

**Saskatchewan treaties No.2, No.4, No.5, No.6, No.8, and No.10 :
historical background and provisions.**

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Treaties 2, 4, 5, 6, 8 and 10 - Historical Background and Provisions

From 1670 the sole government of Rupert's Land was lodged in the Hudson's Bay Company as "true and absolute Lordes and Proprietors" of "one of our Plantacions or Colonyes in America called Rupert's Land" (quotes from the Charter). Scrutiny of the record indicates that, during its tenure, the Company was not concerned with political or social control of the aborigines within its dominion other than to ensure that the furs they collected ended up in the Company's stores. The Company and its officers (who were few in number) were primarily concerned with the fur trade and not land use or settlement. As long as trade was not interfered with, such matters as social organization, land use and even group movements on the part of the aborigines were of little concern to the Company.

In order to enter Confederation the Hudson Bay Company's holdings had first to be surrendered to the Queen by the Company (November 1869). However, before the Surrender Canada had agreed to compensate the Company with the sum of £ 300,000 and 1/20 of all the land set out for settlement in the Fertile Belt, a huge tract of land bounded by the Rocky Mountains on the west, the North Saskatchewan River to the north, the Lake Winnipeg and Lake of the Woods systems on the east and the United States border to the south. (While Canada was interested in acquiring all of the Company's holdings, the new Dominion particularly wanted the Fertile Belt not only as the area most likely for immediate settlement but to secure the most practical right-of-way for the proposed Pacific Railway.) Canada had also agreed with the Company that the Dominion would settle the claims of Indian people affected in the transfer and this provision was written in as Article 14 of the Imperial Order-in-Council dated 23 June 1870 admitting Rupert's Land and the NWT into the Dominion of Canada.

None of the instruments attending the admission of Rupert's Land and the North-Western Territory into Confederation mentioned the "rights" or "sovereignty" of the aborigines ranging the lands to be dealt with; however, provision was made throughout for "claims to compensation for lands required for purposes of settlement" on the part of Indian people affected:

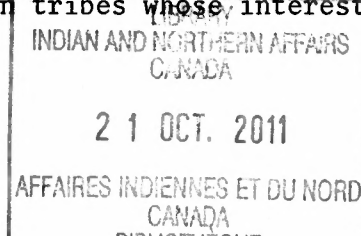
16, 17 December 1867 - Joint Address of the Senate and Commons (Canada) to the Queen
- "... upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines."

22 March 1869 - Agreement between Canada and the HBCo

Article 8 - "It is understood that any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government, and that the company shall be relieved of all responsibility in respect of them."

28 May 1869 - Resolutions of the Senate and Commons (Canada)

- "Resolved - That upon the transference of the territories in question to the Canadian Government, it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer."



29, 31 May 1869 - Second Address of the Senate and Commons (Canada) to the Queen
- "That upon the transference of the territories in question it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer, and we authorize and empower the Governor-in-Council to arrange any details that may be necessary to carry out the terms and conditions of the above agreement."

19 November 1869 - Deed of Surrender, HBCo to the Queen

Article 14 - "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsibility in respect of them."

23 June 1870 - Order-in-Council Admitting Rupert's Land and the North-Western Territory

Article 14 - "Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the company shall be relieved of all responsibility in respect of them."

Featured prominently in documents attending the transfer of the Company's lands to the new Dominion are items concerning the "Fertile Belt" which is defined as being "bounded as follows: - On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the northern branch of the Saskatchewan; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them." (Article 6, O i/c, 23 June 1870, admitting Rupert's Land and the North-Western Territory into the Dominion.) This was the area completely covered between 1871 and 1877 by numbered Treaties 1 to 7 in which Lieutenant-Governor Alexander Morris played a major part. According to Morris the Fertile Belt had to be opened to settlement as soon as possible and the most likely routes for a Pacific Railway to link the settled parts of eastern Canada with British Columbia would pass through it.

Conclusions

1. The specific exercise of the Royal Prerogative giving rise to numbered Treaties 1 to 11 was Article 14 of the Imperial Order-in-Council dated 23 June 1870, as follows, "... claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government..."
2. The preliminary discussions and agreements leading to the action of 23 June 1870 (and the Order-in-Council itself) involved only the Imperial Government, the successor Government of Canada and the Hudson Bay Company as participants. While the HBCo had been designated "Lordes and Proprietors" of the land, the "sale" aspects of the transfer on the Company's part had not been expected by the native peoples concerned.
3. Mere "compensation" could have involved only "once-for-all" cash or "in kind" payment (in this regard the Company's apparent major concern was to "be relieved of all responsibility ..."); however, no doubt influenced in part by current unrest among the native residents over the "sale" of Rupert's Land, the Canadian Government took the larger view reflected in the phrases "it will be the duty of the Government to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the Transfer" and manifested by

the continuing nature of the commitments in the numbered Treaties. (As to method, the large-scale post-Confederation exercises were substantially projections and expansions of that exhibited in the pre-Confederation (1850) Province of Canada Robinson-Huron and Superior-Treaties - Lieutenant-Governor Morris according due credit to William Benjamin Robinson in "The Treaties of Canada with the Indians of the North-West".)

4. Whereas the overall objective of the June 1870 Order-in-Council was acquisition of Rupert's Land and the North-Western Territory by the new Dominion of Canada, the historical record and the numbered Treaties' time scale confirms that Canada's immediate concern at that time was to open the Fertile Belt to settlement and to clear the way for the proposed Pacific Railway. Treaties 1 & 2 (1871) covered the embryo Province of Manitoba and the long-settled portion of the Red River Colony which remained within Canada; Treaty 3 (1873), the North-West Angle so necessary to the proposed Pacific Railway right-of-way; Treaty 4 (1874) most of the remaining area fronting on the U.S. boundary; Treaty 5 (1875) established control of the river-routes from Lake Winnipeg to Hudson Bay; Treaty 6 (1876) opened the vital region between the North and South Saskatchewan systems, and Treaty 7 (1877) the headwaters of the South Saskatchewan. During this spate of treaty activity, areas within Rupert's Land which were subsequently to become large portions of Northern Ontario and New Quebec were apparently not then considered objects for concern. Outside the Fertile Belt, it was not until twenty-two years had elapsed that Treaty 8 (1899), covering large areas in northern B.C., Alberta and Saskatchewan, was negotiated mainly to facilitate the passage of miners to the Pelly River gold strike in the Yukon; Treaty 10 (1906) dealt with a large area between Treaty 5 on the east, Treaty 6 to the south, Treaty 8 to the west and the 60th parallel on the north - although at least ten bands from the Treaty 10 area had been dealt with earlier in Treaty 6 exercises; Treaty 11 (1921) followed the discovery of oil at Fort Norman, NWT, in 1920.

Treaty Provisions

Treaty #2

1. Date Signed: 21 August 1871
2. Indian Groups: Swampy Cree and Chippewa from central Manitoba, south-eastern Saskatchewan and south-western Manitoba
3. Brief History: After the embryo Province of Manitoba was formed in 1870, the Indians of Manitoba appealed to the Honourable A.G. Archibald, Lieutenant-Governor of the new province, to enter into treaty with them. Subsequently negotiations were begun at the Stone Fort in the summer of 1871.
4. Area Ceded: Approximately 35,700 sq. mi.
5. Government Obligations: Reserves - 160 acres per family of five; maintain a school on each reserve at peoples' request; control of liquor traffic; Annuities - (by census), \$5 to each registered Indian (1875), Chiefs \$25.00; Once-for-all expenditures - \$3 per Indian, vehicles, farm stock and equipment; triennial clothing to each chief and headman.

No mention of hunting, fishing or trapping by Indians, nor medical care.

