

# TREATIES

AND THE TREATY RELATIONSHIP

CANADA'S  
HISTORY



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## On the cover

The cover design for this issue began with the Treaty phrase “As long as the sun shines, the grass grows, and the waters flow” represented by three colours (red, green, and blue). These colours were then interwoven to resemble a sweetgrass braid, traditionally signifying mind, body, and spirit, and in this case also representing the three parties in the Treaty relationship (the First Nations, the Crown, and the Creator). The end of the braid includes twenty-one individual strands representing seven past generations, seven future generations, and the Seven Sacred Teachings. The design was a collaboration between artist Kenneth Lavalée and graphic designer Andrew Workman.

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# Contents

- 10 *Gakina Gidagwi'igoomin Anishinaabewiyang:  
We Are All Treaty People*  
Understanding the spirit and intent of the Treaties matters to all of us. *by Karine Duhamel*
- 16 *Interpreting the Treaties*  
Historical agreements between the Crown and First Nations are fraught with ambiguity.  
*by Douglas Brown and William Wicken*
- 22 *Ties of Kinship*  
The Treaty of Niagara is seen by some as marking the true founding of Canada.  
*by Philip Cote and Nathan Tidridge*
- 26 *The Numbered Treaties*  
Western Canada's Treaties were intended to provide frameworks for respectful coexistence.  
*by Wabi Benais Mistatim Equay (Cynthia Bird)*
- 34 *Living Well Together*  
Understanding Treaties as an agreement to share.  
*by Aimée Craft*
- 40 *Algonquin Territory*  
Indigenous title to land in the Ottawa Valley is an issue that has yet to be resolved.  
*by Peter Di Gangi*
- 46 *Nations in Waiting*  
British Columbia's First Nations are in a unique situation regarding Treaties.  
*by Guuduniia LaBoucan*
- 52 *Finding Forgiveness, Building Trust*  
Treaty education in Nova Scotia is a reconciliation story that has been many years in the making.  
*by Jaime Battiste*

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## A message from Janet Walker

First Nations peoples were the first to see this land. They were the first to hunt its forests, fish its rivers, and harvest its flora, and they passed their wisdom down to their children and grandchildren.

Indigenous peoples were willing to share their knowledge with the European newcomers they encountered. Over time, the two groups became trading partners and allies. And yet, the stories of the First Nations, along with those of the Inuit and Métis peoples, were pushed to the margins of history texts. The Treaty relationship, so crucial to understanding Canada today, was forgotten, and in some cases it was even deliberately ignored; today many non-Indigenous Canadians are unaware of these compelling and significant stories.

This special issue of *Canada's History* explores the history of Treaties and the Treaty relationship and is an important first step in sharing First Nations perspectives.

It has been developed with contributors who have helped to incorporate the spirit and intent of Treaty making. The contributors, drawn from across the country, bring expertise and insights that help us to understand the continuing relevance of Treaties and the Treaty relationship.

We are grateful to Treaty Commissioner Loretta Ross, who co-edited this issue, along with *Canada's History* editor-in-chief Mark Collin Reid and all the contributors who have helped to bring this project to fruition.

Many teachers and students have asked for resources to help to advance the understanding of Treaties. This special issue is part of a greater conversation to ensure that our collective history is truly inclusive.



## A message from Mark Collin Reid

Since time immemorial, First Nations have forged ties of kinship and friendship with other Indigenous peoples. These ties were later extended to the European newcomers who arrived in North America centuries ago. The Treaties made between the First Nations and the Crown are living agreements — as relevant today as they were the day they were signed. Everyone benefits when there is a greater understanding and appreciation of Treaties and the Treaty relationship.

This special issue would not have been possible without the tremendous contributions of our many writers, editors, designers, artists, translators, and advisors.

We want to especially thank Loretta Ross, co-editor of *Treaties and the Treaty Relationship*, and her amazing team at the Treaty Relations Commission of Manitoba. Loretta's guidance was crucial to this magazine's success. We are also deeply grateful for the advice offered by the Treaties issue advisory group: Connie Wyatt Anderson, Charlene Bearhead, Monique Larivière, Ry Moran, Jean-Pierre Morin, Janet Porter, Amanda Simard, and Sylvia Smith.

