultural Treaty Benefits**

168. This Claim is for the failure of the Crown to adequately provide the Agricultural Treaty Benefits promised to the First Nation under Treaty No. 1 in the form of agricultural implements and tools, buggies for Chiefs, Braves, and Councillors, livestock and farm animals, seed wheat, potatoes, and garden seed, and a farming instructor, as addressed below.

169. The First Nation submits that the written terms of Treaty No. 1 are deficient. As such, each analysis of the shortfall in provision of Agricultural Treaty Benefits set out below will begin with an interpretation of the scope of the specific Agricultural Treaty Benefit promised under Treaty No. 1 having regard to the leading case law summarized above, the extrinsic evidence

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<sup>256</sup> *Madawaska* at para 306.

<sup>257</sup> *Ibid* at para 368.

of the treaty negotiations, and other records indicating the Parties' conduct and intentions, as summarised above in Part II of this Claim.

**i. *Agricultural Implements and Tools***

170. The First Nation submits that the Crown promised to provide the following agricultural implements and tools under Treaty No.1:

- a. a plough and harrow for each Indian settled down on his share of the reserve, and commenced cultivation of his land,<sup>258</sup> and additional ploughs and harrows when the Government are satisfied that those already given are used as intended;<sup>259</sup>
- b. two axes, two spades, and two hoes for each head of family;<sup>260</sup>
- c. two yoke and chain for oxen;<sup>261</sup> and
- d. implements to cut crops<sup>262</sup>: scythes or cradles.<sup>263</sup>

171. The above promises can be found in the following sources, summarized in detail in Part II of this Claim:

- a) Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces;
- b) December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace;
- c) The Memorandum of Outside Promises; and

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<sup>258</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 133.

<sup>259</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873[Doc. 40]; LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27; see Holmes Report at pages 15 and 34.

<sup>260</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>261</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 134.

<sup>262</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>263</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 16.

d) Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge.

172. For ease of reference, the following table sets out the precise agricultural implement and tool promised, the documentary source of the promise, and whether/how the Crown agreed to provide the benefit:

<b>Agricultural Implement and Tool Promised</b>	<b>Details of the Benefit</b>	<b>Source of Promise</b>	<b>Whether the Crown agreed to provide the Benefit</b>
<b>Ploughs and Harrows</b>	"As each Indian settled down on his share of the reserve, and commenced cultivation of his land, he was to receive a plough and harrow...."	Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces	Yes
<b>Ploughs and Harrows</b>	"A plough and harrow for each settler cultivating the ground."	The Memorandum of Outside Promises	Yes – [Marginalia: Mr. Simpson was supplied with the 50 Ploughs and 50 Harrows paid for by Dept]
<b>Ploughs, Harrows, Spades, Axes, and Hoes</b>	"They claim a Plough and a Harrow, a spade, an axe and a hoe for each head of family."	Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge.	Regarding Ploughs and Harrows: Yes. St. John replied to deputation: "Perhaps more may be given when the government are satisfied that those already given are used as intended." Marginalia initialled by Alexander Campbell reads "Approved".



			Regarding Spades, Axes and Hoes: Yes. Superintendent General of Indian Affairs and Minister of the Interior, Alexander Campbell initialed each of these items, and increased the number of spades, axes and hoes to 2.
<b>Ploughs and Harrows</b>	Additional ploughs and harrows “when the Government are satisfied that those already given are used as intended”	Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge.	Yes, initialled by Alexander Campbell.
<b>Yoke and Chain for Oxen</b>	“They claim... a yoke of oxen with yoke and chain.”	Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge.	Yes. Initialled by Alexander Campbell.
<b>Yoke for Oxen</b>	“Yoke for oxen”	Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge.	Yes. St. John replied to deputation: “Yes. [illegible] and get them one. Campbell initialled his approval and wrote “Give two.”
<b>Implements to Cut Crops</b>	“Seed wheat and implements to cut their crops”	Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge.	Yes. Alexander Campbell wrote “yes” next to both items.

173. The First Nation submits that the benefits promised in the above documents should be considered part of Treaty No. 1 for the following reasons.

174. First, although the 1875 Order in Council deemed all claims against the Government in connection with the oral agreements made during the treaty negotiations other than those contained in the Memorandum of Outside Promises to be abandoned, the historical records indicate that the Crown likely never provided the Memorandum of Outside Promises to the First Nation for its review prior to the First Nation's ratification of the 1875 Order in Council.<sup>264</sup> What's more, according to the historical records, as of February 1873, the Crown knew that the Memorandum of Outside Promises "expressed our [the Crown's] understanding of the matter [the oral agreements reached during the treaty negotiations], but by no means covered the understanding or expectations of the Indians".<sup>265</sup> Based on these records, the First Nation submits that it did not intend to abandon its entitlement to the additional treaty benefits included in the extrinsic documents set out in paragraph 172 but not included in the Memorandum of Outside Promises.
175. Second, Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces states that items in addition to those contained in the written terms of the treaty were promised during the treaty negotiations and lists these specific items. As well, the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace sets out additional items that were promised orally during the treaty negotiations, which items the Crown promised to put in a separate paper.<sup>266</sup>
176. The First Nation submits that the oral items as set out before a Justice of the Peace in December 1872 should be included in Treaty No. 1. Indeed, prior to the negotiation of Treaty No.1, Treaty Commissioner, S.J Dawson, observed that the Anishinabe were able to recall the details of agreements with the Crown with almost verbatim accuracy and warned Ottawa of this ability and the Anishinabe's determinedness to keep their commitments<sup>267</sup>:

At these gatherings it is necessary to observe extreme caution in what is said, as, though they have no means of writing, there are always those present who are charged to keep every word in mind. As an instance of the manner in which the

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<sup>264</sup> See Holmes Report at pages 16 and 17.

<sup>265</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See Holmes Report at page 13.

<sup>266</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>267</sup> Craft, *Breathing Life into the Stone Fort Treaty*, 2013, p. 102 [Doc. 436].

records are in this way ekp, without writing, I may mention that, on one occasion, at Fort Frances, the principal Chief of the tribe commenced an oration, by repeating almost verbatim, what I had said to him two years previously...

For my own part, I would have the fullest reliance as to these Indians observing a treaty and adhering most strictly to all its provisions, if, in the first place it were concluded after full discussion and after all its provisions were thoroughly understood by the Indians, and if, in the next, it were never infringed upon by the whites, who are generally the first to break through Indian treaties.<sup>268</sup>

177. As explained in *Marshall*, extrinsic evidence which shows whether the entire agreement was reduced to writing and whether the parties intended that the written treaty would be the exclusive record of the agreement should be considered.<sup>269</sup> Bearing in mind the Anishinabe's ability to remember oral details and their determinedness to observe their commitments, according to *Marshall*, where a treaty was concluded verbally and afterwards written up by representatives of the Crown, it would be unconscionable for the Crown to ignore the oral terms while relying on the written terms.<sup>270</sup>
178. Finally, Agent Molyneux St. John's February 1873 Report to the Deputy Superintendent General Spragge enumerates articles that the First Nation understood to have been promised under Treaty No.1 and this document contains marginalia indicating the Crown's agreement with the First Nation's understanding of these terms. As stated in *Marshall* where the treaty document does not accord with the recorded history of the treaty negotiations and other documents which include more favourable terms than the written treaty documents, balanced weight must be given to the First Nation's perspective of the treaty.<sup>271</sup> Additionally, it must be assumed, based on the Honour of the Crown, that the Crown intended to honour its agreement, via marginalia with the terms that the First Nation understood to have been promised under Treaty No. 1.

Based on the foregoing records and principles of treaty interpretation, the First Nation submits that it would be unconscionable to ignore the documents referenced in paragraph

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<sup>268</sup> *Ibid*, citing Parliament, S.J. Dawson in *Sessional Papers*, No. 81 (1867-68).

<sup>269</sup> *Marshall*, at paras 9-12, 14.

<sup>270</sup> *Ibid*.

<sup>271</sup> *Marhsall* at paras 19-20.

173 and to rely solely on the written text of the treaty, the Memorandum of Outside Promises, and the 1875 Order in Council to determine the scope of the benefits promised under Treaty No. 1.

179. Having set out the First Nation's position that these extrinsic documents should form part of Treaty No.1, it is clear from the above table that the distribution system for agricultural implements and tools set out in these documents is ambiguous, contradictory and deficient.
180. For example, ploughs and harrows were to be provided either per Indian settled on reserve and cultivating the land<sup>272</sup>, per settler cultivating the ground<sup>273</sup>, or per head of family<sup>274</sup>.
181. Moreover, axes, spades and hoes were to be distributed in accordance with the number of heads of families.<sup>275</sup> However, Treaty No. 1 does not specify whether "each head of family" meant this benefit was to be distributed only to families residing on the reserve and cultivating the ground, or merely to those families belonging to the First Nation.
182. Worse yet, for yoke and chain for oxen, scythes, and cradles, the records do not specify the number of each tool to be provided or a distribution system, be it per reserve, individual, head of family, or otherwise.
183. The First Nation submits that these ambiguities and contradictions must be resolved in favour of the First Nation such that an interpretation which lends to the most generous distribution system for agricultural implements and tools must be chosen over an interpretation that leads to a more restrictive system.<sup>276</sup>

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<sup>272</sup> Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces. Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 13.

