

# **NO MEANS NO: ERMINESKIN'S RESISTANCE TO LAND SURRENDER, 1902-1921**

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## **Abstract / Résumé**

The patent to a section of land in the middle of Ermineskin's reserve was held by the Hudson's Bay Company and eventually sold to farmers. When the Department of Indian Affairs became aware of the situation, they embarked on a campaign to have the Ermineskin people surrender the land. This paper exams the practices of the Department of Indian Affairs and the determined resistance of the Ermineskin people to shed light on land surrender and Aboriginal agency.

La Compagnie de la Baie d'Hudson avait le droit exclusif d'exploitation d'une parcelle de terre en plein milieu de la réserve d'Ermineskin qu'elle a vendu par la suite aux fermiers. Au moment où le Département des Affaires indiennes s'en est rendu compte, il s'est engagé dans un campagne pour s'assurer que les indigènes d'Ermineskin renoncent à leur droit sur ce territoire. Cet article examine les pratiques du Département des Affaires indiennes ainsi que la résistance déterminée des indigènes d'Ermineskin afin d'éclairer le problème de la cession des terres et le problème de l'agence autochtone.

The work of J. R. Miller, Sarah Carter, Brian Titley, David Hall, and John Tobias, among others, has provided insight into the administration of Canadian Indian policy in the prairie provinces at the onset of the 20th Century.<sup>1</sup> These works provide important analysis of the ideological underpinnings of Canadian Indian Policy and Aboriginal agency. According to the consensus opinion in this literature, Canadian Indian policy sought to assimilate Aboriginal people and eliminate the differences between Aboriginal people and the Crown's "other subjects." Fundamental to this policy was the elimination of the Aboriginal land base.<sup>2</sup> Surprisingly little attention, however, has been paid to the issue of land surrenders in the published academic literature. Although Titley remarked that a deliberate policy of encouraging land surrenders existed within the Department of the Interior, "a policy approved by politicians of every persuasion," the study of land surrenders remains confined to numerous reports written by consultants for legal proceedings under the specific claims process.<sup>3</sup> These reports are largely unavailable to the public or the scholarly community. Although the concern for land entitlement is one of the most vexatious problems between Indian Affairs and the First Nations today, a search of the most commonly used abstracting system for historians, *American History and Life*, using such terms as reserves, surrenders, and land entitlements provides few references to the land surrender process in western Canada.

Titley's brief commentary, nevertheless, makes it clear that Indian Affairs places the concerns of settlers over its obligations to protect Indian peoples and actively pursued a series of surrenders in western Canada in the first years of the 20th Century. In the specific case of the Hobbema agency, the proposals considered by Indian Affairs included the surrender of all reserve land in the agency and the re-settlement of the Cree in less desirable regions, the surrender of vacant reserves in the agency, and the surrender of small portions of the agency reserves with compensatory land in less desirable locations. In 1907, in the midst of these campaigns, Indian Affairs approached the Ermineskin people seeking a surrender of a particular section of land within their reserve. The land, although included in the reserve entitlement, had been patented to the Hudson's Bay Company after the reserve survey but prior to the confirmation of the reserve by the government. The HBC had subsequently transferred the patent to local farmers. Ermineskin refused to surrender the land, but when it became clear to Indian Affairs that the patent holder wanted above market value for their title to the land, the Department decided the easier and cheaper course of action would be to coerce the Ermineskin people to grant a surrender. The Ermineskin people were approached over and over by Indian Affairs and only through

their deliberate and repeated resistance did they force Indian Affairs to give up its efforts to obtain this surrender. This paper exams this proposed surrender to shed light on the policies and practice of Indian Affairs during this period, the determined resistance necessary to overcome these policies, and legal questions surrounding Hudson' Bay Company lands and treaty land entitlements.

Chief Bobtail adhered to Treaty Six at Blackfoot Crossing in 1877 on behalf of the Peace Hills Cree.<sup>4</sup> Treaty six guaranteed the Peace Hills Cree people "reserves for farming lands, due respect being had to lands at present cultivated by said Indians, and other reserves for the benefit of said Indians, to be administered and dealt with for them by Her Majesty's Government of the Dominion of Canada, provided all such reserves shall not exceed in all one square miles for each family of five."<sup>5</sup> Since Bobtail witnessed the negotiation of Treaty Seven rather than Treaty Six, he would also have been familiar with the terms of Treaty Seven which envisioned large tribal reserves for the Blackfoot signatories. Another section of Treaty Six deserves mention here for its implication in this surrender. According to Treaty Six

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as she shall deem fit, and also that the aforesaid reserves of land or any interest therein may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their consent first had and obtained.<sup>6</sup>

These terms imbedded a policy of the Indian Act within the written text of the treaty and remained an important element of the Dominion policy regarding Indian lands. There is no indication that Bobtail or his people were made aware of this section of the treaty, nor is there any indication it was discussed at the making of Treaty Six or Treaty Seven.