6. Adhesions: none

Treaty #4

1. Date Signed: 15 September 1874 - Qu'Appelle and Fort Ellice
2. Indian Groups: Cree and Saulteaux from southern Saskatchewan
3. Brief History: With the arrival of the North-West Mounted Police in the territory of present-day Saskatchewan and the extension of a telegraph line westward from Fort Garry, the advance of civilization had an unsettling effect on the local Indian inhabitants. For these reasons a commission was set up to negotiate a treaty to secure the good will and establish the prestige of the Canadian Government among the western tribes.
4. Area Ceded: 74,600 sq. mi.
5. Government Obligations: Reserves - 1 square mile per family of five, subject to Government's right to deal with intruders, to sell or lease reserve lands (with Indian consent), to appropriate reserve lands for Federal public purposes (subject to compensation in money or land); maintain a school on each reserve when people ready for a teacher; right to hunt, trap and fish except on tracts taken up for mining, lumbering, and settlement and subject to Federal "regulations"; control of liquor traffic; Annuities - (by census), \$5 per Indian, \$15 per headman; \$25 per chief; \$750 annually for ammunition and twine; triennial clothing for each chief and headman; Once-for-all-expenditures - \$12 per Indian, \$15 per headman, \$25 per chief; agricultural equipment and farm stock, blankets, tools, cloth, powder and shot, flags and medals.

No mention of medical care in the treaty provisions.

6. Adhesions: none

Treaty #5

1. Date Signed: 20 September 1875 - Berens River.
24 September 1875 - Norway House.
2. Indian Groups: Saulteaux and Swampy Cree from northern Manitoba and extreme north-western Ontario.
3. Brief History: By 1875 steam navigation had been introduced on Lake Winnipeg and settlements established on the principal waterways between Manitoba and the fertile western plains. Soon it became essential to extinguish the Indian title to all lands in the vicinity of Lake Winnipeg so that settlers and traders might have access to its waters, shores, islands, inlets and tributaries.

4. Area Ceded: 100,000 sq. mi. (33,400 sq. mi. were added by later adhesions).
5. Government Obligations: Reserves - 160 acres per family of five (100 acres per family of five at Fisher River), subject to Government's right - to deal with intruders, to sell or lease reserve lands (with Indian consent), to appropriate reserve lands for Federal public purposes (subject to compensation for improvements); right to navigate all lakes and rivers with free access to the shores; maintain schools on reserves as advisable, at peoples' request; right to hunt and fish except on tracts taken up for mining, lumbering and settlement or other purposes, and subject to Federal "regulations"; control of liquor traffic; Annuities - (by census), \$5 per Indian, \$15 per headman, \$25 per chief; \$500.00 annually for ammunition and twine; triennial clothing for each chief and headman; Once-for-all-expenditures - \$5 per Indian; tools, farm stock and equipment; flag and medal. (\$500 moving costs for the Saulteaux of Saskatchewan River).

No mention of medical care in treaty provisions.

6. Adhesions: 1876; 1908; 1909; 1910.

Treaty #6

1. Date Signed: 23 August and 28 August 1876 - Carlton
9 September 1876 - Fort Pitt
2. Indian Groups: Plain and Wood Cree Indians from central Alberta and central Saskatchewan
3. Brief History: The lands of the Cree adjoining the areas ceded by Treaties 4 and 5 contained a great deal of fertile land. News of Treaties 1 and 2 had reached the Cree and Blackfoot Indians and they expressed a desire for a treaty as early as 1871. Since the number of white settlers and miners was rapidly increasing, the Government felt a treaty was essential to maintain peace. In addition, an epidemic of smallpox and an outbreak of famine had decimated the western tribes in 1870 making the Indians apprehensive of the future.
4. Area Ceded: Approximately 121,000 sq. mi.
5. Government Obligations: Reserves - 1 square mile per family of five, subject to Government's right - to deal with intruders, to sell or lease reserve lands (with Indian consent), to appropriate reserve lands for Federal public purposes (subject to compensation for improvements); maintain schools on reserves, as advisable, at peoples' request; control of liquor traffic; right to hunt and fish except on tracts taken up for mining, lumbering, and settlement, and subject to Federal "regulations"; assistance in case of pestilence; medicine chest for use of Indians; Annuities - (by census), \$5 per Indian, \$15 per headman, \$25 per chief; \$1500 a year for ammunition and twine; triennial clothing; \$1000 a year for provisions (to last 3 yrs. intended for Indians at Ft. Pitt and adherents

engaging in agriculture); Once-for-all-expenditures - \$12 per Indian; agricultural equipment, vehicles, seed, tools, flags and medals.

6. Adhesions: 1877, 1878, 1879, 1882, 1889, 1944, 1950, 1954, 1956.

Treaty #8

1. Date Signed: 29 June 1899 - Lesser Slave Lake
1 June 1899 - Peace River Landing
8 July 1899 - Vermilion
25, 27 July 1899 - Fond du Lac
6 July 1899 - Dunvegan
13 July 1899 - Fort Chipewyan
17 July 1899 - Smith's Landing
4 August 1899 - Fort McMurray
14 August 1899 - Wapiscow Lake
2. Indian Groups: Cree, Beaver, Chipewyan, Slave and others.
3. Brief History: In 1898 the Commissioner of the North West Mounted Police reported the desirability of making a treaty with the Indians occupying the proposed route between Edmonton and the Pelly River. At the time it was considered neither politic nor practical to exclude from treaty certain Indians in northeastern British Columbia who were allied with the Athabaska Indians.
4. Area Ceded: Approximately 324,900 sq. mi.
5. Government Obligations: Reserves - 1 square mile per family of five or 160 acres per Indian living apart from band reserves, subject to Government's right - to deal with intruders, to sell or lease reserve lands (with Indian consent), to appropriate reserve lands for Federal public purposes subject to compensation for improvements (in money or land); right to hunt, fish and trap except on tracts needed for mining, lumbering or settlement, and subject to Federal "regulations"; pay school teachers as advisable; Annuities - (by census), \$5 per Indian, \$15 per headman; \$1 per Indian for ammunition and twine; spring provisions for several years; Once-for-all-expenditures - \$12 per Indian, \$22 per headman, \$32 per chief; tools, farm stock or equipment, seed, 2 horses and oxen per chief; silver medal and flag per chief.

No mention of medical care in treaty provisions.

6. Adhesions: 1900

Treaty #10

1. Date Signed: 28 August and 19 September 1906 - Isle à la Crosse
19 August and 22 August 1906 - Lac du Brochet
2. Indian Groups: Chipewyan, Cree and others from Northern Saskatchewan
3. Brief History: In 1905 Saskatchewan and Alberta were raised to provincial status. Indian claims to most of northern Saskatchewan and a small portion of Alberta had yet to be extinguished by treaty. As the Indians in the area had requested a treaty it was decided to open negotiations with a view to extinguishing the native claims.
4. Area Ceded: Approximately 85,800 sq. mi.
5. Government Obligations: Reserves - 1 square mile per family of five or 160 acres per Indian living apart from band reserves, subject to - Government's right to deal with intruders, to sell or lease reserve lands (with Indian consent), to appropriate reserve lands for Federal public purposes subject to compensation (in land or money); provision for education from time to time as deemed advisable; right to hunt, fish and trap except on tracts needed for mining, lumbering or settlement, subject to Federal "regulations"; Annuities - \$5 per Indian, \$15 per headman, \$25 per chief; triennial clothing to each chief and headman; annual distribution of ammunition and twine; assistance in agriculture and stock raising; Once-for-all-Expenditures - \$12 per Indian, \$22 per headman, \$32 per chief; medals and flags.

No mention of medical care in treaty provisions

6. Adhesions: none

By the comprehensive language used in each of the numbered treaties no doubt is left that the Indian people being dealt with were giving up, thereby, whatever rights they might have in the lands concerned.