<sup>273</sup> The Memorandum of Outside Promises. W. M. Simpson and M. St. John, "Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871," ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>274</sup> Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge. Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>275</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>276</sup> *Badger*, at para 41.

184. This position is supported by the well-established principle that any uncertainties, ambiguities or doubtful expressions in the wording of the treaty or document must be resolved in favour of the First Nation, and that any limitations which restrict the rights of the First Nation under treaties must be narrowly construed.<sup>277</sup> This same principle applies to the interpretation of extrinsic evidence which should not be analyzed in minute detail.<sup>278</sup>
185. Additionally, it is the First Nation's position that the deficiencies in the distribution system for axes, spades, hoes, yoke and chain, scythes and cradles must be supplied. This position is supported by the principle that the honour of the Crown requires that where the written text of the treaty is incomplete or deficient, the Court may imply terms into the treaty to produce a sensible result that accords with the intent of both parties.<sup>279</sup> Interpreting the deficiency, like the treaty itself, must be approached generously, having regard to the parties' intentions and the historical context.<sup>280</sup>
186. All the while, the First Nation recognizes that while the language of the treaty must be construed generously, Courts cannot alter the terms of the treaty by exceeding what is possible on the language or realistic.<sup>281</sup> Moreover, it must be recognized that when interpreting these ambiguous terms, the goal is to choose from among the various possible interpretations of common intention the one which best reconciles the interests of the Crown and the First Nation at the time the treaty was signed.<sup>282</sup>
187. Applying these principles to the present Claim, the First Nation submits that a liberal yet realistic interpretation of the distribution system for ploughs and harrows is that they were to be provided per individual settled on reserve and cultivating the land. This interpretation

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<sup>277</sup> *Badger* at paras 41, 52.

<sup>278</sup> *Taylor* at para 23.

<sup>279</sup> *Badger* at paras 43-52.

<sup>280</sup> *Sioui*, at paras 110-111.

<sup>281</sup> *Quebec (AG) v Moses*, 2010 SCC 17, 2010 CarswellQue 4341 at para 107.

<sup>282</sup> *Ibid.*

accords with the historical context that Treaty No. 1 was intended to encourage the First Nation to adopt agricultural practices on reserve.<sup>283</sup>

188. In terms of axes, spades, and hoes, a distribution system that aligns with the extrinsic evidence and historical and cultural context of Treaty 1 is that they were to be provided for each head of family *settled on reserve and cultivating the land*. This interpretation also accords with the Crown's stated intention in 1873 to convert "the greater part of the Indians of Manitoba...into actual settlers" given some rearrangement of the terms of the treaty.<sup>284</sup>
189. Additionally, a liberal yet realistic interpretation of the distribution system for yoke and chain for oxen, scythes, and cradles is that one of each implement/tool was to be provided for each person settled on the reserve and cultivating the land. Absent historical records on this question, the First Nation submits that the Crown's intention to provide these benefits using the same distribution system as ploughs and harrows should be implied.
190. Having determined a distribution system for each agricultural implement and tool promised under Treaty No.1, the First Nation will now assess how many of each benefit the First Nation was entitled to receive.
191. Regrettably, there are no specific records indicating how many individuals and families were settled on the reserve and cultivating the ground at any point in time. Nevertheless, estimates of the same can be gleaned from cross referencing records regarding the population of the First Nation, the survey and establishment of IR2, and the early agricultural activity on the reserve, bearing in mind the principle that any gaps or ambiguities in the evidentiary record must be interpreted in favour of the First Nation.<sup>285</sup>
192. Regarding population, there are significant discrepancies in the estimates of the First Nation's population around the time of treaty. Despite the Crown's promise to take a census

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<sup>283</sup> "Memorandum of an Address to the Indians by the Lieut.-Governor Manitoba," July 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), pp. 16-17. [Doc. 6]. See Holmes Report at pages 9 and 10.

<sup>284</sup> Molyneux St. John, Indian Agent, Winnipeg, to Colonel J. A. Provencher, Indian Commissioner, October 22, 1873, in Canada, Annual Report of the Department of the Interior for the year ended 30<sup>th</sup> June, 1874 (Ottawa: MacLean, Roger & Co., 1875), p. 60 [Doc. 48]. See Holmes Report at page 26.

<sup>285</sup> *Maliseet* at para 386.

of the Band in March 1872, there is no evidence that this ever occurred.<sup>286</sup> As such, while the First Nation estimated its the population at 1000 people in 1872,<sup>287</sup> the Crown said this number was more likely 218 persons.<sup>288</sup> Convoluting matters further, in some years the Crown estimated the Band's population by family and in others by individual. For instance, in 1873, and 1875, the Crown stated that there were 149 heads of family, and 480 people, respectively.<sup>289</sup>

193. Regarding the survey and establishment of the reserve and early agricultural activities on reserve, as explained above, records indicate that members of the First Nation wanted to settle on the reserve and cultivate the ground as early as 1872, but the Crown's own delay in surveying and establishing the reserve frustrated these efforts.<sup>290</sup>
194. For instance, in the fall of 1872, the First Nation informed the Crown that 34 families wished to settle on the reserve and cultivate the land immediately. Although the Crown promised to survey the boundaries of the reserve in 1872,<sup>291</sup> records indicate that the boundaries of the reserve had not been defined by 1877.<sup>292</sup> In fact, there are no records on the final survey

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<sup>286</sup> F. T. Bradley to the Lieutenant Governor of Manitoba, March 10, 1872 [Doc. 22]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See pp. 11 and 14. See Holmes Report at page 19.

<sup>287</sup> F. T. Bradley to the Lieutenant Governor of Manitoba, March 10, 1872 [Doc. 22]. LAC RG 10 Vol. 3558 File 43 Reel C-10098. See pp. 7-8. Marginalia next to Bradley's calculation reads: "Paylist of Aug 1871 gives 181 [families?] Red River Band 1166." See Holmes Report at page 19.

<sup>288</sup> W. Spragge, Deputy Superintendent General of Indian Affairs, "Memo in connection with the Official letter of 8 March 1872 relative to surveys of Indian Reserves made under Treaties Nos. 1 & 2 in the Province of Manitoba and North West Territories," March 23, 1872 [Doc. 24]. LAC RG 15 Series D-II-1 Vol. 228 File 755 (1872) Reel T-12176. See Holmes Report at page 20.

<sup>289</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883* (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]; J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 40 [Doc. 86]. See Holmes Report at page 22.

<sup>290</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]. See Holmes Report at page 26.

<sup>291</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]; See Holmes Report at page 26.

<sup>292</sup> John Black to J. A. N. Provencher, June 8, 1877 [Doc. 115]. LAC RG 10 Vol. 3626 File 5763 Reel C-10109. See Holmes Report at page 22.

and/or confirmation of IR2.<sup>293</sup> What's more, although records indicate that members of the First Nation living at the Roseau Rapids cultivated that land to a greater extent than the members at the "reserve proper", there are no actual records of the numbers of individual and families who cultivated the land at the Rapids at any point in time. Worse yet, records indicate that the Crown did not even consider the lands at the Rapids to be part of the reserve as of 1888.<sup>294</sup>

195. If the Crown had promptly surveyed and established the reserve as promised in 1872 for the 34 families that wished to settle on the reserve and begin cultivating the land that year, and assuming each family had at least 2 individuals, the First Nation would have been entitled, at minimum, to the following agricultural implements and tools in 1872:

Items	Quantity Specified in Treaty No. 1 <sup>295</sup>	Quantity of Implements Owed
Ploughs	1 per individual	68
Harrows	1 per individual	68
Axe	2 per head of family	68
Spade	2 per head of family	68
Hoe	2 per head of family	68
Yoke and Chain for Oxen	1 per individual	68
Scythes or cradles	1 per individual	68

196. Alternatively, the first recorded year that members of the First Nation actually cultivated the land was 1873.<sup>296</sup> According to Indian Commissioner Provencher's annual report that year, half of the Pembina Band was "addicted to agriculture".<sup>297</sup> As explained above, in 1873, the Crown estimated the Band's population at 149 heads of family. Assuming each family had

<sup>293</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883* (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 22.

<sup>294</sup> Chief Nashwahooke and others, Roseau Rapids, Agreement, August 29, 1888 [Doc. 184]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 23.

<sup>295</sup> According to the First Nation's analysis.

<sup>296</sup> Molyneux St. John, Indian Agent, Winnipeg, to Colonel J. A. Provencher, Indian Commissioner, October 22, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 60 [Doc. 48]. See Holmes Report at page 26.