The leadership of the Peace Hills Cree after making treaty proved fluid. Neither Ermineskin nor Samson participated in the treaty signing at Blackfoot Crossing in 1877, but they were paid with several other "stragglers" as members of Bobtail's band at Tail Creek in 1878 (Bobtail himself was again at Blackfoot Crossing). By 1879, these two leaders had also separated and it had become apparent that three distinct groups had emerged within the Peace Hills Cree. The annuity lists show separate bands associated with Ermineskin, Samson, and Bobtail had been recognized by 1880. Later the Department would recognize Louis Bull as a fourth band within the Hobbema community.<sup>7</sup> J. C. Nelson, consequently, surveyed three reserves in the Hobbema agency for the Peace Hills Cree, 10 August to 3 October 1885. Chief Ermineskin took a direct

interest in the surveying of his reserve and participated in decisions regarding the boundaries. Again in 1887, as the Department surveyors clarified the dividing line between Ermineskin and Samson, Chief Ermineskin accompanied the surveyors throughout and provided advice on the location of the boundary.<sup>8</sup> It is clear then that Ermineskin paid close attention to the matter of the land his people claimed as their reserve. The land included in these reserves, however, had been surveyed for settlement by the Department of the Interior in 1882, three years prior to the survey of the reserves. Under the terms of the Deed of Surrender and the Dominion Land Act, the Hudson's Bay Company thereby obtained the right to title to Section 8 and 3/4 of Section 26 of each township. The Hudson's Bay Company exercised their right to Section 8-45-24 W4 on 25 May 1886, a year after the survey of the reserves but prior to the confirmation of the reserves by Order in Council on 17 May 1889.<sup>9</sup>

The Department of the Interior and Indian Affairs demonstrated an awareness of the problems associated with Hudson's Bay Company lands within the boundaries of reserves as early as 1876. The Department requested the Department of Justice provide them with an opinion regarding the terms of the Deed of Surrender.<sup>10</sup> Did the provision for the HBC to acquire 1/20 of the land in the fertile belt include land reserved for Indians and/or land surrendered by Indian peoples. Mr. Z. A. Lash from the Department of Justice replied that in the opinion of the Department of Justice "lands reserved for Indians and not surveyed into townships are not 'lands set out for settlement' within the meaning of the deed." He also noted that since lands surrendered by the Indian peoples for sale and settlement did not "give the land to the Crown absolutely so that it may be set out for settlement like other Crown lands" these lands were not subject to the provision of the deed either. Later that year, the minister of Justice, Edward Blake, provided an opinion which noted that the Hudson's Bay Company's right of selection existed once lands had been set out for settlement provided the lands had not been appropriated for other purposes under the provisions of the Dominion Lands Act and no person had obtained a vested right in the land under the provisions of the Act before the HBC exercised its right.<sup>11</sup>

The Department of Indian Affairs first became aware of problems related to the Hudson's Bay Company title to certain sections in the Hobbema agency reserves in 1887. Deputy Superintendent General Vankoughnet notified Commission Hayter Reed that the HBC had obtained title to 3/4 of section 26-43-25 W4 in Bobtail's reserve. The Department requested that the HBC surrender its title to this partial section so that it could be confirmed within the reserve, and the HBC quickly

acquiesced. The problem was thereby resolved.<sup>12</sup> Quick action by the Department, consequently, easily overcame these title problems. Surprisingly, the Department did not use this occasion to determine if other sections in the Hobbema Agency faced similar encumbrances. Surveyor J. C. Nelson was apparently requested to investigate the matter, but no report was filed prior to his death in 1889. The Department apparently considered the issue primarily a concern of the Interior Department. Satisfied with the resolution of the problem on Bobtail's reserve, the issue apparently rested in complete abeyance after 1890 when the Department of Indian Affairs was informed by the Interior Department that efforts to resolve the issue with the HBC had failed.<sup>13</sup>

Correspondence between the Department of Indian Affairs and the Hudson's Bay Company was sporadic. Only in 1903 did the Department begin serious consultations with the HBC regarding title to lands within Indian Reserves. In December 1905, HBC Commissioner C. C. Chipman claimed over 100,000 acres of land due to the HBC had been included in the reserves. Furthermore, he noted that in some cases title had already passed from the Crown to the HBC. "If these last mentioned Reserves are likely to remain permanently set apart for the Indians, and not thrown open for settlement—as was the case of a Reserve south of Edmonton containing some valuable farm lands which the Company surrendered—then arrangements might be made for the re-vesting in the Crown of the Company's title to the sections therein."<sup>14</sup> Chipman forwarded a list of the Reserves and indicated that 1/20 of the land rightfully belonged to the HBC. Chief Surveyor Samuel Bray correctly pointed out that only those specific portions of section 8 or section 26 included in the Reserves could be claimed by the HBC—rather than Chipman's assertion of 1/20 of the Reserve lands—but casually noted that "under the Treaties, the Indians were apportioned certain reserves, and the remainder of the domain was administered by the Department of the Interior. It would appear to be in the province of that Department to attend to this matter." Bray cautiously advised that waiting for the Interior Department might hold certain risks, however. Interior had shown no indication that it desired a quick settlement to the issue. Perhaps Bray suggested, DIA should resolve the issue as "the longer this business is deferred the more difficult it will be to arrange."<sup>15</sup> The Department of Indian Affairs did not take Bray's advice and did not pursue the matter further in 1905 or 1906.

The problem became apparent to the Department of Indian Affairs in the summer of 1907. Farmers from Wetaskiwin attempted to harvest hay from Section 8-45-24 W4 within the boundaries of Ermineskin's reserve.<sup>16</sup> The HBC, the Department quickly realized, had patented this

section and sold it to a group identified as the Janse brothers. Although the Department of Indian Affairs would later claim the transaction was an innocent mistake by both the vendor and the purchaser, it must be remembered that the HBC had prepared a list of all HBC lands within reserves the previous year and had received no serious consideration from the Department of Indian Affairs or the Interior Department. It also seems unlikely that Wetaskiwin farmers would be unaware of the location of a particular section of land in the district. They arrived on the land to obtain the hay, after all.