SASKATCHEWAN

Major PROVISIONS of TREATIES #2, 4, 5, 6, 8, 10

A) RESERVES

Exact Quotes From Treaties Concerned

- Tr. #2 - "... Her Majesty the Queen hereby agrees and undertakes to lay aside and reserve for the sole and exclusive use of the Indians inhabiting the said tract the following lots of land, that is to say ... so much land as will make one hundred and sixty acres for each family of five persons, or in the same proportion for a greater or smaller number of persons."
(21 Aug. 1871)
- Tr. #4 - "... Her Majesty the Queen hereby agrees ... to assign reserves for said Indians ... to be of sufficient area to allow one square mile for each family of five, or in that proportion for larger or smaller families ..."
(15 Sept. 1874)
- Tr. #5 - "... Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands ... provided all such reserves shall not exceed in all one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families ... And ... Her Majesty the Queen hereby agrees to lay aside a reserve on the west side of Lake Winnipeg, in the vicinity of Fisher River, so as to give one hundred acres to each family of five, or in that proportion for larger or smaller families, who shall remove to the said locality within 'three years' ...".
(20, 24 Sept. 1875)
- Tr. #6 - "... Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for farming lands ... provided all such reserves shall not exceed in all one square mile for each family of five, or in that proportion for larger or smaller families ..."
(23, 28 Aug. 1876)
- Tr. #8 - "... Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian ..."
(21 June 1899)
- Tr. #10 - "... His Majesty the King hereby agrees and undertakes to set aside reserves of land for such bands as desire the same, such reserves not to exceed in all one square mile for each family of five for such number of families as may elect to reside upon reserves or in that proportion for larger or smaller families; and for such Indian families or individual Indians as prefer to live apart from band reserves His Majesty undertakes to provide land in severalty to the extent of one hundred and sixty (160) acres for each Indian ..."
(28 Aug. 1906)

NOTE: Bands in central and southern Saskatchewan received land under treaty years ago. In the northern parts of the Province a number of bands did not receive their land entitlement until recently, and there is still some land to be set aside. However, negotiations have been completed, the lands selected and when the survey work is complete and upon conveyance by the Province to Canada, the lands can be set apart formally for the respective bands. According to our records this will complete the land entitlement of bands under treaty in Saskatchewan.

May 18, 1971

Treaties 6, 8 and 10 - Province of Saskatchewan
Land Entitlement

As at January 1961 there were five Bands in northern Saskatchewan which had not received reserves to completely fulfill Treaty land entitlement. To date nine areas have been conveyed to Canada and have been set apart as reserves for the respective Bands. These are:

Treaty 6

Lac la Ronge Band

Morin Lake I.R. No. 217 - Order in Council P.C. 1968-1782
Grandmothers Bay I.R. No. 219 - Order in Council P.C. 1970-1613

Treaty 8

Fond du Lac Band

Fond du Lac I.R. No. 229 - Order in Council P.C. 1970-1821

Stony Rapids Band

Chicken I.R. No. 225 - Order in Council P.C. 1970-1822
Chicken I.R. No. 226 - Order in Council P.C. 1970-1657

Treaty 10

Lac la Hache Band

Lac la Hache I.R. No. 220 - Order in Council P.C. 1970-1658

Portage la Loche Band

La Loche I.R. No. 221
La Loche I.R. No. 222 Order in Council P.C. 1970-1614
La Loche I.R. No. 223

The four areas of land still to be conveyed to Canada are in Treaties 6 and 8. The Province of Saskatchewan has required further survey work to be done in these areas and this is now in hand. These four areas are:

Treaty 6

Lac la Ronge Band

Bittern I.R. No. 218

Treaty 8

Fond du Lac Band

Fond du Lac I.R. No. 227

Fond du Lac I.R. No. 228

Stony Rapids Band

Chicken I.R. No. 224

When these four parcels are conveyed to Her Majesty the Queen in right of Canada and formally set apart by Order in Council for respective Bands as set out above this will extinguish all the Treaty land entitlement of the Bands in northern Saskatchewan.

C) EDUCATION

Exact Quotes From Treaties Concerned

Tr. #2 - "... Her Majesty agrees to maintain a school in each reserve hereby made, whenever the Indians of the reserve shall desire it."

Tr. #4 - "... Her Majesty agrees to maintain a school in the reserve allotted to each band as soon as they settle on said reserve and are prepared for a teacher."

QUOTES:* - "... Whenever you go to a Reserve, the Queen will be ready to give you a school and a schoolmaster ..." Gov. Morris, p. 93
"... when they are ready for it she will send schoolmasters on every Reserve and pay them ..." Gov. Morris, p. 96

Tr. #5 - "... Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it."

Tr. #6 - "... Her Majesty agrees to maintain schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve desire it."

QUOTES:* - "... The Indians ... displayed a strong desire for instruction in farming, and appealed for the aid of missionaries and teachers. The latter the Commissioners promised, and for the former they were told they must rely on the churches, representatives of whom were present ..." Gov. Morris, p. 179

"... you need not concern yourselves so much about what your grand-children are going to eat; your children will be taught, and then they will be as well able to take care of themselves as the whites around them." Gov. Morris p. 213

Tr. #8 - "... Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable."

QUOTE:^o - "As to education, the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government." Report of the Commissioners for Treaty #8, p. 4

B) ANNUITIES

Exact Quotes From Treaties Concerned

- Tr. #2 - "... (by) census ... pay to each Indian family of five persons the sum of fifteen dollars, Canadian currency, or in like proportion for a larger or smaller family ..."

NOTE:

In 1875 the Privy Council raised the annuity for each Indian from \$3 to \$5 per annum and made an additional \$20 payment to each Chief annually.

- Tr. #4 - "... (by) census ... each Chief twenty-five dollars; each Headman, not exceeding four to a band, fifteen dollars; and to every other Indian ... five dollars per head ..."
- Tr. #5 - "... (by) census ... pay to each Indian the sum of five dollars per head yearly ... each Chief an annual salary of twenty-five dollars ... each subordinate officer, not exceeding three for each band...fifteen dollars per annum ..."
- Tr. #6 - "... (by) census ... pay to each Indian person the sum of \$5 per head yearly ... each Chief ... shall receive an annual salary of twenty five dollars per annum ... each subordinate officer, not exceeding four for each Band, shall receive fifteen dollars per annum ..."
- Tr. #8 - "... Her Majesty also agrees ... to (pay) annually ... each Chief twenty-five dollars, each Headman, not to exceed four to a large Band and two to a small Band, fifteen dollars, and to every other Indian of whatever age, five dollars ..."
- Tr. #10 - "... His Majesty also agrees ... to (pay) annually ... each Chief twenty-five (25) dollars, each headman fifteen (15) dollars and to every other Indian of whatever age five (5) dollars".

EDUCATION (cont'd)

Tr. #10 - "... His Majesty agrees to make such provision as may from time to time be deemed advisable for the education of the Indian children."

QUOTE:^o - "As to education, the Indians were assured that there was no need for special stipulation over and above the general provision in the treaty, as it was the policy of the government to provide in every part of the country as far as circumstances would permit, for the education of the Indian children, and that the law provided for schools for Indians maintained and assisted by the government being conducted as to religious auspices in accordance with the wishes of the Indians." Report of the Commissioners Treaty #10, p. 5

* From: Hon. Alexander Morris, Lieut.-Gov. of Manitoba, The North-West Territories, and Kee-Wa-Tin. The Treaties of Canada with the Indians, (1880)

^o From: Dept. Pamphlets, Treaties 8 and 10.

LIVELIHOOD (cont'd)

Tr. #8 - "... Her Majesty the Queen hereby agrees ... the said Indians ... shall have right to pursue their usual avocations of hunting, trapping and fishing throughout the tract surrendered ... subject to such regulations ... made by the Government of the country ... and saving and excepting such tracts ... taken up ... for settlement, mining, lumbering, trading or other purposes."