<sup>297</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, December 31, 1873, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1874* (Ottawa: MacLean, Roger & Co., 1875), p. 57 [Doc. 50]. See Holmes Report at page 26.



at least 2 individuals, if Provencher's report was accurate, and approximately 75 families were cultivating the land in 1873, the Band would have been entitled to the following agricultural implements and tools as of 1873:

Items	Quantity Specified in Treaty No. 1	Quantity of Implements Owed
Ploughs	1 per individual	149
Harrows	1 per individual	149
Axe	2 per head of family	149
Spade	2 per head of family	149
Hoe	2 per head of family	149
Yoke and Chain for Oxen	1 per individual	149
Scythes or cradles	1 per individual	149

197. Records indicate that in 1878, the Crown noted the good use the First Nation had made of the limited kind and number of implements that were provided.<sup>298</sup> This indicates that more implements should have been provided in 1878 according to marginalia on Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge.<sup>299</sup>
198. By 1882, records indicate that only about 12 of the 150 families belonging to the First Nation were cultivating the land or residing on the reserve.<sup>300</sup> If these 12 families were cultivating the land, assuming each family consisted of at least 2 individuals, the First Nation's entitlement to agricultural implements and tools would have been as follows:

Items	Quantity Specified in Treaty No. 1	Quantity of Implements Owed
Ploughs	1 per individual	24
Harrows	1 per individual	24
Axe	2 per head of family	24
Spade	2 per head of family	24
Hoe	2 per head of family	24

<sup>298</sup> E. McColl, Inspector of Indian Agencies and Reserves, to the Superintendent General of Indian Affairs, December 31, 1878, in Canada, Report of the Deputy Superintendent General of Indian Affairs [1878], p. 54 [Doc. 134]. McColl did not report on any specific bands. See Holmes Report at page 27.

<sup>299</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See p. 20. See Holmes Report at page 15.

<sup>300</sup> E. McColl, Inspector of Indian Agencies, to the Superintendent General of Indian Affairs, November 28, 1882, in Canada, Annual Report of the Department of Indian Affairs for the year ended 31st December, 1882 (Ottawa: MacLean, Roger & Co., 1883), p. 154 [Doc. 159]. See Holmes Report at page 28.

Yoke and Chain for Oxen	1 per individual	24
Scythes or cradles	1 per individual	24

199. The following table summarizes the implements and tools that were distributed to the First Nation between 1872 and 1890 according to the historical records summarized in Part II above:

Date Provided	Plough	Harrow	Spade	Axe	Hoe	Chain for oxen	Scythes or cradles
1872				12 <sup>301</sup>	12 <sup>302</sup>		
October 5, 1875	3 <sup>303</sup>			36 <sup>304</sup>	36 <sup>305</sup>		18 <sup>306</sup>
November 4, 1876	4 <sup>307</sup>			15 <sup>308</sup>	24 <sup>309</sup>		
November 1877	1 cross <sup>310</sup> plough	4 <sup>311</sup>				3 sets <sup>312</sup>	10 <sup>313</sup>

<sup>301</sup> “Statement of Cattle and Implements distributed in the years 1872-73-74 as showing by letters 1, 2, 3, 4, 5, 6, herewith attach [sic] Treaties Nos. [1 & 2],” January 28, 1878 [Doc. 124]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 38.

<sup>302</sup> “Statement of Cattle and Implements distributed in the years 1872-73-74 as showing by letters 1, 2, 3, 4, 5, 6, herewith attach [sic] Treaties Nos. [1 & 2],” January 28, 1878 [Doc. 124]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 38.

<sup>303</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>304</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>305</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>306</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>307</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>308</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>309</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>310</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>311</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>312</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<sup>313</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 37.

<b>May 26, 1878</b>	4 <sup>314</sup>	4 <sup>315</sup>					20 <sup>316</sup>
<b>1878-1879</b>	2 <sup>317</sup>	2 <sup>318</sup>				4 sets <sup>319</sup>	
<b>1890</b>				12 <sup>320</sup>			12 <sup>321</sup>
<b>Total</b>	<b>14</b>	<b>10</b>	<b>0</b>	<b>75</b>	<b>72</b>	<b>14</b>	<b>60</b>

200. While further work will be required to be undertaken to determine the exact population entitled to have received the complement of agricultural implements and tools, it is clear that the Crown failed to provide the full complement of agricultural implements and tools promised to the First Nation pursuant to Treaty No 1.
201. The remainder of this section highlights additional records which further indicate that the Crown breached its treaty obligation to provide the First Nation with agricultural implements and tools in accordance with Treaty No. 1.
202. First, as explained above, under the terms of Treaty No. 1, each individual settled on the reserve and cultivating the ground was promised 1 plough, 1 harrow, 1 yoke and chain for

<sup>314</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>315</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>316</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 39.

<sup>317</sup> "B. – Indians of Manitoba and the North-West," June 30, 1884, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), Part II, p. 143 [Doc. 163]. See Holmes Report at page 40.

<sup>318</sup> "B. – Indians of Manitoba and the North-West," June 30, 1884, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), Part II, p. 143 [Doc. 163]. See Holmes Report at page 40.

<sup>319</sup> "B. – Indians of Manitoba and the North-West," June 30, 1884, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1884* (Ottawa: MacLean, Roger & Co., 1885), Part II, p. 143 [Doc. 163]. See Holmes Report at page 40.

<sup>320</sup> "Manitoba Superintendency – Details," June 30, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890* (Ottawa: Brown Chamberlin, Queen's Printer, 1891), Part II, p. 49 [Doc. 198]. See Holmes Report at page 40.

<sup>321</sup> "Manitoba Superintendency – Details," June 30, 1890, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1890* (Ottawa: Brown Chamberlin, Queen's Printer, 1891), Part II, p. 49 [Doc. 198]. See Holmes Report at page 40.

oxen, and 1 scythe or cradle, and each head of family settled on reserve and cultivating the land was promised 2 axes, 2 spades, and 2 hoes.

203. Nevertheless, in response to an 1874 estimate of implements to be provided under Treaties 1 and 2, Commissioner Provencher commented that he felt one plough and harrow to every four families “should be sufficient to enable them to start in agricultural pursuits.”<sup>322</sup> Historical records suggest that the Crown did reduce the actual expenditure on agricultural implements by about 77% based on Commissioner Provencher’s comment.<sup>323</sup>
204. What’s more, in 1875, Indian Affairs accountant Robert Sinclair commented that Indian Commissioner Provencher’s estimate for agricultural implements required under Treaties 1 and 2 for the 1875-1876 fiscal year was “excessive” even though the estimate would have provided less than what the First Nation was entitled to under Treaty No. 1. That is, this “excessive” estimate would have provided for 1 plough and 1 harrow to every 5 families, over 3 hoes, over 2 spades, and nearly 2 axes to each family, and more than one scythe to every two families.<sup>324</sup>
205. The First Nation submits that these Records indicate that the Crown clearly breached its treaty obligation by unilaterally reducing the First Nation’s entitlement to the Agricultural Treaty Benefits in this manner.
206. In addition, records from 1875 indicate that the Crown improperly restricted the provision of tools under Treaty No. 1 based on the use the First Nation made of them. For instance, in July 1875, Commissioner Provencher was instructed only to give tools “to those Indians...who are likely to make good use of them.”<sup>325</sup> Additionally, in November 1875, Provencher noted that because the First Nation utilized more hoes than ploughs, few ploughs

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<sup>322</sup> J. Provencher, Indian Commissioner, to the Minister of the Interior, February 16, 1874 [Doc. 55]. LAC RG 10 Vol. 3607 File 3023 Reel C-10105. See Holmes Report at page 35.

<sup>323</sup> “Return D (5) Manitoba” in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 73 [Doc.]. See Holmes Report at page 35.

<sup>324</sup> R. [Sinclair], Department of Indian Affairs, May 10, 1875 [Doc. 69]. LAC RG 10 Vol. 3614 File 4116 Reel C-10107. See Holmes Report at page 35.

<sup>325</sup> Department of Indian Affairs to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 76]. LAC RG 10 Vol. 3624 File 5134 Reel C-10109. See Holmes Report at pages 35 and 36.

were distributed.<sup>326</sup> Finally, in his annual report for 1875, Provencher stated “[t]he use they make of these articles, and the care they give to the cattle, exonerates the Government from all further responsibility.”<sup>327</sup>

The First Nation submits that according to Treaty No.1, the Crown was also obligated to provide ploughs and harrows in addition to those provided to each person cultivating the ground, if it was satisfied that these ploughs and harrows were being used as intended.<sup>328</sup> However, the Crown was not permitted to limit or cease the provision of any agricultural implements or tools based on its dissatisfaction with the use made of them. In doing so, the Crown breached its treaty obligations.

207. In addition to these breaches, the following records further indicate that the Crown failed to provide agricultural implements and tools in accordance with Treaty No. 1:

- a. records from 1876 indicate that the Crown was of the view that “only a very small proportion of the Indians who are cultivating” had received the plough and harrow to which they were entitled under Treaty No.1;<sup>329</sup>
- b. a record from 1878 indicates that the Crown failed to provide implements other than the grub hoe:

...They use the grub hoe very successfully in the absence of more suitable implements in the cultivation of their garden patches, from a fraction to six or seven acres in extent. Excellent crops of wheat and other grain have been raised on some of the Reserves by the use of no other implement;<sup>330</sup> and

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<sup>326</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 6-9. See Holmes Report at page 36.

<sup>327</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at page 36.

<sup>328</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 15.

<sup>329</sup> Alex. Morris, Lieutenant Governor, to the Minister of the Interior, October 26, 1876 [Doc. 100]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 36.

<sup>330</sup> E. McColl, Inspector of Indian Agencies and Reserves, to the Superintendent General of Indian Affairs, December 31, 1878, in Canada, *Report of the Deputy Superintendent General of Indian Affairs [1878]*, p. 54 [Doc. 134]. McColl did not report on any specific bands. See Holmes Report at page 27.