The Ermineskin people reacted quite strongly to the attempted incursion of White farmers onto their reserve. Chief Ermineskin and his Headmen wrote:

we are greatly surprised to find that the HBC claim lands situated inside our reserves. The reserve was surveyed in 1884 or 85 according to the Department maps, and at that time no mention was made of there being any land inside of its lines belonging to the HBC. We were told also at that time by Mr. E. Dewdney that all the land inside of the survey stakes was ours. We do object to our reserves being interfered with in any way without our consent.<sup>17</sup>

The Department immediately made enquiries with the Department of the Interior and notified the Ermineskin people that the HBC had obtained patent on the land in 1886 and that the Department would endeavour to "obtain an equal area of unoccupied Government land by way of compensation to the Indians or to compensate them in some other way."<sup>18</sup> Ermineskin replied his people had first claim upon the land and noted the promises made in the treaty. Regarding the offer of compensation, Ermineskin remarked "we don't want any money and we want to keep our land." Ermineskin noted the land had importance as a source of hay, it was in the middle of the reserve, and that the reserve was already surrounded by White people and he did not want White people living amongst the Indian people on the reserve. The Chief informed the government that if the HBC had a claim to some land give them the compensation. He concluded: "I ask it as a Right as well as a favour, I am getting old, and I think I did quite well with the Government people. I am ready to do the same until my death but I want to keep this land for the welfare of my people, to keep them away from White people, from liquor, etc.. I am very sorry that after over thirty years this land is contested to me."<sup>19</sup>

The Department of Interior, however, appeared unable to act with haste. The Department of Indian Affairs, meanwhile, noted the land was an important source of hay for 8 families from Ermineskin and made

enquiries with the Janse Brothers regarding the sale of their claim to the land at a reasonable price.<sup>20</sup> The Janse Brothers demanded \$30/acre for the surface rights and \$35/acre if they included sub-surface rights. It quickly became clear that the Janse Brothers purchase of the land was related to speculation that coal seams existed within the boundaries of the Ermineskin reserve.<sup>21</sup> Prospecting in the area near the Ermineskin reserve during this period led the Department of Indian Affairs to request a surrender of the sub-surface rights in the area known as the wedge of the Ermineskin reserve. The Department of Indian Affairs obtained a surrender of the sub-surface rights to this area, in relative proximity to the Janse Brothers' claim, in March 1908, and leased the area for coal development to prospectors.<sup>22</sup> The Department, nevertheless, tried to reduce the expectations of the Janse Brothers and Agent Mann noted that no prospecting had occurred in the district at present and that any ideas the brothers might have about coal were merely speculative. The failure of the Department of the Interior to respond to DIA enquiries and the obvious speculative nature of the Janse Brothers' purchase of the land set the stage for continued confrontation in 1908.

When the Wetaskiwin farmers once again arrived in August 1908 to harvest hay on section 8, Ermineskin and his people were furious. Panny Ermineskin, one of the headmen, noted that the missionary and agent would be removed from the reserve if the farmers cut hay on the reserve.<sup>23</sup> Ermineskin again notified the Department and requested it act on behalf of his people. He wrote:

I wish you the department to prevent Miss Evans from cutting hay on this land, and if you stop it at once my people will be peaceful. I wish to be friends with all white people but my anger is almost roused, [I] am an old man and say that if anyone touches this section of land there will be trouble. The Department is rich and it only can settle this matter without difficulty.<sup>24</sup>

Inspector Markle, meanwhile, informed the Commissioner that Panny Ermineskin "was impertinent and not disposed to listen to reasonable explanations from Mr. Mann, that he headed a section of the band and proceeded to the land under dispute and ordered the hay makers off the land. I understand too, that he carried fire arms and made threats...if they did not at once leave."<sup>25</sup> With no response from the Interior Department, all J. D. McLean could tell chief Ermineskin was that "we are trying and hope we will eventually come to some satisfactory arrangement... but some time will elapse before a settlement is likely arrived at."<sup>26</sup> Even Commissioner Laird expressed unhappiness with the lack of a response from the Department of the Interior. He noted that the actions of the

Ermineskin people were regrettable, "but I can scarcely help saying that the delay of a year on the part of the Department of the Interior in taking the necessary action to settle the matter...might be expected to bring about unpleasantness."<sup>27</sup>

At least Indian Affairs was now fully apprized of the seriousness of the situation. It reached an arrangement with the HBC to stop the company's transfer of patents to lands within reserves until the HBC and Interior resolved the problems between them regarding compensation. The situation on Ermineskin still had to be resolved. The concerns of Ermineskin and his people, however, would be a secondary concern. Frank Oliver, the Minister responsible for Indian Affairs, had remarked in the House of Commons in 1906 that "if it becomes a question between the Indians and the Whites, the interests of the Whites will have to be provided for."<sup>28</sup> The Department, therefore, paid the farmers for hay taken from the land in May 1908 while it waited for the Department of the Interior to respond to enquiries.<sup>29</sup> In March 1909, the Department of the Interior finally responded to the Department of the Interior with a listing of all HBC eligible land contained in reserves and its status. Dozens of cases were listed where Interior either claimed the land was vacant, and therefore eligible for selection by the HBC, or already patented to the HBC.

The words "vacant in the register" mean that the land has not been noted as in a reserve whether because not surveyed or for other reasons. If not surrendered by the Company the land is noted as standing in its name, which means it has been so granted.<sup>30</sup>

The list made it clear that from the perspective of the Department of the Interior, the HBC held the patent on the land in question. Intriguingly, neither Indian Affairs nor the Department of Interior appear to have investigated how dozens of reserves could have been improperly registered and lands within them patented to non-Indians after the reserve had been surveyed. Both branches of the ministry simply accepted that the communication failure existed. Just as important, Indian Affairs, the more junior of the two branches, clearly felt it had to correct the situation on its own with no assistance from the Interior Department.