QUOTE:^o - "... we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and ... necessary ... to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it." Report of the Commissioners for Treaty #8, p. 4

Tr. #10 - "... His Majesty the King hereby agrees ... the said Indians ... shall have the right to pursue their usual avocations of hunting, trapping and fishing throughout the territory surrendered ... subject to such regulations ... made by the government of the country ... and saving and excepting such tracts ... taken up ... for settlement, mining, lumbering, trading or other purposes."

QUOTE:^o - "I guaranteed that the treaty would not lead to any forced interference with their mode of life ... (I) dwelt upon the importance, in their own interest, of the observance of the laws respecting the protection of fish and game." Report of the Commissioners for Treaty #10 p. 5

NOTE: Article 12 of the Saskatchewan Natural Resources Transfer Agreement (March, 1930) reads:

"In order to secure to the Indians of the Province the continuance ... of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province ... shall apply to the Indians within the boundaries thereof, provided ... that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access."

In the case of Daniels v. Queen (Man., 1968) the Supreme Court of Canada held that the Natural Resources Transfer Agreements are subject to the Migratory Birds Convention Act.

* From: Hon. Alexander Morris, Lieut.-Gov. of Manitoba, the North-West Territories, and Kee-Wa-Tin. The Treaties of Canada with the Indians, (1880)

^o From: Dept. Pamphlets, Treaties 8 and 10.

D) LIVELIHOOD (Hunting, Fishing, etc.) Exact Quotes From Treaties Concerned

Tr. #2 - Not Mentioned

Tr. #4 - "... Her Majesty agrees that ... Indians shall have right to pursue their avocations of hunting, trapping and fishing throughout the tract surrendered, subject to such regulations ... made by the Government of the country ... and saving and excepting such tracts as may be required for ... settlement, mining or other purposes ..."

QUOTE:* - "... you will have the right of hunting and fishing just as you have now until the land is actually taken up ..." Gov. Morris, p. 96

Tr. #5 - "Her Majesty further agrees ... the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to such regulations ... made by Her Government of Her Dominion of Canada ... and saving and excepting such tracts ... required or taken up for settlement, mining, lumbering or other purposes ..."

Tr. #6 - "Her Majesty further agrees ... the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered ... subject to regulations ... made by Her Government of Her Dominion of Canada, and saving and excepting such tracts ... taken up for settlement, mining, lumbering or other purposes ..."

QUOTES:* - "... I impressed strongly on them the necessity of changing their present mode of life, and commencing to make homes and gardens for themselves, so as to be prepared for the diminution of the buffalo and other large animals, which is going on so rapidly." Gov. Morris, p. 183

"You want to be at liberty to hunt as before. I told you we did not want to take this means of living from you, you have it the same as before, only this, if a man, whether Indian or Half-breed, had a good field of grain, you would not destroy it with your hunt ..." Gov. Morris, p. 218

"... The North-West Council is considering the framing of a law to protect the buffaloes, and when they make it, they will expect the Indians to obey it. The Government will not interfere with the Indian's daily life, they will not bind him. They will only help him to make a living on the reserves by giving him the means of growing from the soil his food ..." Gov. Morris, p. 241

PESTILENCE AND FAMINE (cont'd)

NOTE i: Of all the numbered Treaties as written, this provision is an exclusive feature of Tr. #6.

NOTE ii: In Regina v. Johnston (Sask. Court of Appeal, 1966), the Court held this treaty provision along with the "medicine chest" did not entitle an Indian "to receive general hospital services from the Government of Canada...".

Tr. #8 - not mentioned in Treaty #8 provisions, however the Report of the Commissioners for Treaty 8, p. 3 (Dept. Pamphlets) states:

"We told them that the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada ..."

Tr. #10 - not mentioned in Treaty #10 provisions, however the Report of the Commissioners for Treaty 10, p. 5 (Dept. Pamphlets) states:

"... the government was always ready to assist Indians in actual destitution; that in times of distress they would, without any special stipulation in the treaty, receive such assistance as it was usual to give in order to prevent starvation among them ..."

* From: Hon. Alexander Morris, Lieut.-Gov. of Manitoba, The North-West Territories, and Kee-Wa-Tin. The Treaties of Canada with the Indians, (1880)

E) PESTILENCE AND FAMINE

Exact Quotes From Treaties Concerned

Tr. #6 - "... in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen ... will grant to the Indians assistance of such character and ... extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians ..."

QUOTES:* - "... They saw the food supply, the buffalo, passing away, and they were anxious and distressed ... They desired to be fed. Small-pox had destroyed them by hundreds a few years before and they dreaded pestilence and famine ... The food question, was disposed of by a promise, that in the event of a *National* famine or *pestilence* such aid as the Crown saw fit would be extended to them ..." Gov. Morris, p. 178

"... They were anxious to learn to support themselves by agriculture, but felt too ignorant to do so, and they dreaded that during the transition they would be swept off by disease or famine ... I replied ... as to our inability to grant food, and again explaining that only in a national famine did the Crown ever intervene ... I closed by stating that, after they settled on the reserves, we would give them provisions to aid them while cultivating, to the extent of one thousand dollars per annum, but for three years only, as after that time they should be able to support themselves." Gov. Morris, p. 186

"... explaining, with regard to assistance, that we could not support or feed the Indians, and all that we would do would be to help them cultivate the soil. If a general famine came upon the Indians the charity of the Government would come into exercise. I admitted the importance of steps being taken to preserve the buffalo, and assured them that it would be considered by the Governor-General and Council of the North-West Territories, to see if a wise law could be framed such as could be carried out and obeyed." Gov. Morris, p. 188

"... The North-West Council is considering the framing of a law to protect the buffaloes, and when they make it they will expect the Indians to obey it. The Government will not interfere with the Indian's daily life, they will not bind him. They will only help him to make a living on the reserves by giving him the means of growing from the soil, his food. The only occasion when help would be given, would be if Providence should send a great famine or pestilence upon the whole Indian people included in the treaty. We only looked at something unforeseen and not at hard winters or the hardships of single bands, and this, both you and I, fully understood." Gov. Morris, p. 241

PA
Ottawa 4, February 6th, 1970.

Mr. R.H. Connelly,
Regional Director,
Manitoba Regional Headquarters,
Winnipeg, Manitoba.

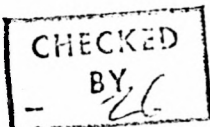
In one of the discussion groups which I attended at the Wendigo Conference, a question was raised as to why Chiefs and Councillors under Treaty No.5 did not receive the \$5.00 per capita payment in addition to the \$25.00 and \$15.00 as set out for Chiefs and Councillors in the wording of the Treaty.

... When I returned to Ottawa I raised the matter with the Community Affairs people and, for your information, I am submitting a reply which I received from Henry Rogers, dated January 29th.

Original Sent by
J.W. Churchman

CHURCHMAN:LAS

J.W. Churchman,
Senior Consultation Officer.



21

Department of
Indian Affairs and
Northern Development



Ministère des
Affaires indiennes et
du Nord canadien

OTTAWA 4, January 29, 1970

our file, notre dossier 1/28-3 (C27)
your file, votre dossier

J.W. Churchman,
Senior Consultation Officer.

The question raised by the Indian Brotherhood meeting in Manitoba on the Annuities payable to Chiefs and Councillors, under Treaty No. 5, is one which has been raised on several occasions over the years.