- c. a record of an 1891 deputation clearly suggests that the Crown breached its treaty obligations owed to the members of the First Nation residing at the Rapids. At this deputation the First Nation stated they had only received three ploughs, but only one was fit for use and one required two yoke of oxen to draw it.<sup>331</sup>
208. Based on all of the foregoing, the First Nation submits that the Crown failed to provide the full complement of agricultural implements and tools promised to the First Nation pursuant to Treaty No. 1.
- ii. ***Buggies for Chiefs, Braves, and Councillors***
209. As set out above in Part II, in the Memorandum of Outside Promises, the Crown promised to provide each Chief, except Yellow Quill, and the Braves and Councillors of each Chief, except Yellow Quill, with a buggy, with the buggies to be the property of the Indians to whom they are given.<sup>332</sup> Additionally, Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces also provided that each Chief with the exception of Bozawequare, the Chief of the Portage Band, was to receive a Buggy, or light spring wagon... and councillors of the Portage Band excepted,<sup>333</sup> were to receive a buggy.
210. Based on the population records gathered from the treaty annuity paylists and the Department of Indian Affairs Annual reports, for several decades from 1877 onwards, the First Nation had 3 chiefs and 12 braves and councillors. This means the First Nation was entitled to receive at least 15 buggies under Treaty No. 1.
211. As set out above in Part II, there are no records to indicate that the Crown ever provided any Chiefs, Braves, and Councillor's of the First Nation with buggies or light spring wagons.

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<sup>331</sup> E. McColl, Inspector of Indian Agencies, to F. Ogletree, Indian Agent, April 17, 1891 [Doc. 201]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at pages 40 and 41.

<sup>332</sup> W. M. Simpson and M. St. John, "Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871," ca. August 1871 [Doc. ]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 9] See Holmes Report at page 13.

<sup>333</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871] (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 13.

Rather, records indicate that the Crown provided “light express waggons” in 1872 to unspecified Bands, Chiefs and Councillors who were parties to Treaties 1 and 2.<sup>334</sup>

212. Moreover, records indicate that after the 1875 Order in Council purportedly made the Memorandum of Outside Promises part of Treaty No. 1, the Crown actively decided not to fulfill its promise to provide buggies.
213. In particular, on August 2, 1875, the Deputy Minister of the Interior stated that buggies were “quite unnecessary for the Indians” and therefore recommended Commissioner Provencher to induce the chiefs and councillors entitled to receive them to take agricultural implements or tools instead.<sup>335</sup> Based on these instructions, Provencher wrote to the Minister of the Interior on November 4, 1875, and noted that while according to the April 30, 1875 Order in Council, 64 buggies were required for “each Brave from Treaties Nos. 1 and 2.:

According to your instructions, I have refrained myself as far as possible to mention the fact to them and I hope that only few will be required, but as the amount is to be expended in some other way I have placed it in the Estimates.<sup>336</sup>

214. There are no records to indicate that the First Nation agreed to this variation of the terms of the treaty nor that any additional tools and implements were provided in lieu of buggies.
215. Based on these historical records, the First Nation submits that the Crown breached its treaty obligation to provide buggies in accordance with Treaty No. 1.

### **iii. *Farm Animals and Livestock***

216. The Crown promised to provide the following farm animals and livestock to the First Nation under Treaty No. 1:

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<sup>334</sup> William Spragge, Deputy Superintendent of Indian Affairs, March 14, 1873, in Canada, *Annual Report on Indian Affairs for the year ended 30th June, 1872* (Ottawa: I. B. Taylor, 1873), p. 6 [Doc. 42]. See Holmes Report at page 13.

<sup>335</sup> Deputy Minister of the Interior to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 77]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 44.

<sup>336</sup> J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 6-9. See Holmes Report at page 45.

- a. A cow for each chief<sup>337</sup>; Cows for the Chiefs and Headmen;<sup>338</sup>
- b. A male and female of “each kind of animal/all animals raised/used by farmers”<sup>339</sup> “the smaller kinds of animals bred upon a farm” for each Chief, these when the Indians are prepared to receive them;<sup>340</sup>
- c. A bull for the general use of each Reserve<sup>341</sup>; bulls for the Chiefs and Headmen<sup>342</sup>;
- d. A boar for each Reserve<sup>343</sup>;
- e. A sow for each Chief<sup>344</sup>; Hogs for Chiefs and Headmen;<sup>345</sup>
- f. Pigs and hens;<sup>346</sup>
- g. A yoke of oxen, and a second yoke of oxen “if fair use can be made of them”<sup>347</sup>;

<sup>337</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>338</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. See Holmes Report at page 14.

<sup>339</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]; Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at pages 13, and 15.

<sup>340</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at page 12.

<sup>341</sup> Wemyss M. Simpson, Indian Commissioner, to the Secretary of State for the Provinces, November 3, 1871, in Canada, *Report of the Indian Branch of the Department of the Secretary of State for the Provinces [1871]* (Ottawa: I. B Taylor, 1872), p. 28 [Doc. 13]. See Holmes Report at pages 12.

<sup>342</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>343</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>344</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>345</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>346</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at page 15.

<sup>347</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at pages 15 and 16.



- h. Horses for the Chiefs and Headmen<sup>348</sup>;
- i. Work oxen for the Chiefs and Headmen<sup>349</sup>;
- j. Sheep for the Chiefs and Headmen<sup>350</sup>; and
- k. Turkeys and fowls for the Chiefs and Headmen.<sup>351</sup>

217. The following table sets out the source of the promised farm animals and livestock:

Source of the Promise	Animal and Livestock Promised
Commissioner Simpson's November 3, 1871 Report on the Treaty Negotiations to the Secretary of State for the Provinces	Each chief was to receive a cow and a male and female of the smaller kinds of animals bred upon a farm  There was to be a bull for the general use of each Reserve
December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace	That these articles enumerated were...for the Chiefs and headmen,... horses,... work oxen, Bulls, Cows, Hogs, Sheep, Turkeys, and fowls
The Memorandum of Outside Promises	In lieu of a yoke of oxen for each Reserve, a Bull for each  A cow for each Chief  A Boar for each Reserve  A sow for each Chief  A male and female of each kind of animal raised by farmers

<sup>348</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>349</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>350</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>351</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc.37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge – Marginalia initialed by Alexander Campbell indicating approval	A male and female of all animals used by Farmers  A yoke of oxen  A second yoke of oxen “if fair use can be made of them”  Pigs and hens, but not sheep
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218. For the same reasons outlined in Part IV(A)(d)(i), the First Nation submits that the farm animals and livestock promised in the documents listed in the above table should be considered part of Treaty No.1.
219. Like agricultural implements and tools, the distribution system for certain farm animals and livestock is ambiguous, contradictory and/or deficient.
220. First, the term of Treaty No. 1 providing for a male and female of each kind of animal raised by farmers is somewhat ambiguous in that different wording is used in different treaty documents, and none of the wording specifies which animals were contemplated by this term.
221. According to *Marshall*, even in the absence of ambiguity, extrinsic evidence should be used to give “content” to this term:
- ... if there is evidence by conduct or otherwise as to how the parties understood the terms of the treaty, then such understanding and practice is of assistance in giving content to the term or terms.<sup>352</sup>
222. As set out in Part II, there exists extrinsic evidence that this term was intended to be construed broadly, and specifically, to include horses. In particular, in a letter to the Minister of the Interior dated October 1876, Lieutenant Governor Alexander Morris expressed his opinion that “each kind of animal raised by farmers” should include stallions and mares, observing that the memorandum attached to Treaty 1 “is very wide in its terms as regards animals.”<sup>353</sup>

<sup>352</sup> *Marshall*, paras 10-12 and 14.

<sup>353</sup> [E. A. Meredith] to Alexander Morris, Lieutenant Governor of Manitoba, November 6, 1876 [Doc. 101]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 64.

223. Additionally, the record of the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace indicates that each Chief and Headman of the First Nation was orally promised horses, work oxen, bulls, cows, hogs, sheep, turkeys, and fowls.<sup>354</sup>

224. Second, the terms providing for pigs, and hens do not specify whether these animals were to be distributed per reserve, chief, family, or individual. In terms of extrinsic evidence, the following extract from an Estimate dated November 27, 1873 for livestock to be provided to Bands in Treaties 1 and 2 suggests that pigs and hens were to be distributed to each individual settled on reserve:

Under Memo called “Outside Promises” they should have further

1 Bull for each Reserve = 13 Bulls

1 Cow for each Chief = 13 Cows

1 Boar for each Reserve = 13 Boars

1 Sow for each Chief = 13 Sows

also

For each Settler

2 Pigs [\$]12

2 Sheep [\$]8

2 Chickens [\$]2 \$22.00 ea.

to 745 persons = \$16,280.00<sup>355</sup>

225. To the contrary however, another record, being Provencher’s proposal to the Minister of the Interior dated December 2, 1876, suggests that pigs and hens were to be distributed to each family cultivating the land:

2 pigs @ \$6.00 each \$12.00

2 sheeps @ \$4.00 “ \$8.00

2 chickens @ \$1.00 “ \$2.00

The total \$22.00 being the amount to which each family cultivating the land might be entitled to under this head.<sup>356</sup>

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<sup>354</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>355</sup> “Extract from Supply Book, in Indian Office at Ottawa,” November 27, 1873 [Doc. 49]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. The total cost for the animals to be provided to individual settlers appears to be incorrect: \$22 x 745 = \$16,390. See Holmes Report at page 63.