DIA made enquiries with the owners of the land regarding the possible purchase of their claim by the Department. Although the speculation regarding coal had abated by 1909, the patent holders continued to demand \$30/acre and Mr. Bray, the DIA chief surveyor agreed that the \$9600 price tag for the section was reasonable. Markle remarked that the patent holder apparently believed that the Department would be compelled to pay an extravagant price. In concluding his report, Inspec-



tor Markle set the tone for the future negotiation of this issue. He wrote:

I shall advise the Indians to quit claim their interest in this dispute section and the section lying northerly therefrom too. Messrs. Jansen could then hold this very valuable property, so viewed by them, and terms could be made with the Indians possibly on a more reasonable basis. I fear the Indians will not entertain my proposition, however. They seem very reluctant about parting with any of their land.<sup>31</sup>

Markle's conclusion is remarkable for its understatement. Ermineskin had not proved reluctant to surrendering land, he had rejected the notion outright.

The Department of Indian Affairs had become aware of Ermineskin's resistance to the idea of surrendering reserve lands as early as 1902. The Calgary and Edmonton Railway, a subsidiary of the CPR had a right-of-way through the Hobbema reserves. The government sought to expand the right of way to allow settlement along the line. At the same time, local farmers in the area requested a town site and delivery point. Frank Oliver, the M.P. for Edmonton at the time, endorsed the request.<sup>32</sup> The preferred location was within Ermineskin's reserve and the Department requested that DIA surveyor A. W. Ponton enquire about a surrender from Ermineskin.<sup>33</sup> Ponton reported in July that Ermineskin opposed any surrenders and noted "he would never consent to having a town site inside his reserve." Rather than respect this decision, however, Ponton encouraged the Agent to avoid the older members of the band and to act quietly among the young men on the reserve to convince them about the merits of a surrender.<sup>34</sup> This approach at subterfuge led to resentment from chief Ermineskin and Agent Grant reported in September that Ermineskin became angry if the Agent even mentioned the idea of a surrender.<sup>35</sup> Ermineskin's resistance to surrenders led Assistant Indian Commissioner J. A. J. McKenna to remark: "I am quite convinced that the Indians will not during the lifetime of Chief Ermineskin entertain such a proposition."<sup>36</sup>

Despite these clear indications that Ermineskin would not consider any surrender proposals, the DIA officials continued to press the issue. The Department received information from Reverend John McDougall, a Methodist missionary who had been resident on Samson's reserve, that Samson's band desired to surrender a portion of its reserve and Inspector Markle made enquiries in October 1904. Markle concluded that the Indians in the Hobbema district had too much land and that Samson had agreed to surrender land from his reserve. If the Department agreed to take a surrender from Samson and provide immediate value for that land, Markle reported: "I will expect the Indians of both

Ermine-Skin's [sic] and Bob Tail [sic] bands to make requests for portions of their reserves too."<sup>37</sup> Given this set of circumstances, it is remarkable that a note from G. M. Matheson to the Deputy Superintendent General in December 1904 noted: I cannot find that the *Dep't* has expressed a desire to take surrenders of parts of the three reserves in the Hobbema Agency."<sup>38</sup> Although Samson's people eventually rejected the proposed surrender, the Department remained convinced that a surrender could be obtained if the cash value was appropriate. Laird notified J. D. McLean that the CPR continued to express interest in a siding at Hobbema and suggested the Department offer \$25/acre. Agent Grant reported that his valuation was fair and hoped "that Chief Ermineskin will have the good sense to let them have this strip of land."<sup>39</sup> Ermineskin, however, refused. When Ermineskin approached the Agent in 1905 regarding a fence for his reserve to keep settlers' cattle out and the band's cattle inside the reserve, the Agent suggested they surrender some land and use the profits to buy the fence. Once again the Agent noted, "[n]either the Chief nor councillors would listen to this idea."<sup>40</sup>

The Department continued to press for the surrender of lands in the Hobbema Agency. Frank Oliver enlisted the aid of Reverend McDougall to obtain surrenders not only at Hobbema but also throughout southern Alberta and Saskatchewan in 1906. In March, J. D. McLean instructed McDougall to again make an effort to obtain a surrender at Hobbema. After meeting with the Indian peoples, he noted that Samson and his people were amenable to the idea of a surrender but that both the Ermineskin and Montana peoples "made some violent speeches against the surrender of any parts of their reserves and then left the council."<sup>41</sup> The Department received similar treatment from Ermineskin in 1908 as the Department considered a surrender of the Bobtail reserve then occupied by the Montana Cree. In this case the Department eventually took surrenders from both Louis Bull and Samson First Nation in conjunction with the surrender of Bobtail.<sup>42</sup> Indeed, the Samson's surrender solved the Department's problem with 3/4 of sec. 26-44-25 W4, another parcel of land patented to the HBC.<sup>43</sup> The Department clearly hoped for a similar outcome on the Ermineskin reserve, but Chief Ermineskin refused to surrender any portions of his reserve.<sup>44</sup> Meanwhile, the solicitors for the Janse brothers, upset by the delays continued to protest claiming they paid taxes on the land while the Indian peoples utilized the hay. They demanded compensation on top of the \$30/acre and made enquiries with Senator Talbot to expedite the matter. The HBC also made enquiries on their behalf.<sup>45</sup>