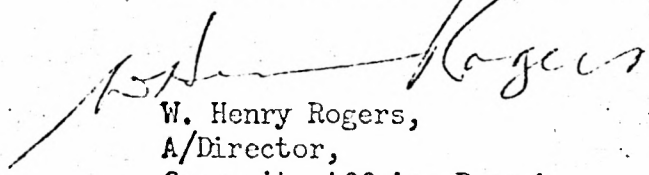
The pertinent part of Treaty No. 5 reads as follows:

"And further, that Her Majesty's Commissioners shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all the Indians inhabiting the tract above described, distributing them in families, and shall in every year ensuing the date hereof, at some period in each year to be duly notified to the Indians, and at a place or places to be appointed for that purpose within the territory ceded, pay to each Indian person the sum of five dollars per head yearly.....

It is further agreed between Her Majesty and the said Indians that each Chief duly recognized as such shall receive an annual salary of twenty-five dollars per annum, and each subordinate officer, not exceeding three for each band, shall receive fifteen dollars per annum; and each such Chief and subordinate officer as aforesaid shall also receive, once every three years, a suitable suit of clothing; and each Chief shall receive, in recognition of the closing of the treaty, a suitable flag and medal".

--A copy of the Legal Adviser's opinion in the matter is attached.

It appears that the Legal Adviser based his opinion on the fact that at no time was a Chief paid \$25.00 annually plus \$5.00, nor was a Councillor paid \$15.00 plus \$5.00. The records were searched, and since the question was not raised immediately after the treaty was signed, he is satisfied that the intent was that the Chief's full entitlement is \$25.00 and each Councillor's \$15.00.


W. Henry Rogers,
A/Director,
Community Affairs Branch.

Encl. (1)

REGINA v. JOHNSTON

Saskatchewan Court of Appeal, Culliton, C.J.S., Woods, Brownridge, Maguire and Hall, J.J.A. March 17, 1966.

Indians — Treaty rights — Entitlement to "medicine chest" and relief from "pestilence" or "general famine" — Whether thereby entitled to "general hospital services" — Whether exempt from hospital tax — *Saskatchewan Hospitalization Act* — *Indian Act* (Can.), s. 87.

Evidence — Judicial notice — Interpretation of treaty — Meaning of language — Judicial notice of facts of history — Reference to treatise.

A treaty between the Crown and certain Indian tribes concluded in 1876 provided "That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent" and "That in the event . . . of the Indians . . . being overtaken by any pestilence, or by a general famine, the Queen . . . will grant . . . assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity . . ." Such provisions do not entitle an Indian "to receive general hospital services from the Government of Canada" so as to exempt the Indian from payment of hospitalization tax under s. 23(1) (iv) of the Regulations issued under the *Saskatchewan Hospitalization Act*, R.S.S. 1953, c. 232 [now R.S.S. 1965, c. 253]. Nor, therefore, could he be protected by s. 87 of the *Indian Act*, R.S.C. 1952, c. 149, which makes provincial laws applicable to Indians "except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made under this Act".

The Court must give the words of the treaty the ordinary meaning that would have been attributed to them at the time the treaty was made and in so doing may take judicial notice of the facts of history by reference to authoritative treatises.

[*R. v. White and Bob* (1964), 50 D.L.R. (2d) 613, 52 W.W.R. 193 [aff'd 52 D.L.R. (2d) 481n, [1965] S.C.R. vi], apud]

APPEAL by way of stated case from an acquittal by a Magistrate on a charge under the *Saskatchewan Hospitalization Act* for failing to pay hospital tax.

Ronald L. Barclay, for the Crown.

D. S. Newsham, for respondent.

The judgment of the Court was delivered by

CULLITON, C.J.S.:—This is an appeal by the Attorney-General for Saskatchewan by way of stated case.

The respondent was charged on an information dated March 22, 1965, that he, being a resident of Saskatchewan, did unlawfully fail to pay 1963 tax on or before August 31, 1963, as required by the *Saskatchewan Hospitalization Act*,

R.S.S. 1953, c. 232 [now R.S.S. 1965, c. 253], and amendments and Regulations thereto. On being arraigned before Judge Policha of North Battleford, a plea of not guilty was entered.

Pursuant to s. 703(5) of the *Criminal Code*, certain facts were admitted by the respondent, namely: that he, Walter Johnston, was a resident of Saskatchewan and that he had not paid the tax as alleged in the information. It was agreed by counsel for the Crown that the respondent was an Indian within the meaning of the *Indian Act*, R.S.C. 1952, c. 149. There was filed by the prosecution a copy of the Regulations issued under the *Saskatchewan Hospitalization Act*. The two pertinent sections of these Regulations [O.C. 1400/62, 53 Sask. Gaz., p. 861] are as follows:

21. Where the tax is to be paid by the Government of Canada in accordance with an arrangement to that effect between that Government and the Government of Saskatchewan on behalf of a resident who is an Indian within the meaning of The Indian Act (Canada) and is residing on an Indian reserve or has been residing outside an Indian reserve for less than twelve months, the other provisions of these regulations shall apply to such resident and to the tax payments made on his behalf.

23(1) Subject to the provisions of section 24 the following classes of persons shall be exempt from taxation:

(iv) every other person who is entitled to receive general hospital services from the Government of Canada at the beginning of the tax year, to the extent that he continues to be entitled to such general hospital services during the tax year.

Counsel for the prosecution stated that while there was no written agreement, there was an undertaking between the Government of Canada and the Government of Saskatchewan that the Government of Canada would pay the hospitalization tax for Indians residing on a reserve or who had been residing outside a reserve for less than 12 months. The evidence established that Johnston had permanent employment in the City of North Battleford and had been residing outside an Indian reserve for more than 12 months.

No evidence was called in defence. There was filed by counsel for the respondent a certified copy of Treaty Number 6 made between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions and concluded in 1876 [Indian Treaties and Surrenders (1891), vol. 2, No. 157A, p. 35], with special reference to the following clauses in that Treaty:

That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent.

That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them.

In disposition of the charge, the learned Judge of the Magistrate's Court, in a written judgment, said in part:

Referring to the "medicine chest" clause of Treaty No. 6, it is common knowledge that the provisions for caring for the sick and injured in the areas inhabited by the Indians in 1876 were somewhat primitive compared to present day standards. It can be safely assumed that the Indians had limited knowledge of what provisions were available and it is obvious that they were concerned that their people be adequately cared for. With that in view, and possibly carrying the opinion of Angers, J., a step farther, I can only conclude that the "medicine chest" clause and the "pestilence" clause in Treaty No. 6 should properly be interpreted to mean that the Indians are entitled to receive all medical services, including medicines, drugs, medical supplies and hospital care free of charge. Lacking proper statutory provisions to the contrary, this entitlement would embrace all Indians within the meaning of the *Indian Act*, without exception. In my opinion, the accused falls within the exemption from taxation set forth in s. 23(1) (iv) of the Regulations and is not required to pay the tax.

I find the accused not guilty as charged.

In stating the case for the Court, the learned Judge found the facts as I have outlined them, and submitted the following questions:

- (1) Was I right in holding that Treaty No. 6 applied to the defendant, Walter Johnston?
- (2) Was I right in holding that the clause which reads as follows:
"That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent"
in Treaty No. 6, covered premiums payable under the Saskatchewan Hospitalization Act by the said defendant, Walter Johnston?
- (3) Was I right in holding that the said defendant, Walter Johnston, is exempt from taxes by virtue of Regulation 23(1) (iv) of the Regulations made pursuant to The Saskatchewan Hospitalization Act, O.C. 1400/62, Saskatchewan Gazette, September 14, 1962, Volume 58, No. 37, and thereby not required to pay the said tax?