<sup>356</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 2, 1876 [Doc. 104]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

226. Moreover, the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace suggests that hogs, and fowls, were to be distributed per Chief.<sup>357</sup>
227. Moreover, although Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge indicates that sheep were not promised, other extrinsic evidence including the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace, the Estimate dated November 27, 1873, and Provencher's proposal to the Minister of the Interior dated December 2, 1876 all suggest that sheep were promised. The most generous distribution system is set out in the Estimate dated November 27, 1873, which suggests sheep were intended to be provided per individual settled on the reserve.
228. The First Nation submits that these ambiguous/silent/contradictory terms and records regarding the distribution system for pigs, hens, and sheep should be interpreted such that the same were to be distributed per individual settled on reserve. This conclusion is supported by the well-established principles of treaty interpretation that ambiguous terms should not be interpreted to the prejudice of the First Nation if another construction is reasonably possible<sup>358</sup>, that any gaps or ambiguities in the evidentiary record must be interpreted in favour of the First Nation<sup>359</sup>, and that where the written text of the treaty is incomplete or deficient the court may imply terms into the treaty to produce a sensible result that accords with the parties' intentions, which must be interpreted generously based on the historical context.<sup>360</sup>
229. Next, the distribution system for oxen is also ambiguous, contradictory, and deficient. As explained above, Agent Molyneux St. John's February 1873 Report to Deputy Superintendent General Spragge provides for "a yoke of oxen, and a second yoke of oxen "if fair use can be made of them."<sup>361</sup> However, this term is silent regarding a distribution

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<sup>357</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>358</sup> *Marshall* at para 51.

<sup>359</sup> *Maliseet* at para 368.

<sup>360</sup> *Sioui*, at paras 110-111; *Marshall* at paras 41-44.

<sup>361</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 21-22, 26-27. See Holmes Report at pages 15 and 16.

system. That being said, the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace suggests that each Chief was promised work oxen.<sup>362</sup> This term does not specify how many oxen were to be provided to each Chief, but does suggest more than one per chief was contemplated. Finally, the Memorandum of Outside promises provides, “[i]n lieu of a yoke of oxen for each Reserve, a Bull for each.”<sup>363</sup>

230. The First Nation submits that these ambiguities, contradictions and deficiencies must also be resolved in favour of the First Nation having regard to the parties’ intentions based on the extrinsic evidence and historical context.
231. The following extrinsic evidence outlined in detail in Part II, sheds light on the intended distribution system for oxen. First, in Agent Molyneux St. John’s February 1873 Report to Deputy Superintendent General Spragge, he enumerated a list of articles that the Indians understood to have been promised under Treaty No. 1. One such term, which was subsequently initialed by Alexander Campbell indicating his approval, was that “[t]hey claim a Plough and a Harrow, a spade [marginalia: 2 spades], and axe [marginalia: 2 axes], and a hoe [marginalia: 2 hoes] for each head of family, a yoke of oxen with yoke and chain.”<sup>364</sup> Although somewhat ambiguous for oxen, each item in this list appears to have been designated per family. Certainly, the words “Reserve”, and “Chief” do not appear in this list.
232. Moreover, although the Memorandum of Outside Promises provides a bull for each Reserve, in lieu of a yoke of oxen, in their March 1874 Recommendations to the Minister of the Interior, the Board of Indian Commissions recommended one pair of oxen for every 10

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<sup>362</sup> David Prince, James Settee Sr., Henry Chief, Thomas Flett, William Bear, and Thomas Spence, December 30, 1872 [Doc. 37]. LAC RG 10 Vol. 3555 File 7 Reel C-10098. The Pembina Bands (Roseau River) were not part of this deputation. See Holmes Report at page 14.

<sup>363</sup> W. M. Simpson and M. St. John, “Memorandum of things outside of the Treaty which were promised at the Treaty at the Lower Fort, signed the 3rd Aug, 1871,” ca. August 1871 [Doc. 9]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. Also printed in Morris, *The Treaties of Canada*, 1880, pp. 126-127 [Doc. 143]. See Holmes Report at page 13.

<sup>364</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

families settled on the Reserve and a bull for each Reserve, if required.<sup>365</sup> This difference suggests that the Crown did not necessarily equate bulls and oxen.

233. Moreover, in terms of evidence of the parties' conduct, historical records indicate that the Crown provided more oxen than any other animal under Treaty No.1. The fact that more oxen were supplied than cows, which were to be supplied per Chief, suggests that the Crown intended the distribution system for oxen to be more generous than per chief. The next most generous distribution system after "per Chief" is "per family settled on reserve", and this system is supported by some extrinsic evidence.
234. The First Nation therefore submits that a liberal, yet realistic interpretation of the distribution system for oxen in favour of the First Nation, which aligns with the extrinsic evidence is that two oxen were to be distributed per family settled on reserve.
235. Finally, the First Nation submits that the contradiction between the Memorandum of Outside promises, which provides for a bull for each Reserve and the December 1872 Appearance of Treaty 1 Chiefs before a Justice of the Peace, which suggests that each Chief was a promised bull, should be resolved in favour of the First Nation such that the distribution system for bulls was per Chief.
236. Based on the above analysis of Treaty No. 1, and the population data from the treaty annuity paylists and Department of Indian Affairs Annual Reports set out in Part II, the First Nation submits that it would have been entitled, at minimum, to the following farm animals and livestock in 1872:

<b>Farm Animals and Livestock</b>	<b>Quantity Specified in Treaty No. 1</b>	<b>Quantity of Farm Animals and Livestock Owed</b>
Cow	Per Chief	3

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<sup>365</sup> Molyneux St. John, Minutes of the Board of Indian Commissioners, March 13, 1874 [Doc. 58]. LAC RG 10 Vol. 3608 File 3117 Reel C-10105. Some of these benefits reflected terms of Treaty 3, which had been completed in 1873 (i.e., annuity of \$5, ammunition, and agricultural assistance). See Holmes Report at page 16.

A male and female of each kind of animal used by farmers	Per Chief	6 of each kind of animal used by farmers, including horses
Bull	Per Chief	3
Boar	Per Reserve	1
Sow	Per Chief	3
Hog	Per Chief	3
Pig	Per individual settled on reserve	312
Hen	Per individual settled on reserve	312
Sheep	Per individual settled on reserve	312
Turkey	Per Chief	3
Fowl	Per Chief	3
Yoke of oxen	Per family settled on reserve	84

237. The historical records of the farm animals and livestock provided to the First Nation are also ambiguous and contradictory.

238. First, there exists a record that in August 1872, the First Nation was given a yoke of oxen.<sup>366</sup> However, another record, being a May 28, 1878 statement of cattle and other animals provided to the Pembina Bands from the date of treaty to December 31, 1877 states that the First Nation did not receive any farm animals in 1872. This statement also provides that the First Nation received 6 cows and 10 oxen prior to 1877.<sup>367</sup> In contrast, however, another January 18, 1881 “Statement of Cattle the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881”, indicates that the Crown provided the First

<sup>366</sup> Wemyss M. Simpson to W. Spragge, Deputy Superintendent General of Indian Affairs, August 19, 1872 [Doc. 36]. LAC RG 10 Vol. 3580 File 683 Reel C-10188. See Holmes Report at page 34.

<sup>367</sup> Jas. F. Graham, Acting Indian Superintendent, Manitoba Superintendency, to the Minister of the Interior, May 28, 1878 [Doc. 125]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 66.

Nation with 8 rather than 10 oxen between 1875 and 1877.<sup>368</sup> Worse yet, there is also evidence that the First Nation reported that it received 8 rather than 6 cows, and 11 oxen and 1 bull at some point before November 21, 1877.<sup>369</sup>

239. Given the Specific Claims Tribunal's decision in *Madawaska Maliseet First Nation*, the First Nation submits that the ambiguity in farm animals and livestock provided prior to 1877 must be interpreted in favour of the First Nation such that the lowest recorded number of farm animals provided prior to 1877 should be relied on being: 6 cows, 8 oxen, and 0 bulls.
240. The remaining Crown records pertaining to the provision of farm animals and livestock are also ambiguous because they do not specify:
- a. to which of the bands in Treaties 1 and 2 the animals were provided;
  - b. whether the animals were provided by the Crown as a treaty benefit, loaned to the First Nation<sup>370</sup>, or whether the First Nation otherwise purchased/obtained/raised the animals;
  - c. whether the animals that were purchased for the First Nation were actually provided to the First Nation; and
  - d. whether records of the farm animals and livestock provided to the "Reserve Proper" and the Roseau Rapids Band were separated.
241. The First Nation submits that all records of this ambiguous nature should not be included in the calculations of the number of animals and livestock provided to the First Nation under Treaty No.1 as these records could lead to gross overestimations of the number of animals provided.