Following Chief Ermineskin's rejection of the surrender in 1908, the Department did make efforts to obtain the land at an appropriate value

in 1909. The sale of lands surrendered from Louis Bull brought prices in the range of \$14-\$17/acre. The government thus instructed Markle to offer the patent holders \$20/acre as a premium. Markle resisted, asserting that the patent holders believed "they are in a position to dictate terms and prices," but under pressure made the offer. The solicitors for the Janse brothers rejected it, restating the asking price of \$30/acre and demanded compensation for the hay cut on the land in 1908 and 1909 by Ermineskin First Nation. Further, the lawyers asserted they proposed to bring the matter up in Parliament if the situation remained unresolved.<sup>46</sup> The Department also consulted with the Department of Justice but was informed that the information contained in the DIA files did not warrant an opinion beyond those given in 1876.<sup>47</sup> Thus, when Indian Affairs decided in 1910 that obtaining a surrender from Ermineskin was the simplest course of action to resolve the problem of section 8-45-24 W4, it was fully apprized of the attitude of Chief Ermineskin and his people with regard to surrenders. Despite its knowledge and the appeals by Chief Ermineskin, the Department decision to try and obtain a surrender from Ermineskin rather than pay the "extravagant" price demanded by the Janse brothers, indicates it put the cost of the transaction ahead of the interests of the Ermineskin people.

The Deputy Superintendent General instructed surveyor J. K. McLean to inform Agent Mann that the Department would provide the Indians with a timber section in compensation once they had surrendered their claims to the HBC section.<sup>48</sup> Apparently, the Department believed that once properly informed of the Department's position, Ermineskin and his people would certainly see the value of the surrender. Since "the Department does not see its way to pay the sum demanded," J. D. McLean wrote:

I have to request you to again explain the facts to the Indians; that is to say, that the said section was patented many years ago to the Hudson's Bay Company and that this Department was not aware of that fact until quite recently, and that we are unable to come to any reasonable terms with the owners of the said section. If the Indians will therefore give a relinquishment of their claim to the said section another section with the timber thereon will be given to them in lieu thereof.<sup>49</sup>

When informed of the Department's position, Ermineskin and his people refused to "relinquish their claim to section 8." What is more, Agent Mann noted, "when they are spoken to about it they are inclined to be abusive."<sup>50</sup>

Ermineskin appeared to be in good position to delay. The section

was accessible only by passage through Reserve land, which he and his people denied, and they continued to cut hay on the land. Once Indian Affairs realized that although patent to the section had passed to the HBC, there were no agreements in place for ingress or egress thereto the problem became less urgent.<sup>51</sup> The opinion of the Department law clerk that the Department of Indian Affairs was not liable for the actions of the Indian peoples in cutting hay on the section, moreover, provided no motivation for the Department to solve this problem quickly.<sup>52</sup> The Department consequently did nothing to discourage the Ermineskin people from haying on the land and did not intervene when they prevented the Janse brothers from crossing reserve land to get access to the section. Homes were built on the land over the next five years.

With the urgency removed, the issue went into abeyance for several years as the HBC and the Department of the Interior discussed the HBC claims to lands within forest reserves and parks.<sup>53</sup> The HBC had agreed not to transfer any of the patents it held to lands contained in Indian Reserves while it resolved its disagreements with the Interior Department. A couple of legal opinions were sought by the Department of the Interior to clarify the issues primarily as they related to forest reserves. The failure of the department of Indian Affairs to seek its own legal opinions regarding reserve lands suggests its now casual approach to the crisis. Not until wartime inflation and demands for increased production in 1917 did pressure to resolve the title to the land increase. Meeting war time demands for grain had stretched the productive capacity of Canadian farm lands, and William M. Graham had designed a plan to improve the agricultural productivity of Indian lands throughout the prairie provinces.<sup>54</sup> Graham's scheme generally failed, but his actions won him appointment to the position of Commissioner of Indian Affairs. Given the effort to improve the productivity of Indian lands, a section of arable land claimed by White farmers but utilized by Indian peoples as a hay meadow was a glaring inconsistency. The Janse brothers seized upon the opportunity, obtained the services of new Calgary-based solicitors and politicians including R. B. Bennett, and made enquiries regarding access to the land. They also offered to exchange the land for another section of equal quality elsewhere in Alberta.<sup>55</sup> Arthur Meighen, the new Minister of Indian Affairs, took a personal interest in the matter.

When asked what value they placed on the land, the Janse brothers demanded \$35/acre. The Department politely refused such enquiries.<sup>56</sup> Once again the Department made enquiries about a "fair" valuation of the land and William Graham reported \$22.50/acre was an accurate price. Meanwhile, the Department of the Interior notified Indian Affairs that discussions with the HBC had not progressed and that an exchange of

land was unlikely. W. W. Cory, the Deputy Minister, asked Duncan Campbell Scott if his "Department is now in a position to deal with the matter in any way."<sup>57</sup> Graham was instructed to offer \$22.50/acre, but rather than accept, the Janse brothers countered with an offer to purchase the 285 acres of section 9 with would provide them access to the CPR right-of-way and solve their problems of ingress and egress for \$40/acre.<sup>58</sup> The \$11,400 sale was looked upon quite favourably by the Department of Indian Affairs, although Scott cautioned:

It would be advisable to settle this difficulty in some way if possible, but I do not think it at all advisable to allow any occupation by Janse Brothers of any portions of the reserve without the consent of the Indians, as there would undoubtedly be opposition from them.<sup>59</sup>

The Department thus determined to sell the fractional component of Section 9 and took a \$1000 deposit from the Janse Brothers on December 1, 1918. On December 3, Commissioner Graham was instructed to submit a surrender to Ermineskin. Graham was to offer \$22.50/acre, but if the Indian people protested he could increase the offer to \$25/acre.<sup>60</sup> The Department, consequently, sought to obtain the surrender of section 8 and section 9 with the cost partially offset by the Janse Brothers purchase and thereby extricate itself from the problem with a savings in the overall money distributed.