It was agreed and so found by the trial Judge that the respondent was an Indian as defined in the *Indian Act* and that he was a descendant of the Indians on behalf of whom Treaty Number 6 was made. Treaty Number 6 is, in my opinion, a treaty of the type referred to in s. 87 of the *Indian*

Act. He is, therefore, in my opinion, entitled to any rights or immunities under the said Treaty that may have been contemplated by Parliament in enacting s. 87 of the *Indian Act*, unless the claim to such vested rights and immunities is limited to Indians residing on a reserve. Section 87 reads:

87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

I want to make it perfectly clear that the issue before this Court is not one relating to the general responsibility of the Government of Canada to Indians, but simply whether the learned trial Judge was right in his interpretation of the "medicine chest" and "pestilence" clauses of the Treaty. If I conclude that the learned trial Judge was right in his interpretation, only then would it become necessary to determine whether the respondent, as a non-resident of a reserve, is entitled to the benefits of the terms of the Treaty.

In the interpretation of the clauses of a treaty, one must first look to the words used and give to those words the ordinary meaning that would be attributed to them at the time the treaty was made. To do so, too, it is both proper and advisable to have recourse to whatever authoritative record may be available of the discussions surrounding the execution of the treaty. I agree with the opinion expressed by Norris, J.A., in *R. v. White and Bob* (1964), 50 D.L.R. (2d) 613, 52 W.W.R. 193 [affd 52 D.L.R. (2d) 481n, [1965] S.C.R. vi], when, at p. 629, he said:

The Court is entitled "to take judicial notice of the facts of history whether past or contemporaneous" as Lord du Parcq said in *Monarch Steamship Co., Ltd. v. Karlshamns Oljefabriker (A/B)*, [1949] A.C. 196 at p. 234, [1949] 1 All E.R. 1 at p. 20, and it is entitled to rely on its own historical knowledge and researches. *Read v. Bishop of Lincoln*, [1892] A.C. 644, Lord Halsbury, L.C. at pp. 652-4.

I have perused the treatise entitled *Treaties of Canada with the Indians of Manitoba, North-West Territories, and Kee-Wa-Tin*, by the Honourable Alexander Morris, P.C. The learned author, in this work, presents an authoritative record of the negotiations which resulted in the conclusion of a number of treaties, including Treaty Number 6. It is apparent that in the negotiation of Treaty Number 6 the Indians

greatly feared both pestilence and starvation. The learned author, at p. 178, says:

They desired to be fed. Small-pox had destroyed them by hundreds a few years before, and they dreaded pestilence and famine,

and then he went on to say:

The food question, was disposed of by a promise, that in the event of a *National* famine or *pestilence* such aid as the Crown saw fit would be extended to them, and that for three years after they settled on their reserves, provisions to the extent of \$1,000.00 per annum would be granted them during seed-time.

The undertaking so given was incorporated in the "pestilence" clause of the Treaty. Thus both historically, and on the plain language of the clause, it means no more than it plainly states: the obligation of the Crown in the event of pestilence or general famine, to provide such assistance as the Chief Superintendent of Indians should deem necessary and sufficient to meet the calamity. With every deference to the contrary opinion of the learned Judge of the Magistrate's Court, I do not think this clause of the Treaty has any relevancy in the determination of the question with which he was faced.

There is nothing in Morris' treatise to suggest that any meaning should be given to the words "medicine chest" other than that conveyed by the words themselves in the context in which they are used. The only reference I can find in the treatise is at p. 218, where the author states: "A medicine chest will be kept at the house of each Indian agent, in case of sickness amongst you." The "medicine chest" clause in the Treaty incorporates this undertaking.

Again, on the plain reading of the "medicine chest" clause, it means no more than the words clearly convey: an undertaking by the Crown to keep at the house of the Indian agent a medicine chest for the use and benefit of the Indians *at the direction of the agent*. (The italics are mine.) The clause itself does not give to the Indian an unrestricted right to the use and benefit of the "medicine chest" but such rights as are given are subject to the direction of the Indian agent. Such limitation would indicate that the obligation was to have physically on the reservations, for the use and benefit of the Indians, a supply of medicine under the supervision of the agent. I can find nothing historically, or in any dictionary definition, or in any legal pronouncement, that would justify the conclusion that the Indians, in seeking and accepting the Crown's obligation to provide a "medicine chest" had in contemplation provision of all medical services, including hospital care.

Mr. Justice Angers, of the Exchequer Court of Canada, in an unreported judgment in *Dreaver v. The King*, gave an extended interpretation to the "medicine chest" clause of the Treaty when, at p. 20, he said:

The clause might unquestionably be more explicit but, as I have said, I take it to mean that all medicines, drugs or medical supplies which might be required by the Indians of the Mistawasis Band were to be supplied to them free of charge.

In reaching the foregoing conclusion, the learned Justice appears to have relied on the evidence of the suppliant Dreaver, who testified he was present during the negotiation of the Treaty and that it was understood that all medicines were to be supplied free to the Indian. There appears to be nothing in his evidence to support any wider interpretation of the clause than that given to it by Mr. Justice Angers. While I express no opinion as to the correctness of the interpretation of the clause as made by Mr. Justice Angers, I do not think, with respect, that the interpretation so given justifies the extended meaning attributed thereto by the learned Judge of the Magistrate's Court.

In light of the conclusion which I have already stated, it is not necessary for me to answer Q. 1 of the stated case, but I must answer "No" to Qq. 2 and 3. I direct that the matter be remitted back to the learned Judge of the Magistrate's Court for disposition.

Appeal allowed; case remitted.

RE HALLIWELL AND WELFARE INSTITUTIONS BOARD (B.C.)

British Columbia Supreme Court, Munroe, J. December 9, 1967.

Administrative law — Boards and tribunals — Welfare Institutions Board cancelling licence for rest home — Whether acting judicially or administratively — Requirements of natural justice — Welfare Institutions Licensing Act (B.C.).

When the Welfare Institutions Board of British Columbia cancels a licence required for the operation of a private rest home in the Province under the terms of the *Welfare Institutions Licensing Act*, R.S.B.C. 1960, c. 406, as amended and Regulations pursuant thereto, it decides an issue affecting the rights of the licensee and must therefore act judicially and give the licensee an opportunity to know in what respect it is alleged to have violated any provisions of the Act or Regulations and to make answer to such allegations.

A failure by the Board to observe such procedure constitutes a denial of natural justice and its order will be quashed on *certiorari* proceedings.

F) MEDICINE CHEST

Exact Quotes From Treaties Concerned

Tr. #6 - "... a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent."

QUOTES:* - "... That we be supplied with medicines free of cost ..." Ind. rep., p. 215

- "A medicine chest will be kept at the house of each Indian agent, in case of sickness amongst you ..." Gov. Morris, p. 218

NOTE i: Of all the numbered Treaties as written, this provision is an exclusive feature of Tr. #6.

NOTE ii: In the case of Regina v. Johnston (Sask. Court of Appeal, 1966) reaffirmed by Regina v. Swimmer (Sask. Court of Appeal, 1970), copies attached, the Court held that:

"... the terms of Treaty 6 do not impose upon the Government of Canada the obligation of providing, without cost, medical and hospital services to all Indians."

NOTE iii: The Supreme Court of Canada has yet to set a date when the appeal will be heard in the Swimmer Case.

Tr. #8 - not mentioned in Treaty #8 provisions, however the Report of the Commissioners for Treaty 8, p. 4 (Dept. Pamphlets) states:
"... We promised that supplies of medicines would be put in the charge of persons selected by the Government at different points, and would be distributed free to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, that the Government would always be ready to avail itself of any opportunity of affording medical service ..."

Tr. #10 - not mentioned in Treaty #10 provisions, however the Report of the Commissioners for Treaty 10, p. 5 (Dept. Pamphlets) states:
"I promised that medicines would be placed at different points in the charge of persons to be selected by the government, and would be distributed to those of the Indians who might require them. I showed them that it would be practically impossible for the government to arrange for a resident doctor owing to the Indians being so widely scattered over such an extensive territory; but I assured them that the government would always be ready to avail itself of any opportunity of affording medical service ..."