Finally, a quick note about terminology. We have tried during the editing process to respect and to reflect the regional variants of the spellings of some First Nations terms. Readers may also note that the terms "First Nations" and "Indigenous" have, on occasion, been used interchangeably. While the term "Indigenous" also includes the Inuit and Métis peoples, this issue focuses specifically on the Treaty relationship between First Nations and the Crown, and the editors deferred to the writers' preferences with regard to using "First Nations" and "Indigenous" interchangeably.

# Encouraging a deeper knowledge of history and Indigenous Peoples in Canada

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No relationship is more important to the Government of Canada than its relationship with Indigenous Peoples. We are pleased to support publications such as *Canada's History: Treaties and the Treaty Relationship*. The establishment of treaties between settlers and Indigenous Peoples has had a profound impact on a wide range of issues from land and resource use to Indigenous health care and education, as well as the relationship between Indigenous Peoples and the Crown.

As Minister of Canadian Heritage, I thank Canada's History Society for offering Canadians a chance to learn about a vital part of our shared past and how it shapes our future. By learning more about the treaties between Indigenous Peoples and the Crown, readers will be better able to understand the agreements' present-day context and challenges, and in turn, envision more positive ways forward.

A handwritten signature in blue ink, reading 'M. Joly'.

The Honourable Mélanie Joly

Canada 

# Contributors



**Jaime Battiste** is a law graduate of Dalhousie University, a resident of Eskasoni First Nation, and a member of Potlotek First Nation. Battiste is currently the Treaty Education Lead for Nova Scotia. He has written about Mi'kmaw laws and knowledge, and has held positions as a professor, senior advisor, citizenship coordinator and Assembly of First Nations Regional Chief.



**Cynthia Bird (Wabi Benais Mistatim Equay)** of Peguis First Nation is a long time First Nations educator whose most recent work has been with the Treaty Relations Commission of Manitoba as Lead and Advisor to the K-12 Treaty Education Initiative. She is a recipient of the Aboriginal Circle of Educators' Research and Curriculum Development Award (2011) and the TRCM's Treaty Advocacy Award (2014).



**Douglas Brown** of Membertou First Nation is the Executive Director of the Union of Nova Scotia Indians. Brown holds a law degree from Dalhousie University and worked on Aboriginal and Treaty Rights cases since 1998. Prior to this, he received a BA in Mi'kmaq Studies from Cape Breton University and also served in the United States Army from 1983 to 1987.



**Philip Cote** of Moose Deer Point First Nation is a Young Elder, Indigenous artist, educator, historian and Traditional Wisdom Keeper. He is engaged in creating opportunities for art-making and teaching methodologies through Indigenous symbolism, traditional ceremonies, history, oral stories, and land-based pedagogy. His art and teaching philosophy evolves from his practice of experiential learning and the transmission of Indigenous Knowledge.



**Aimée Craft** is an Indigenous lawyer (Anishinaabe-Métis), and an Assistant Professor at the Faculty of Common Law, University of Ottawa. Her expertise is in Anishinaabe and Canadian Aboriginal law. Craft's award-winning 2013 book, *Breathing Life Into the Stone Fort Treaty*, focuses on understanding and interpreting Treaties from an Anishinaabe inakonigewin (legal) perspective.



**Peter Di Gangi** is the Director of Policy and Research for the Algonquin Nation Secretariat in Timiskaming, Quebec. An expert on Indigenous historical, legal and cultural research, Di Gangi has also worked extensively with Anishinaabe communities on the North Shore of Lake Huron and Manitoulin Island, and with the Algonquin communities of the Ottawa Valley.



**Karine Duhamel** is Curator for Indigenous Rights at the Canadian Museum for Human Rights. Her work also includes developing relationships with Indigenous communities and leaders across Canada. Of Anishinaabe and Métis heritage, she is a historian and educator with expertise in residential schools, Treaty federalism and Indigenous politics. She received her PhD from the University of Manitoba in 2013.



**Guuduniia LaBoucan**, a Cree biologist, lawyer, and writer, works as a Senior Policy Analyst for the Fish and Wildlife Branch of the British Columbia government. A mother and a partner, LaBoucan won the 2017 Cedric Literary Award in the First Nations Writer category. She enjoys athletic pursuits, including Ping Pong, tennis and soccer playing, and lives in Victoria, B.C.