Graham informed the Department that Ermineskin would likely demur unless the Department agreed to distribute half of the total value at the time of the surrender. The government thus immediately forwarded \$10,406—half of the value at \$22.50/acre. Five months later, no action appeared to have been taken and the solicitors for the Janse brothers expressed anger. The Indian Agent at Hobbema, J. Butlin, finally reported on May 22, 1919: "The Chief and Headmen are all quite final in their refusal to surrender the above mentioned lands for any consideration. They claim Section 8 as a part of their reserve, and I might say that there are three Indian farms located in section 8, and one in that portion of section 9 lying west of the CPR railway."<sup>61</sup> Undaunted, Graham asked Inspector W. B. Crombie to approach Ermineskin. Crombie met with the people on 16 June and reported:

Several of the Band expressed themselves quite strongly in their opposition to the proposed surrender, and in fact it was evident from the beginning of the meeting that they had made up their minds to oppose a surrender, irrespective of any inducements which might be offered them. I am convinced that this Band had been advised by outsiders, and I am inclined to believe by employees of the Department as well,

not to surrender this land. Seventeen of those present at the meeting spoke against and none spoke in favour of it. The Chief and Headmen expressed the hope that the Department would not trouble them any more by asking for a surrender of this land.<sup>62</sup>

The inspector noted that Ermineskin and his people might consider a surrender along the northern edge of the reserve but clearly were uninterested in relinquishing their claims to section 8. The changing of administrative personnel of the Department of Indian Affairs from Laird and Markle to Graham and Crombie had not changed the practices and policies of the Department, but as Crombie's remark about outside advisors suggests, the corporate memory and Ermineskin's long resistance to surrender appear forgotten.

Crombie's suggestion that Ermineskin might surrender alternative lands to be exchanged for section 8 led the Department to ask the Janse brothers about alternatives. Although the land proposed by the Department of Indian Affairs proved unacceptable to them, they agreed to accept section 21-45-24 W4 in exchange for section 8 if a surrender could be obtained from Ermineskin. Scott informed Meighen of his plan and his doubts, but before the Department could even call a meeting at Ermineskin to discuss the use, the Agent at Hobbema informed the Department that "the Ermineskin Indians are, without exception, refusing to surrender this area, and adds that he does not think it would be possible to procure a surrender from them of any portion of their Reserve."<sup>63</sup> The agent suggested that perhaps a surrender from Louis Bull should be obtained and that land used to exchange with the Janse brothers. Faced with the refusal of Ermineskin to consider a surrender, Scott once again offered the patent holders \$25/acre and noted "if they do not care to accept this offer, you will have to advise them as to their future course of action."<sup>64</sup> By November, Scott agreed to increase the offer to \$30/acre. The Janse brothers appealed to Sir James Loughheed to intervene and Scott noted that if the patent holders refused the offer they could take the matter to the Exchequer court. On 30 March 1921, the Janse brothers agreed to sell their patent to section 8 for \$30/acre.<sup>65</sup>

Ermineskin's determined resistance had finally produced an appropriate outcome. The land remained a part of the Ermineskin reserve. It had taken several years to arrive at this solution, however. The Royal Commission on Aboriginal Peoples noted that "Implementation [of treaty promises] was left to a small group of civil servants without the knowledge, power or authority...to hold off other government departments and the private sector if they had conflicting agendas."<sup>66</sup> No where was this more clear than in the case of section 8 on Ermineskin. The land in

question was surveyed as a reserve before settlers entered the area and before a patent was issued to the HBC. Yet the failure of the Department of Indian Affairs to register the survey quickly, the unwillingness of the Department of the Interior to consider an appropriate remedy nor admit that it had awarded a patent to land surveyed as a reserve, the failure of DIA to account for the reserve lands patented by the HBC in an appropriate and timely manner, and the financial interest of the HBC in the land, all placed Ermineskin in the precarious situation of defending its land base from White farmers, farmers who had the sympathetic ear of various government agencies. The Department of Indian Affairs, furthermore, had demonstrated a clear desire to put financial considerations above its obligations to the Indian peoples in its trust. In his article, "Owen Glendower, Hotspur, and Canadian Indian Policy," Historian J. R. Miller indicates that Indian peoples were important historical agents despite the attitudes and policies initiated by the Department of Indian Affairs. This case study demonstrates that Indian peoples were indeed important agents in the historical process. Their agency required significant effort. They not only had to remain resolute against an onslaught of proposals, but also had to overcome the incompetence and powerlessness of the Department of Indian Affairs. In their collective strength, they managed to remain agents of their destiny and forced the government to solve a problem it had created.