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<sup>368</sup> Jas. F. Graham, Indian Superintendent, to the Superintendent General of Indian Affairs, January 19, 1881 [Doc. 149]; and "Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881," January 19, 1881 [Doc. 148]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 67.

<sup>369</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. Whippletrees, trace chains, scythes, and snaiths are not included in the implements required to be provided under the terms of Treaty 1 or the "Outside Promises." See Holmes Report at page 37.

<sup>370</sup> Francis Ogletree, Indian Agent, Portage la Prairie Agency, to the Superintendent General of Indian Affairs, September 1, 1883, in Canada, Annual Report of the Department of Indian Affairs for the year ended 31st December, 1883 (Ottawa: MacLean, Roger & Co., 1884), p. 54 [Doc. 162]. See Holmes Report at page 29.



242. Reconciling these ambiguous and contradictory records, the First Nation submits that the following farm animals and livestock were provided to the First Nation from the time of Treaty No. 1 to 1886:

Date Provided	Cows	Male and Female of all	Bull	Boar	Sow	Hog	Pig	Hen	Sheep	Turkey	Fowl	Oxen
Unknown date prior to 1877	6											8
July 28, 1878												1
1886	4 cows <sup>371</sup> 2 of which were distributed to the Roseau Rapids											
<b>Total</b>	10	0	0	0	0	0	0	0	0	0	0	9

243. Finally, there exists a non-ambiguous record that the Roseau Rapids Band received a yoke of oxen in 1885, but it is not clear whether this was counted in the 8 oxen reported to have been provided to the First Nation prior to 1877.<sup>372</sup> There is also evidence that in 1877, the First Nation informed the Crown “that they were promised some pigs, sheep, and chickens which have not yet been given.”<sup>373</sup>

244. As such, regardless of how one interprets the distribution system regarding the First Nation’s entitlement to farm animals and livestock, the historical records indicate that the Crown never provided animals other than cows, oxen, and perhaps a bull. As such, it is clear that

<sup>371</sup> In a subsequent letter, Agent Ogletree corrected this is read *one* cow. Francis Ogletree, Indian Agent, Portage la Prairie, to E. McColl, Inspector of Indian Agencies, April 30, 1891 [Doc. 203]. LAC RG 10 Vol. 3730 File 26306-1 Reel C-10127. See Holmes Report at page 68.

<sup>372</sup> Jas. F. Graham, Indian Superintendent, to the Superintendent General of Indian Affairs, January 19, 1881 [Doc. 149]; and “Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881,” January 19, 1881 [Doc. 148]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 67.

<sup>373</sup> Geo. Newcomb to the Superintendent General of Indian Affairs, November 21, 1877 [Doc. 121]. LAC RG 10 Vol. 3654 File 8904 Reel C-10114. See Holmes Report at page 66.

the Crown failed to provide the full complement of farm animals and livestock promised to the First Nation pursuant to Treaty No. 1.

245. The remainder of this section highlights further records which indicate that the Crown breached its treaty obligation to provide the First Nation with farm animals and livestock in accordance with Treaty No. 1.
246. First, several records indicate that the Crown improperly restricted the provision of farm animals and livestock based on whether the Crown felt the First Nation would make good use of them and take care of them in breach of Treaty No. 1. For instance, in his annual report for 1875, Commissioner Provencher stated that the practice “of distributing agricultural implements, some tools and some cattle, has met the requirements of the Indians, and nothing more will be claimed by them.” He further indicated, “[t]he use they make of these articles, and the care they give to the cattle, exonerates the Government from all further responsibility.”<sup>374</sup>
247. Second, records indicate that as of 1878, the Crown had failed to provide some Bands with cattle, horses and oxen:

Numerous instances can be cited where the members of Bands with ploughs and harrows, but without cattle or horses, have actually harnessed themselves and ploughed and harrowed their fields—ingenious use of ropes and portage straps. In other cases they have made train dogs do the work of the ox and the horse rather than make no use of the implements provided.<sup>375</sup>

248. Third, records indicate that instead of providing the Chiefs with a male and female of each animal used by farmers, the Crown decided to substitute these animals for cows. However, in addition to the Crown’s plan to limit the provision of these cattle based on the use made of them and care given to them, records further indicate that the Crown ultimately failed to provide both these substitutional cows and a male and female of each farm animal used by

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<sup>374</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at page 36.

<sup>375</sup> E. McColl, Inspector of Indian Agencies and Reserves, to the Superintendent General of Indian Affairs, December 31, 1878, in Canada, *Report of the Deputy Superintendent General of Indian Affairs* [1878], p. 54 [Doc. 134]. McColl did not report on any specific bands. See Holmes Report at page 27.

farmers. Moreover, there are no records that indicate the First Nation agreed to this variation of the treaty.

249. In particular, as set out above in Part II, records indicate that in September 1876, Commissioner Provencher wrote to the Minister of the Interior and informed him that some of the bands had expressed a desire to have cattle instead of the smaller farm animals that were promised in the Memorandum of Outside Promises. Provencher therefore asked what value or quantity of cattle would be considered appropriate to substitute for the smaller farm animals.<sup>376</sup> On October 7, 1876, Deputy Minister of the Interior E.A. Meredith responded to Commissioner Provencher, providing the Superintendent General's approval of the substitution, noting however, that cattle should only be given to bands that "would make good use of, and take care of them."<sup>377</sup>
250. Additionally, Commissioner Provencher stated that he did not intend to give each band the full amount of cattle in 1876, but proposed that a "very small proportion only might be allowed every year, or as the Indians may be in need of."<sup>378</sup> In providing explanations for some of his accounts for 1876, Commissioner Provencher explained to the Minister of the Interior that the accounts for cattle "represent the value of smaller animals promised to the Indians by the Treaty 1." He noted that he procured younger cattle, "as the value and not the quantity only is promised to the Indians," and this would enable them to get a greater number.<sup>379</sup>
251. Finally, on January 8, 1881, Indian Superintendent Graham provided a statement to Deputy Superintendent General L. Vankoughnet, in which he remarked that he was not aware of *any* cattle that had been supplied to bands in lieu of the smaller animals, except to one band in Treaty 2.<sup>380</sup>

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<sup>376</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, September 25, 1876 [Doc. 98]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 64.

<sup>377</sup> E. A. Meredith, Deputy Minister of the Interior, to J. A. N. Provencher, Acting Indian Superintendent, October 7, 1876 [Doc. 99]. LAC RG 10 Vol. 3571 File 124 Pt. 2 Reel C-10101. See Holmes Report at page 64.

<sup>378</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 2, 1876 [Doc. 104]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>379</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 5, 1876 [Doc. 105]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 65.

<sup>380</sup> Jas. F. Graham, Indian Superintendent, to the Superintendent General of Indian Affairs, January 19, 1881 [Doc. 149]; and "Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of

252. The First Nation submits that the Crown's unilateral decision to substitute smaller animals for young cows, and its the failure to provide both the substituted cows and the originally promised farm animals constitutes a breach of Treaty No. 1.

**iv. *Seed Wheat, Potatoes, and Garden Seed***

253. The Crown promised to provide the First Nation with seed wheat under Treaty No. 1. The source of this promise is Agent Molyneux St. John's February 1873 Report to the Deputy Superintendent General Spragge. Canada's recognition of this benefit is confirmed by marginalia reading "yes" next to seed wheat and initialed by Alexander Campbell, who became the Superintendent General of Indian Affairs and Minister of the Interior in 1873.<sup>381</sup>

254. Additionally, the Board of Indian Commissioner's March 1874 Report to the Deputy Superintendent General Spragge recommended that the Crown also provide potatoes and garden seeds in addition to seed wheat.<sup>382</sup>

255. The First Nation submits that the extrinsic evidence suggests that seed grain was understood to be a benefit promised under Treaty No. 1. In particular, in December 1880, Indian Superintendent Graham instructed the new Indian Agent for the First Nation that the "terms of the treaty provide that seed grain be supplied once for all by the Department."<sup>383</sup> Moreover, in 1891, Deputy Superintendant General L. Vankoughnet stated that Agent Ogltree could use his own discretion in supplying seed potatoes to the First Nation at the expense of the government. This statement suggests that seed was a treaty benefit, as the First Nation was not expected to pay the Crown back for the seed that was provided.

256. Overall, if seed wheat, potatoes and garden seeds were understood as treaty benefits, it is not clear what amount of the same the First Nation was entitled to under Treaty No. 1.

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Treaty to date 19th January 1881," January 19, 1881 [Doc. 148]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at page 67.

<sup>381</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>382</sup> Molyneux St. John, Minutes of the Board of Indian Commissioners, March 13, 1874 [Doc. 58]. LAC RG 10 Vol. 3608 File 3117 Reel C-10105. Some of these benefits reflected terms of Treaty 3, which had been completed in 1873 (i.e., annuity of \$5, ammunition, and agricultural assistance). See Holmes Report at page 16.

<sup>383</sup> Jas. F. Graham, Indian Superintendent, to J. E. Têtu, Indian Agent, December 22, 1880 [Doc. 146]. LAC RG 10 Vol. 3722 File 24233 Reel C-10126. See Holmes Report at page 82.