* From: Hon. Alexander Morris, Lieut.-Gov. of Manitoba, The North-West Territories, and Kee-Wa-Tin. The Treaties of Canada with the Indians, (1880)

Legal Division

CANADA

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

136/3-8
April 4, 1957

R.T.
MEMORANDUM FOR: MR. W. C. BETHUNE
SUPERINTENDENT
RESERVES AND TRUSTS
INDIAN AFFAIRS BRANCH

T. 5-1-57
I acknowledge your memorandum of the 25th ultimo and in my opinion it can be said that under Treaty No. 5 each Chief is entitled to \$5.00 over and above \$25.00 and each subordinate Officer is entitled to \$5.00 over and above \$15.00. The point, however, is not at all clear in the Treaty. In view of this I believe we can look at other documents on the same subject, i.e., other Treaties, in order to determine the meaning of Treaty No. 5 in so far as it relates to the payment of treaty money. This is a rule of construction and I see no reason why it cannot be applied here. Other Treaties clearly indicate that Chiefs and subordinate Officers or head men are not entitled to the general payment of \$5.00 over and above the larger special payment made because of their rank.

Applying the above mentioned rule, my conclusion is that under Treaty No. 5 the Chiefs and subordinate Officers are only entitled to \$25.00 and \$15.00 respectively.

D. H. Christie
D. H. Christie
Legal Adviser.

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BEFORE: FULL COURT

BETWEEN:

HER MAJESTY THE QUEEN,

APPELLANT,

- and -

ANDREW SWIMMER, of
Battleford, in the
Province of Saskatchewan,

RESPONDENT.

SERGE KUJAWA, Q.C. for the Crown, APPELLANT.

J. M. KOSKIE for the RESPONDENT.

JUDGMENT OF THE COURT

CULLITON, C.J.S.

This is an appeal by The Honourable the
Attorney General for Saskatchewan by way of Stated
Case.

The respondent was charged in an Information
that he, on May 13, 1968, being a resident of
Saskatchewan, did unlawfully fail to pay the 1966 joint
tax, consisting of the following:

The Saskatchewan Hospitalization Act Tax \$48.00

The Saskatchewan Medical Care Insurance

Act Premium

\$24.00

\$72.00

After a trial before Judge Policha of the Magistrates' Court, the respondent was found not guilty. The case stated by the learned Judge of the Magistrates' Court may be summarized as follows:

The respondent Andrew Swimmer is a resident of the Province of Saskatchewan and is an Indian within the meaning of the Indian Act (Canada). He lived on a reserve from his birth until 1958, and since that time has resided outside a reserve. It is admitted that he did not pay the tax.

Section 72(1) of the Indian Act, Cap. 149, R.S.C. 1952, provides that the Governor in Council may make regulations to provide medical treatment and health services for Indians. The Government of Canada pays the hospitalization tax and provides medical care for an Indian who is a resident of the Province of Saskatchewan and resides on a reserve, or who has been residing outside a reserve for less than twelve months. This arrangement is recognized by Section 21 of the regulations issued under The Saskatchewan Hospitalization Act, which reads:

"21. Where the tax is to be paid by the Government of Canada in accordance with an arrangement to that effect between that Government and the Government of Saskatchewan on behalf of a resident who is an Indian within the meaning of the Indian Act (Canada) and is residing on an

"Indian reserve or has been residing outside an Indian reserve for less than twelve months, the other provisions of these regulations shall apply to such resident and to the tax payments made on his behalf. "

This arrangement is also recognized by Section 21(1)(v) of the regulations issued under The Saskatchewan Medical Care Insurance Act, which is as follows:

"21. - (1) Subject to section 22, the following classes of persons shall be exempt from the premium levy:

-
(v) every person who at the beginning of the premium year is an Indian within the meaning of the Indian Act (Canada) and is residing on an Indian reserve or has been residing outside an Indian reserve for less than twelve months;

The learned trial Judge found that the respondent was entitled to the benefit accorded to Indians under Treaty No. 6, made between Her Majesty the Queen and the Plain and Wood Cree Indians and Other Tribes of Indians at Fort Carlton, Fort Pitt and Battle River with Adhesions, and concluded in 1876. This Treaty includes the "medicine chest" clause, which reads:

" That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent."

The learned trial Judge held that this clause should be interpreted to mean that all Indians

to whom the said Treaty applies, are entitled to receive all medical services, including medicine, drugs, medical supplies and hospital care free of charge. Because of this, the learned trial Judge said the respondent was exempt from payment of the taxes imposed by The Saskatchewan Hospitalization Act, and The Saskatchewan Medical Care Insurance Act, and that he came within the following regulations:

(under The Saskatchewan Hospitalization Act):

"23. - (1) Subject to section 24, the following classes of persons shall be exempt from taxation:

-
- (iv) every other person who at the beginning of the tax year is, without payment being made by him of a fee, premium or other sum of money, entitled to have payment made at the entire expense of the Government of Canada in respect of any hospital services he receives.
- "

(under The Saskatchewan Medical Care Insurance Act):

"21. - (1) Subject to section 22, the following classes of persons shall be exempt from the premium levy:

-
- (vi) every other person who at the beginning of the premium year is, without payment being made by him of a fee, premium or other sum of money, entitled to have payment made at the entire expense of the Government of Canada in respect of any medical services he receives.
- "

He further held that, because of the interpretation he placed upon the "medicine chest" clause, only the

Parliament of Canada could legislate in respect of Indians and consequently regulation No. 21 of The Saskatchewan Hospitalization Act regulations, and Section 21(1)(v) of The Saskatchewan Medical Care Insurance Act regulations, were ultra vires.

The questions posed in the said Case are as follows:

"1. Did I err in law in holding that the clause in Treaty No. 6, which reads as follows:

'That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such Agent'

should be interpreted to mean that the Government of Canada should pay the joint tax payable under The Saskatchewan Hospitalization Act and the regulations thereto, and The Saskatchewan Medical Care Insurance Act and the regulations thereto, on behalf of the defendant Andrew Swimmer?

"2. Did I err in law in holding that the clause in Treaty No. 6 which reads as follows:

'That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such Agent'

should be interpreted to mean that the Indians are entitled to receive all medical services, including medicines, drugs, medical supplies and hospital care, free of charge?

"3. Did I err in law in holding that section 21 of the regulations made pursuant to The Saskatchewan Hospitalization Act, O/c 1479/64, Saskatchewan Gazette, September 18, 1964, is ultra vires the Province of Saskatchewan?

"4. Did I err in law in holding that section 21(1)(v) of the regulations made pursuant to The Saskatchewan Medical Care Insurance Act, o/c 1418/64, Saskatchewan Gazette, September 18, 1964, is ultra vires the Province of Saskatchewan?

"5. Did I err in law in holding that the defendant Andrew Swimmer, being an Indian within the meaning of the Indian Act, R.S.C. 1952, Cap. 149, and entitled to the benefits of Treaty No. 6 is entitled to have payment made at the entire expense of the Government of Canada in respect to any medical services he receives as set forth in section 23(1) paragraph (vi) of the regulations made pursuant to The Saskatchewan Medical Care Insurance Act, O/C 1418/64, Saskatchewan Gazette, September 18, 1964?

"6. Did I err in law in holding that the defendant Andrew Swimmer, being an Indian within the meaning of the Indian Act, R.S.C. 1952, Cap. 149, and entitled to the benefits of Treaty No. 6, is entitled to have payment made at the entire expense of the Government of Canada in respect of any hospital services he receives as set forth in section 21(1) paragraph (iv) of the regulations made pursuant to The Saskatchewan Hospitalization Act, O/C 1479/64, Saskatchewan Gazette, September 18, 1964?