### Acknowledgment

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### Notes

1. J. R. Miller, "Owen Glendower, Hotspur, and Canadian Indian Policy," *Ethnohistory* 37, no. 4 (1990), 386-415; Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, (Montreal and Kingston: McGill-Queen's University Press, 1990); Carter, "Two Acres and A Cow: 'Peasant' Farming for the Indians of the Northwest," *Canadian Historical Review* 70, no. 1 (1989), 27-52; E. Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada*, (Vancouver: University of British

- Columbia Press, 1986); David Hall, "Clifford Sifton and Canadian Indian Administration, 1896-1905," *Prairie Forum* 2, no. 2 (1977), 127-151; John Tobias, "Protection, Civilization, and Assimilation: An Outline History of Canada's Indian Policy," *Western Canadian Journal of Anthropology* 6, no. 2 (1976), 13-30; Tobias, "Canada's Subjugation of the Plains Cree, 1879-1885," *Canadian Historical Review* 64 (1983), 519-48.
2. Canada. *Report of the Royal Commission on Aboriginal People*, vol. 1 (Ottawa, 1996), 281-83.
  3. Titley, *A Narrow Vision*, 22.
  4. Laird to Mills, 28 September 1877, RG 10, vol. 3641, file 7570. Order in Council 1079, 14 December 1877. RG 10, vol. 3655, file 9000.
  5. Alexander Morris, *The Treaties of Canada with the Indians of Manitoba in the Northwest Territories*. (Toronto: Belfords, Clarke & Co., 1880), 353.
  6. Morris, *The Treaties*, 353. For a discussion of the relationship of Indian policy to the terms of Treaty Eight see Robert Irwin, "The successful pursuance of that humane and generous policy": Canadian Indian Policy and the Making of Treaty Eight." Papers of the Treaty Eight Centenary Conference in *Lobstick: An Interdisciplinary Journal*. (May 2000).
  7. Inspector Wadsworth noted that while the Department appeared to recognize both Ermineskin and Samson as chiefs, they were not signatories to the Treaty. Both demanded their names be added and they get the appropriate medals, but the Department ignored these request. Wadsworth to Dewdney, 1 February 1884. RG 10, vol. 3640, file 7452 pt. 3. The relationship of the Ermineskin people to Bobtail and Bobtail's demand for a large reserve based upon his understanding of the treaty can be found in David Lupul and Brenda Gainer, "A history of the Bobtail Band and Its Reserve," Unpublished Paper, T.A.R.R., May 1978.
  8. Diary of J. C. Nelson, 10 August 1885 to 3 October 1885. Diary of Surveyor, 6 November 1887. RG 10, vol. 3831, file 63465.
  9. This Order in Council confirmed the reserves granted in Treaties 4, 6, and 7. Thus the Department of Indian Affairs should have been aware that the problem of HBC lands selected prior to 1889 existed throughout the prairie provinces. Indeed, an undated list in RG 10, vol. 3837, file 68970 pt. 1 has nearly 200 entries for problem sections.
  10. For information on the Deed of Surrender and its relationship to Aboriginal claims see Frank Tough, "Aboriginal Rights versus the Deed of Surrender: The Legal Rights of Native Peoples and Canada's Acquisition of the Hudson's Bay Company Territory." *Prairie Forum*



- 17, no. 2 (1992): 225-250.
11. Z. A. Lash, 28 June 1876 and Edward Blake, 7 December 1876. RG 10, vol. 3837, file 68970 pt. 1.
  12. Vankoughnet to Reed, 15 September 1887, Vankoughnet to Reed, 24 December 1887. RG 10, vol. 3600, file 1634.
  13. S. B. Bray, Memorandum to Deputy Superintendent General, 22 December 1905. RG 10, vol. 3837, file 68970 pt. 1.
  14. Chipman to Secretary Indian Affairs, 14 December 1905. RG 10, vol. 3838, file 68970 pt. 1.
  15. Bray, Memorandum, 22 December 1905. RG 10, vol. 3837, file 68970 pt. 1.
  16. Agent Grant to Laird, 13 September 1907, RG 10, vol. 1412, p. 119.
  17. Ermineskin, et al to Indian Commissioner, 30 September 1907.
  18. Secretary to P. G. Keyes (Interior), 9 October 1907 and Secretary to Agent Mann, 30 December 1907. RG 10, vol. 3837, file 68970 pt. 1.
  19. Ermineskin to Commissioner, 15 January 1908. RG 10, vol. 3837, file 68970 pt. 3.
  20. Agent Mann to Secretary, 16 January 1908; and Agent Mann to Janse Brothers, 5 February 1908, RG 10, vol. 1412, p. 196 and 210.
  21. Janse Brothers to Mann 25 February 1908, RG 10, vol. 1412, p. 234-5.
  22. Mann to Secretary, 4 March, 27 March, 7 April, 16 June 1908, RG 10, vol. 1412, pp. 243, 254, 291.
  23. Agent Mann to Secretary, 11 August 1908, RG 10, vol. 1412, p. 414.
  24. Ermineskin to Secretary, 10 August 1908. RG 10, vol. 3837, file 68970 pt. 3.
  25. Markle to Commissioner, 24 August 1908. RG 10, vol. 3837, file 68970 pt. 3.
  26. McLean to Ermineskin, 26 August 1908, RG 10, vol. 3837, file 68970 pt. 1.
  27. Laird to Secretary, 2 September 1908. RG 10, vol. 3837, file 68970 pt. 1.
  28. Titley, *A Narrow Vision*, 21.
  29. Agent Mann to Secretary, 11 August 1908, RG 10, vol. 1412, p. 414.
  30. Pereira (Assistant Secretary Interior) to J. D. McLean, 2 March 1909. RG 10, vol. 3837, file 68970 pt. 1. In the case of Ermineskin, for some reason several sections were listed as Ermineskin's reserve but at least two parcels were listed as "In the name of the HBCo."
  31. Mann to Secretary, 19 September 1908, Bray to Secretary 28 September 1908, and Markle to Secretary, 4 December 1908. RG 10, vol. 3837, file 68970 pt. 3.
  32. Oliver to Sifton, 25 March 1902. RG 10, 774/3-4-8-139-1 vol. 1.