257. Records indicate that the Crown did provide some seed grain beginning in 1876,<sup>384</sup> and expended money on potatoes and garden seed for Treaty No. 1 in 1878.<sup>385</sup> However, records further indicate that the First Nation asked the Crown for their seed early in the spring of 1882<sup>386</sup>, and there are no records suggesting that this seed was ever provided.
258. Moreover, estimates for 1879-80 show that none of the seed grain purchased for Treaties 1 and 2 that year was used.<sup>387</sup> Records also indicate that in 1883, the Crown refused to provide members of the First Nation residing at the Roseau Rapids with more seed until they settled on the reserve proper.<sup>388</sup> Additionally, like many of the benefits promised under Treaty No. 1, the Crown made receipt of seed grain conditional upon the Crown's perception of the quality of care the First Nation's provided to the seed.<sup>389</sup>
259. Based on the foregoing, the First Nation submits that the First Nation was entitled to seed grain, potatoes, and garden seed under Treaty No. 1 and that the Crown breached its obligation to provide the full complement of this benefit as promised to the First Nation.

**v. *Farming Instructor, Carpenter, and Blacksmith***

260. The Crown promised to provide the First Nation with a farmer to teach them to cultivate the land, and a blacksmith and carpenter to assist them in building.<sup>390</sup> The source of this promise is Agent Molyneux St. John's February 1873 Report to the Deputy Superintendent General Spragge. Canada's recognition of this benefit is confirmed by marginalia initialed by Alexander Campbell, who became the Superintendent General of Indian Affairs and

<sup>384</sup> J. A. N. Provencher, Acting Indian Superintendent, Manitoba Superintendency, to the Superintendent General of Indian Affairs, February 1, 1877, in Canada, *Report of the Deputy Superintendent General of Indian Affairs* [1877], p. 36 [Doc. 109]. See Holmes Report at page 81.

<sup>385</sup> "B. – Indians of Manitoba," June 30, 1878, in Canada, *Report of the Deputy Superintendent General of Indian Affairs* [1878], p. 182 [Doc. 126]. See Holmes Report at page 81.

<sup>386</sup> Interview between Archibald and Kee-wee-tah-yash's brother, February 23, 1872 [19]. LAC MG 27 IC 10 Reel M-5538. See Holmes Report at page 25.

<sup>387</sup> Canada, *Report of the Auditor General on Appropriation Accounts of the year ended 30th June, 1879* (Ottawa: MacLean, Roger & Co., 1880), p. 201 [Doc. 139]. See Holmes Report at page 81.

<sup>388</sup> Francis Ogletree, Indian Agent, to James G. Graham, Indian Superintendent, June 11, 1883 [Doc. 161]. LAC RG 10 Vol. 3558 File 29 Reel C-10098. See Holmes Report at page 28.

<sup>389</sup> Francis Ogletree, Indian Agent, to the Superintendent General of Indian Affairs, October 29, 1886, in Canada, *Annual Report of the Department of Indian Affairs for the year ended 31st December, 1887* (Ottawa: MacLean, Roger & Co., 1888), p. 48 [Doc. 175]. See Holmes Report at page 82.

<sup>390</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

Minister of the Interior in 1873, next to the farmer, blacksmith, and carpenter, which said “yes, if it can be arranged.”<sup>391</sup>

261. Even if it is not accepted that a farmer, blacksmith and carpenter were expressly provided under Treaty No.1, extrinsic evidence suggests that this term should be implied. As explained by Binnie J. in *Marshall*, where it is necessary to give efficacy to the contract, the Court will imply a contractual term on the basis of the presumed intention of the parties.<sup>392</sup>
262. As is clear from the historical record, one purpose of Treaty No. 1 was to encourage the First Nation to live “in peace and harmony with the white man and by degrees adopting his habits of agriculture.”<sup>393</sup> The fact that provision of treaty benefits was meant to serve this purpose can be further gathered from Indian Agent Molyneaux St. John’s statement in 1873, that the Pembina Bands had made “some little progress towards cultivating the ground” and that in his opinion, “the greater part of the Indians of Manitoba would be converted into actual settlers” given some rearrangement of the terms of the treaty.<sup>394</sup> Surely, providing a farmer, blacksmith, and carpenter to assist the First Nation in learning how to farm, and build structures for their farm animals and livestock would have furthered the intention of the First Nation adopting agriculture. As such, the First Nation submits that it was entitled to a farmer, carpenter and blacksmith under Treaty No. 1.
263. The historical record suggests that a farmer was never provided to the First Nation as a treaty benefit. To the contrary, in 1898 although the Crown appointed two Farming Instructors in the Portage la Prairie Agency, including one to be stationed on the Roseau River Reserve,<sup>395</sup> these instructors were paid for by the First Nation. This conclusion is clear from Secretary

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<sup>391</sup> Molyneux St. John, Indian Agent, to W. Spragge, Deputy Superintendent General of Indian Affairs, February 24, 1873 [Doc. 40]. LAC RG 10 Vol. 3598 File 1447 Reel C-10104. See pp. 18-19. See Holmes Report at page 15.

<sup>392</sup> *Marshall* at para 43.

<sup>393</sup> Wemyss M. Simpson to W. Spragge, Deputy Superintendent General of Indian Affairs, August 19, 1872 [Doc. 36]. LAC RG 10 Vol. 3580 File 683 Reel C-10188. See Holmes Report at page 26.

<sup>394</sup> Molyneaux St. John, Indian Agent, Winnipeg, to Colonel J. A. Provencher, Indian Commissioner, October 22, 1873, in Canada, Annual Report of the Department of the Interior for the year ended 30th June, 1874 (Ottawa: MacLean, Roger & Co., 1875), p. 60 [Doc. 48]. See Holmes Report at page 26.

<sup>395</sup> J. D. McLean, Secretary, Department of Indian Affairs, to the Deputy Minister, March 2, 1898 [Doc. 229]. LAC RG 10 Vol. 3983 File 162550-1 Reel C-10168. See Holmes Report at page 46.

McLean's 1898 statement that the instructors' salaries were to be paid "by an assessment on the products of the Indians of ten cent, which will be funded here for this purpose."<sup>396</sup>

264. There are no records indicating that a blacksmith and carpenter were ever provided to the First Nation as a treaty benefit or otherwise.
265. The First Nation therefore submits that the Crown breached its treaty obligation to provide the First Nation with a farming instructor, carpenter and blacksmith in accordance with Treaty No. 1.

**vi. *Summary of Breach of Agricultural Treaty Benefits***

266. In summary, the First Nation submits that the Crown breached its obligation to provide the full complement of Agricultural Treaty Benefits to the First Nation as promised under Treaty No. 1, including agricultural implements and tools, buggies for Chiefs, Braves, and Councillors, farm animals and livestock, seed wheat, potatoes, and garden seed, and a farming instructor, carpenter and blacksmith.

**B. Breach of Fiduciary Duty**

267. The First Nation submits that the Crown breached its fiduciary obligations by failing to provide all of the benefits promised in Treaty No. 1, and by failing to implement the treaty promises in a method which would uphold the Crown's honourable obligations to the First Nation.
268. In *Ontario (Attorney General) v Bear Island Foundation*, the Supreme Court of Canada made the following statement, in *obiter*, about the relationship between the treaty and fiduciary obligations of the Crown:

...whatever may have been the situation upon the signing of the Robinson-Huron Treaty, that right was in any event surrendered by arrangements subsequent to that treaty by which the Indians adhered to the treaty in exchange for treaty

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<sup>396</sup> J. D. McLean, Secretary, Department of Indian Affairs, to S. R. Marlatt, Inspector, Portage la Prairie Inspectorate, March 17, 1898 [Doc. 230]. LAC RG 10 Vol. 3983 File 162550-1 Reel C-10168. See Holmes Report at page 46.

annuities and a reserve. It is conceded that the Crown has failed to comply with some of its obligations under this agreement, and thereby breached its fiduciary obligations to the Indians.<sup>397</sup>

269. In *R v Marshall*, Binnie J. underscored the importance of the honour of the Crown when entering into treaties with First Nations:

49 This appeal puts to the test the principle, emphasized by this Court on several occasions, that the honour of the Crown is always at stake in its dealings with aboriginal people. This is one of the principles of interpretation set forth in *Badger, supra*, by Cory J., at para. 41:

... the honour of the Crown is always at stake in its dealings with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown. It is always assumed that the Crown intends to fulfil its promises. No appearance of "sharp dealing" will be sanctioned.

50 This principle that the Crown's honour is at stake when the Crown enters into treaties with first nations dates back at least to this Court's decision 1895, *Ontario, Province v. The Dominion of Canada and Province of Quebec*. In *re Indian Claims* (1895), 25 S.C.R. 434. In that decision, Gwynne J. (dissenting) stated, at pp. 511 (para. 12)

...what is contended for and must not be lost sight of, is that the British sovereigns, ever since the acquisition of Canada, have been pleased to adopt the rule or practice of entering into agreements with Indian nations or tribes in their province of Canada, for the cession or surrender by them of what such sovereigns have been pleased to designate the Indian title, by instruments similar to these now under consideration to which they have been pleased to give the designation of "treaties" with the Indians in possession of and claiming title to the lands expressed to be surrendered by the instruments, and further that the terms and conditions expressed in those instruments as to be performed by or on behalf of the Crown, have always been regarded as involving a trust graciously assumed by the Crown to the fulfillment of which with the Indians the faith and honour of the Crown is pledged, and which trust has always been most faithfully fulfilled as a treaty obligation of the Crown.<sup>398</sup>

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<sup>397</sup> *Ontario (AG) v Bear Island Foundation*, 1991 2 SCR 570, 1991 CarswellOnt 600 at para 7.