**Nathan Tidridge** is an author and award-winning secondary school teacher. He serves on the Board of Directors for the Ontario Heritage Trust and the Institute for the Study of the Crown in Canada at Massey College, as well as on the National Advisory Council for the Prince's Charities Canada. Tidridge was recently awarded the Meritorious Service Medal by the Governor General of Canada.



**William Wicken** is a Professor of History at York University. He is the author of *Mi'kmaq Treaties on Trial* (2002), and *The Colonization of Mi'kmaq Memory and History, 1794-1928* (2012). The latter won the 2013 Governor General's History Award for Scholarly Research. Wicken has expertise in Indigenous history and in public policy and has testified as an expert witness in Aboriginal legal cases. He is also a member of the board of directors of Canada's History Society.

# Foreword

by Loretta Ross, Commissioner, Treaty Relations Commission of Manitoba



This special issue of *Canada's History* magazine is a wonderful opportunity to provide readers with perspectives on Treaties that go beyond what most people have learned in school. For too long, Canadians have learned about Treaties with First

Nations from a singular, non-First Nations perspective. The goal of this special issue is to try to provide a more balanced understanding of Treaties and the Treaty relationship.

Our special guest contributors help us to gain a more nuanced and enriched understanding of Treaties and the Treaty relationship by explaining the broader historical context of the Treaties, which includes the histories, laws, languages, and ways of life of First Nations peoples. They also discuss the challenges of interpreting the Treaties when First Nations' beliefs contest the non-Indigenous historical narratives that have dominated the minds of Canadians for so long.

Karine Duhamel argues that we need to recover the true spirit and intent of the Treaties, including First Nations' accounts and histories of them; they hold the key to a new path forward between the parties.

Co-authors Douglas Brown and William Wicken review some of the challenges in interpreting Treaties between First Nations and the Crown. For instance, the languages and laws of First Nations contain concepts that are not compatible, or have no equivalency, with Canadian laws or languages.

Philip Cote and Nathan Tidridge together revisit the 1764 Treaty of Niagara and its rediscovery by non-Indigenous people as a highly significant moment in terms of negotiations between First Nations and the European peoples. They suggest that this Treaty can be considered the true founding relationship that made possible the creation of Canada.

Cynthia Bird relates the historical significance of the Numbered Treaties. They were used by both First Nations and the Crown as political tools designed to achieve each party's goals. The First Nations saw these Treaties as a way of solidifying a peaceful relationship with the Crown; the Treaties were intended to provide frameworks for respectful coexistence between the two sides.

Aimée Craft examines First Nations' understandings of Treaties as based upon a connection or relationship with the land and an agreement to share the land. This runs counter to non-Indigenous legal systems, which traditionally have been based on land-ownership and possession. Craft argues that Treaty interpretation must take Indigenous law and legal systems into account.

The outstanding issue of the Algonquins and the Ottawa Valley area is the focus of Peter Di Gangi. Although traditional First Nation territory has always included this area, this has never been acknowledged by a land-sharing Treaty — an issue that remains unresolved.

Guuduniia LaBoucan examines the history of Treaties in British Columbia. The Nisga'a Treaty of 1998 was the first modern Treaty signed in British Columbia in almost a century. The history of negotiations in British Columbia again illustrates the disconnect between the Crown and First Nations when it came to the notion of forfeiting or selling land.

Jaime Battiste relies on his experiences in his work with the Mi'kmaw and on Treaty Education to illustrate the importance of Mi'kmaw history in Nova Scotia. He speaks of the importance of collaboration and of treating people as potential allies in order to move forward.

We hope this special issue helps to transform how Canadians understand Treaties so that we all can work together in a manner that respects the spirit and intent of the Treaties — which were signed on a nation-to-nation basis.

This special issue is certainly not the final word on Treaties, but rather, the beginning of an important and necessary dialogue that includes the perspectives of both sides of the Treaty relationship. For far too long, many non-Indigenous Canadians have either misunderstood, or have had little knowledge of, the integral role Treaties had in the formation of Canada and how the relationship created by them continues today.

As all parties in the Treaty relationship move forward, we need to find new ways to work together; it is a responsibility held by both First Nations and the rest of Canada.