33. J. A. Smart to A. W. Ponton, 8 April 1902 and J. D. McLean to Ponton, 7 May 1902. RG 10, vol. 3960, file 141977-1.
34. Ponton to Secretary, 24 July 1902. RG 10, vol. 3563, file 82 pt. 15.
35. Grant to Laird, 6 September 1902. RG 10, vol. 3563, file 82 pt. 15.
36. J. A. J. McKenna, Memorandum, 14 January 1904. RG 10, 774/32-10-138.
37. J. A. J. McKenna to W. S. Grant, 15 June 1904, Markle to Commissioner, 3 October 1904. RG 10, vol. 3563, file 82 pt. 15.
38. G. M. Matheson to Deputy Superintendent General, 5 December 1904. RG 10, vol. 4012, file 267135. [emphasis original]
39. Laird to Secretary, 13 September 1905. 774/31-2-1-1 38CP vol. 1.
40. Agent Grant to Laird, 5 February 1905, RG 10, vol. 1411, p. 157.
41. McLean to McDougall, 31 March 1906. RG 10, vol. 4020, file 280470-2. McDougall to Oliver, 24 May 1906. RG 10, vol. 4012, file 267138. McDougall to Deputy Superintendent General, 25 May 1906. RG 10, vol. 4012, file 266600. The Department rejected the offer by Samson to surrender 11,000 acres of land because it was located away from the railway on the eastern and western edges of the reserve. "The very purpose of securing the surrender was to get settlement along the line of railway." Oliver to McDougall, 26 June 1906. RG 10, vol. 4012, file 266600.
42. For coverage of the Bobtail surrender see David Lupul, "The Bobtail Land Surrender," *Alberta History* 26, no. 1 (1978): 29-39. Fore correspondence related to the surrenders and copies of the surrenders taken in 1909 see RG 10, vol. 4012, file 266600.
43. Pedley to McDougall, 18 January 1909. RG 10, vol. 4012, file 266600.
44. McDougall to Oliver, 3 January 1909. RG 10, vol. 4012, file 266600.
45. Loggie and Manley to Secretary, 15 April 1910. C. C. Chipman to Secretary 11 August 1910. RG 10, vol. 3837, file 68970 pt. 3.
46. J. K. McLean, Memorandum, 25 November 1909; J. D. McLean to Markle, 29 November 1909; McLean to Markle, 12 January 1910; and Loggie and Manley to Markle, 3 February 1910. RG 10, vol. 3837, file 68970 pt. 3.
47. E. Newcombe to Secretary, 8 September 1909. RG 10, vol. 3837, file 68970 pt. 1.
48. Deputy Superintendent General to McLean, 23 February 1910. RG 10, vol. 3837, file 68970 pt. 3. It is not clear if the D. S. G. believed the timber land would be a more valuable inducement or if he simply did not know that the land in question was hay land.
49. McLean to Mann, 29 April 1910. RG 10, vol. 3837, file 68970 pt. 3.
50. Mann to Secretary, 17 May 1910. RG 10, vol. 3837, file 68970 pt. 3.
51. Loggie and Manley to Secretary, 25 November 1910. Secretary to

- Loggie and Manley, 9 December 1910. RG 10, vol. 3837, file 68970 pt. 3.
52. S. Bray, Memorandum for Deputy Minister, 19 May 1910. RG 10, vol. 3837, file 68970 pt. 3.
53. The HBC land in question was not resolved until 1926. See House of Commons, Sessional Papers, 1928, Sessional Paper 107 for correspondence on this issue.
54. Brian Titley, "W. M. Graham: Indian Agent Extraordinaire," *Prairie Forum* 8, no. 1 (1983), 25-41; Titley, *A Narrow Vision*, 40-41.
55. A. P. Patrick to Minister of Indian Affairs, 10 August 1917. Janse Brothers to Minister of Interior, 21 August 1917. R. B. Bennett to D. C. Scott, 30 August 1917. RG 10, vol. 3837, file 68970 pt. 3.
56. J. D. McLean to Janse Brothers 19 April 1918. RG 10, vol. 3837, file 68970 pt. 3.
57. Scott to Graham, 24 April 1918. Cory to Scott, 29 May 1918. Graham to Scott, 29 May 1918, RG 10, vol. 3837, file 68970 pt. 3.
58. Graham to Scott, 13 August 1918. Savary, Fenerty & Chadwick to Scott, 10 October 1918. RG 10, vol. 3837, file 68970 pt. 3.
59. Scott, memorandum to Meighen, 17 October 1918. RG 10, vol. 3837, file 68970 pt. 3.
60. Savary, Fenerty & Chadwick to Scott, 27 November 1918. Scott to Graham, 3 December 1918. Rg 10, vol. 3837, file 68970 pt. 3. The total price of the surrender of the 925 acres at \$25/acre would be \$23,125 of which some \$11,400 would come from the sale of section 9. This was substantially less than the \$16,000 it would cost to purchase section 8 from the Janse bros. at \$25/acre.
61. Butlin to Graham, 22 May 1919. RG 10, vol. 3837, file 68970 pt. 3.
62. Crombie to Graham, 20 June 1919. RG 10, vol. 3837, file 68970 pt. 3.
63. Scott to Meighen, 11 November 1919. Graham to Scott, 15 November 1919. RG 10, vol. 3837, file 68970 pt. 3.
64. Scott to Savarty, Fenerty & Chadwick, 22 May 1920. RG 10, vol. 3837, file 68970 pt. 3.
65. Scott to Loughheed, 4 January 1921. A. Greene (solicitor) to Scott, 30 March 1921. RG 10, vol. 3837, file 68970 pt. 3.
66. Canada. *Report of the Royal Commission*, vol. 1, 177.