<sup>398</sup> *Marshall* at paras 49-50.



270. Similarly, in *Beardy's & Okemesis*, the Specific Claims Tribunal explained that unilateral alteration of the terms of a treaty amounts to a breach of fiduciary duty:

[423] The precept of Crown honour in dealings with aboriginal interests did not originate with constitutional recognition and affirmation of aboriginal and treaty rights. In *Manitoba Métis Federation Inc v Canada (AG)*, 2013 SCC 14 at para 66, [2013] 1 SCR 623, the Supreme Court of Canada said:

The honour of the Crown arises “from the Crown's assertion of sovereignty over an Aboriginal people and de facto control of land and resources that were formerly in the control of that people”: *Haida Nation*, at para. 32. In Aboriginal law, the honour of the Crown goes back to the Royal Proclamation of 1763, which made reference to “the several Nations or Tribes of Indians, with whom We are connected, and who live under our Protection”: see *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 S.C.R. 103, at para. 42...

[424] If Aboriginal rights could, prior to the enactment of the *Constitution Act*, 1982, have been extinguished by competent legislation, this is not the case for treaty rights. Professor Leonard Rotman explains:

Since Aboriginal rights are inherent and do not depend upon Crown recognition or affirmation, the Crown accepted them in their full form when it assumed its position of power in Canada. Under the Doctrine of Continuity, the Crown was deemed, under its own laws, to have explicitly accepted all local laws and pre-existing rights of the Aboriginal peoples that it did not explicitly nullify or supercede at the time of its “acquisition” or assertion of sovereignty. The same principles which underlie the Doctrine of Continuity would have allowed the Crown to eliminate pre-existing Aboriginal rights entirely through executive action, such as the passing of legislation or the issuing of a royal proclamation. Treaty rights, however, are quite different, since they are entirely the product of negotiations between the parties.

Since treaties are negotiated instruments which the Crown has pledged its honour to uphold, it would be unseemly to allow those negotiated rights to be unilaterally altered by Crown legislation...

The Crown is under a fiduciary duty to uphold the integrity of treaty rights that it has guaranteed and protected under its name. The strict nature of the Crown's duty suggests that it be able to infringe upon treaty rights only under the most urgent of circumstances. On those occasions where it is able to derogate from its guarantee of treaty rights to Native peoples, the

Crown must act in accordance with fiduciary obligations of the highest order.

**If treaty rights are subject to alteration at the whim of the Crown, the solemn nature of the treaties in which they are contained is necessarily ignored, the Crown's fiduciary duty breached, and its honour tarnished.** Judicial recognition of the solemn nature of treaties between the Crown and Aboriginal peoples has resulted in the promulgation of special canons of treaty interpretation that apply to the compacts between the Crown and Native peoples. The Supreme Court of Canada has demonstrated its recognition of the solemn nature of treaties when it held that treaty rights could only be deemed to have been extinguished by strict proof thereof and then only with the consent of the Aboriginal signatories.

425 If treaty rights could have been abrogated legislatively in 1885, this was not done in any event. Parliament did not legislate a power to withhold treaty annuities. Neither was there an order of the Governor in Council. This was an administrative action.

[426] **Crown fiduciary duties derive from the precept of the honour of the Crown. Where, as in the present circumstances, there is a cognizable Indian interest that the Crown is honour bound to uphold, failure to do so amounts to a breach of fiduciary duty.**<sup>399</sup>

[Emphasis added]

271. In addition to breaching its fiduciary duty by failing to provide the full complement of Agricultural Treaty Benefits promised under Treaty No. 1, the First Nation submits that the Crown also breached its fiduciary duty to uphold the integrity of its treaty promises and to act in accordance with the honour of the Crown in the following ways:

- a. by unilaterally deciding to reduce the First Nation's entitlement to ploughs and harrows in 1874 from 1 plough and 1 harrow per individual settled on reserve and cultivating the ground to 1 plough and 1 harrow per every 4 families;<sup>400</sup>

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<sup>399</sup> *Supra* note 111, *Beardy's & Okemasis Band No. 96* at paras 423 to 426.

<sup>400</sup> "Return D (5) Manitoba" in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 73 [Doc. 70]; R. [Sinclair], Department of Indian Affairs, May 10, 1875 [Doc. 69]. LAC RG 10 Vol. 3614 File 4116 Reel C-10107. See Holmes Report at page 35.

- b. records suggest that in 1875-1876, the Crown further reduced the entitlement for ploughs and harrows to 1 plough and 1 harrow per every 5 families, and the entitlement for scythes from 1 per individual settled on reserve and cultivating the land to 1 per every 2 families;<sup>401</sup>
- c. by restricting and ceasing the provision of agricultural implements tools under Treaty No. 1 based on the use the First Nation made of the same;<sup>402</sup>
- d. by unilaterally deciding to substitute buggies with agricultural implements and tools, and then subsequently failing to provide the substituted agricultural implements and tools and/or the originally agreed upon buggies;<sup>403</sup>
- e. by restricting and ceasing the provision of farm animals and livestock based on whether the Crown felt the First Nation would make good use of them and take care of them;<sup>404</sup> and
- f. by unilaterally deciding to substitute a male and female of each animal used by farmers for young cows, and then subsequently failing to provide the substituted cows and/or the originally agreed upon male and female of each animal used by farmers.<sup>405</sup>

<sup>401</sup> R. [Sinclair], Department of Indian Affairs, May 10, 1875 [Doc. 69]. LAC RG 10 Vol. 3614 File 4116 Reel C-10107. See Holmes Report at page 35.

<sup>402</sup> Department of Indian Affairs to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 76]. LAC RG 10 Vol. 3624 File 5134 Reel C-10109; J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at pages 36 and 63.

<sup>403</sup> Deputy Minister of the Interior to J. A. N. Provencher, Indian Commissioner, August 2, 1875 [Doc. 77]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108; J. A. N. Provencher, Indian Commissioner, to the Minister of the Interior, November 4, 1875 [Doc. 87]. LAC RG 10 Vol. 3623 File 5091 Reel C-10109. See pp. 6-9. See Holmes Report at page 44.

<sup>404</sup> J. A. N. Provencher, Indian Commissioner, to the Superintendent General of Indian Affairs, October 30, 1875, in Canada, *Annual Report of the Department of the Interior for the year ended 30th June, 1875* (Ottawa: MacLean, Roger & Co., 1876), p. 33 [Doc. 86]. See Holmes Report at page 63.

<sup>405</sup> J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, September 25, 1876 [Doc. 98]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108; J. A. N. Provencher, Acting Superintendent, Manitoba Superintendency, to the Minister of the Interior, December 5, 1876 [Doc. 105]. LAC RG 10 Vol. 3621 File 4767 Reel C-10108; Jas. F. Graham, Indian Superintendent, to the Superintendent General of Indian Affairs, January 19, 1881 [Doc. 149]; and "Statement of Cattle distributed to the several Bands of Indians under Treaties No. 1 and 2 from date of Treaty to date 19th January 1881," January 19, 1881 [Doc. 148]. Both on LAC RG 10 Vol. 3621 File 4767 Reel C-10108. See Holmes Report at pages 64 and 67.

## PART V: CONCLUSION

272. In view of the above, the Roseau River Anishinabe First Nation claims that Canada owes an outstanding lawful obligation to the First Nation and that the First Nation's claim should be accepted for negotiation and a settlement concluded.

All of which is respectfully submitted this 6th day of October, 2023.

  
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## LIST OF AUTHORITIES

### Legislation

*Indian Act*, RSC, 1985, c I-5

*Specific Claims Tribunal Act*, S.C. 2008, c.22

### Case Law

*R v Sioui*, [1990] 1 SCR 1025, 1990 CarswellQue 103

*R v Taylor*, 1981 CarswellOnt 641, [1981] 3 CNLR 114

*Quebec (AG) v Moses*, 2010 SCC 17, 2010 CarswellQue 4341

*Behn v Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 SCR 227

*Ontario (AG) v Bear Island Foundation*, 1991 2 SCR 570, 1991 CarswellOnt 600

*R v Badger*, [1996] 1 SCR 771, 1996 CarswellAlta 365F

*R v Marshall*, [1999] 3 SCR 456, 1999 CarswellNS 262

*Nowegijick v The Queen*, [1983] 1 SCR 29, 1983 CarswellNat 123

*Simon v R*, [1985] 2 SCR 387, 1985 CarswellNS 226F

*Mitchell v Peguis Indian Band*, [1990] 2 SCR 85, 1990 CarswellMan 209

*Beardy's & Okemasis Band No. 96 v Canada (Minister of Indian Affairs and Northern Development)*, 2015 SCTC 3, 2015 CarswellNat 11351

*Watson v Canada*, 2020 FC 129, 2020 CarswellNat 145

*Madawaska Maliseet First Nation and Canada (Minister of Indian Affairs and Northern Development), Re*, 2017 SCTC 5, 2017 CarswellNat 9985