The interpretation and application to be given to the "medicine chest" clause in Treaty No. 6, was considered by this Court in R. v. Johnston [1966] 56 W.W.R. 565. Speaking for the Court, at pages 570-1, I said:

" Again, on the plain reading of the 'medicine chest' clause, it means no more than the words clearly convey: an undertaking by the Crown to keep at the house of the Indian Agent a medicine chest for the use and benefit of the Indians at the direction of the agent. (italics are mine)

"Indian an unrestricted right to the use and benefits of the 'medicine chest' but such rights as are given are subject to the direction of the Indian Agent. Such limitation would indicate that the obligation was to have physically on the reservations, for the use and benefit of the Indians, a supply of medicine under the supervision of the agent. I can find nothing historically, or in any dictionary definition, or in any legal pronouncement, that would justify the conclusion that the Indians, in seeking and accepting the Crown's obligation to provide a 'medicine chest' had in contemplation provision of all medical services, including hospital care. "

I have no reason to depart from this opinion. There was, in my view, nothing in the present case that justified the rejection of this view by the learned Judge of the Magistrates' Court.

It was because of the interpretation the learned Judge of the Magistrates' Court gave to the 'medicine chest' clause that he held Section 21 of the regulations under The Saskatchewan Hospitalization Act, and Section 21(1)(v) of the regulations under The Saskatchewan Medical Care Insurance Act, to be ultra vires.

Section 87 of the Indian Act, supra, reads:

"87. Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act."

As I have already stated, the terms of Treaty No. 6 do not impose upon the Government of Canada the obligation of providing, without cost, medical and hospital services to all Indians. Moreover, I know of no Act of Parliament that purports to do so. Under these circumstances, the respondent was subject to the provisions of The Saskatchewan Hospitalization Act and The Saskatchewan Medical Care Insurance Act, being laws of general application, and liable for the tax thereunder.

In view of the conclusion I have reached, I must answer all questions in the Stated Case, "Yes". The verdict of acquittal will be set aside, and there shall be entered a verdict of guilty. The matter will be referred back to the learned trial Judge for the imposition of the appropriate penalty.

DATED at the City of Regina, in the Province of Saskatchewan, this 4th day of December, A.D. 1970.

.....
CULLITON, C.J.S. for the Court.

CORAM: CULLITON, C.J.S., WOODS, BROWNRIDGE, MAGUIRE
and HALL, JJ.A.

Hunting and Fishing Cases - Saskatchewan

Rex v. Smith (1935) Saskatchewan Court of Appeal

Indians - Game Act, R.S.S. 1930, c. 208 - Carrying firearms upon a game reservation - Natural Resources Agreement.

"The words "on unoccupied Crown lands" as used in para. 12 of the Natural Resources Agreement between the Dominion and the Province of Saskatchewan must be given their plain and ordinary meaning and be taken to include lands required for the establishing of game reserves. And the words "on any other lands to which the said Indians may have a right of access" does not give Indians a right of access to a game reserve beyond that accorded to all other persons as they too are subject to the reserves of the Game Act." *

*(1935) 3 D.L.R. 703

Rex v. Mirasty (1939) Police Court

Indians - The Fur Act, 1936, ch. 98 - Possession of unprime beaver pelt - Pelt taken on a provincial forest reserve.

"The hunting rights of treaty Indians were now governed by the Natural Resources Agreement between the Dominion government and the province of Saskatchewan, s.12 which restricted the Indians' hunting rights to "unoccupied Crown lands." A forest reserve which was set up by the province for specific purposes could not be classified as "unoccupied Crown Lands." Hence treaty Indians had no special hunting rights in such a reserve." *

*(1942) 1 W.W.R. 343

Regina v. Strongquill (1953) Saskatchewan Court of Appeal

Indians - Hunting Rights of Treaty Indians - Natural Resources Agreement, 1929, Par. 12 - Effect of Provincial Legislation - Whether S. 13 (2) Game Act, 1950 Valid - "Unoccupied Crown land" - "Lands to which Indians may have right of Access."

"Sec. 13 of the Game Act, 1950, ch. 76, is not a binding enactment as against Indians and is ultra vires." *

(Forest Preserves are "unoccupied Crown lands")

*8 W.W.R. (NS) 247

Regina v. Watson (1966) District Court of the District of Kamsack (Sask.)

Indians are permitted to "fish for food" (under paragraph 12 of the Natural Resources Agreement) on "unoccupied Crown lands."

Kinniewees and Nippi 21-25 August 1969 (District Court for Saskatchewan; Judicial Centre of Melfort)

Indians - Hunting in a Game Preserve - Sec. 5 Game Act, 1965, Ch. 356.

"...lands within the Province designated as game preserves cease to be unoccupied Crown lands and Treaty Indians are bound by the provisions of the Game Act prohibiting hunting thereon."

Treaty Claims -- Saskatchewan

- (a) A provision of Treaty #6 which has been broadly interpreted (by some native people) to mean complete welfare services to Indians, is that which reads:

"That in the event hereafter of the Indians comprised within this treaty being overtaken by any pestilence, or by a general famine, the Queen, on being satisfied and certified thereof by Her Indian Agent or Agents, will grant to the Indians assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity that shall have befallen them."
p. 4, Treaty #6 (1964).

In no instance have the Courts or Department interpreted this clause to mean provision for all encompassing social assistance.

- (b) Another provision of Treaty #6 which the Courts have dealt with reads:

"That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent."
p. 4, Treaty #6 (1964).

Judicial Decisions

- 1) Regina v. Johnston. (1966) Saskatchewan Court of Appeal.

Indians - Treaty rights - Entitlement to "medicine chest" and relief from "pestilence" or "general famine" - whether thereby entitled to "general hospital services" - whether exempt from hospital tax - Saskatchewan Hospitalization Act - Indian Act (Can.) s. 87.

"A treaty between the Crown and certain Indian tribes concluded in 1876 provided "That a medicine chest shall be kept at the house of each Indian Agent for the use and benefit of the Indians at the direction of such agent" and "That in the event ... of the Indians ... being overtaken by any pestilence, or by a general famine, the Queen ... will grant ... assistance of such character and to such extent as Her Chief Superintendent of Indian Affairs shall deem necessary and sufficient to relieve the Indians from the calamity ..." Such provisions do not entitle an Indian "to receive general hospital services from the Government of Canada" so as to exempt the Indian from payment of hospitalization tax under s. 23 (I) (IV) of the Regulations issued under the Saskatchewan Hospitalization Act, R.S.S. 1953, C. 232 (now R.S.S. 1965, C. 253). Nor, therefore could he be protected by s. 87 of the Indian Act, R.S.C. 1952, C. 149, which makes provincial laws applicable to Indians "except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made under this Act."

The Court must give the words of the treaty the ordinary meaning that would have been attributed to them at the time the treaty was made and in so doing may take judicial notice of the facts of history by reference to authoritative treatises." *

* 56 D.L.R. (2d) 749.

2) Regina v. Swimmer (4 Dec. 1970) Court of Appeal for Saskatchewan.

Mr. Justice Culliton set aside the "not guilty" verdict delivered by J.M. Policha, a Judge of the Magistrates' Courts for Saskatchewan (13 Dec., 1968). In referring to the Johnston Case, Justice Culliton stated:

"I have no reason to depart from this opinion. There was, in my view, nothing in the present case that justified the rejection of this view by the learned Judge of the Magistrates' Court."

The Appeal Judge concluded his judgement:

"As I have already stated, the terms of Treaty 6 do not impose upon the Government of Canada the obligation of providing, without cost, medical and hospital services to all Indians. Moreover, I know of no Act of Parliament that purports to do so. Under these circumstances the respondent was subject to the provisions of The Saskatchewan Hospitalization Act and The Saskatchewan Medical Care Insurance Act, being laws of general application, and liable for the tax thereunder."

3) The Supreme Court of Canada will hear a "Motion to leave for Appeal" on the Swimmer Case, Monday, 12 March, at 10:30 A.M. - Leave to Appeal was granted
date not set.