A key to understanding the various perspectives of the Treaty relationship is a willingness to listen and, hopefully, to have challenging — and even difficult — conversations.





# *Gakina Gidagwi'igoomin* *Anishinaabewiyang:* We Are All Treaty People

*Understanding the spirit and intent of the Treaties matters to all of us.*

by Karine Duhamel

In October 2017, twenty-one First Nations representing approximately thirty thousand people took the federal and Ontario governments to court, alleging that the Treaty commitments made by the man originally assigned to negotiate them in 1850, Special Commissioner William Benjamin Robinson, were due for renegotiation. The case focuses on a central question: How should Treaty terms negotiated nearly 170 years ago be interpreted today? The First Nations who signed Robinson's Treaties argue that the federal and provincial governments have drawn considerable resource wealth from their territory without ever renegotiating the terms Robinson made, even though Robinson included a clause for renegotiation. The annual annuity to band members remains the same today as it was in 1874 — four dollars per person.

Public commentary on the case has focused on the unreliability of the memories of Treaty signatories or their descendants, or on the idea that Treaties are somehow out of place in today's world. These ideas reveal misconceptions within the public sphere regarding the significance of Treaties today.

Recovering the true spirit and intent of Treaties is a priority. These agreements are not old, obsolete, or pointless. First Nations' own histories and accounts of Treaty processes uphold important principles of reciprocity, respect, and renewal rooted in thousands of years of experience and presence on these lands. The Treaties hold the keys to a new path forward as living agreements regarding relationships between First Nations and settlers in the past, for the present, and towards the future.

The original spirit and intent of Treaty involves understanding and upholding the agreements people actually negotiated, rather than focusing on how Treaties have been reinterpreted long after the fact. The misinterpretation of Treaties in general

has generated a substantial body of case law in both the public and corporate sectors. The idea that First Nations then would want to clarify the original terms and ideas to which they agreed and ensure that they are honoured should not be viewed as an exceptional request. Clarification is part of the process in all types of agreements, whether they are between nations, among businesses, or within individual contracts.

For First Nations people, the original spirit and intent of the Treaties was, and still is, centred on principles about land and nationhood that are embedded in ceremonies, protocols, and discussions of Treaties that are outside of the written documents themselves. Even the courts recognize the negotiations prior to Treaty making, and the discussions afterwards, as being part of the Treaties. Therefore Treaties represent much more than the texts.

According to Anishinaabe Elder Harry Bone in the radio series *Let's Talk Treaty*, discussing the original spirit and intent of Treaty includes recognizing who First Nations are now and who First Nations were at the time of Treaty negotiation in relationship to settlers and to the land. Bone, of the Keeseekoowenin Ojibway First Nation in Manitoba, says First Nations are the first owners and occupants of the land; they protect their languages, beliefs, and teachings and honour the Creator. Treaties are part of the first law — the constitution of First Nations — that involves the idea of entering into peaceful arrangements with newcomers on an equal, nation-to-nation basis.

The intent of Treaties at the time of their negotiation was the protection and retention of rights to languages, ways of life, and existing belief systems. This undertaking is part of the original understanding of Treaty processes as ongoing relationships that are dynamic and adaptable. Treaties were about retaining a way of life that included hunting, fishing,

and gathering, as well as a relationship to the land that existed for thousands of years prior to the arrival of Europeans. According to First Nations signatories of the Treaties, as well as to Knowledge Keepers today, the land and everything on it is alive. The land has been described as the Creator's Garden by Anishinaabe Elder Ken Courchene in *Untuwe Pi Kin He: Who We Are*, and the law is seen as Mother Earth herself. The seven sacred principles of Anishinaabe law, for instance, are centred on relationships — between nations, between individuals, and, most importantly, with the land.

At the time the Treaties were signed, as now, First Nations did not consider land to be a static entity to be bought or sold. It could not be distributed, parcelled out, and held individually in the sense of ownership. As Anishinaabe Elder Lawrence Smith of Baaskaandibewi-ziibiing (Brokenhead) First Nation in Manitoba explains in *Ka'esi Wahkotumahk Aski: Our Relations With The Land*, the land and its resources are, and continue to be, gifts from Creator. In the same volume, Anishinaabe Elder Francis Nepinak of

of any agreement they make to allow others to use it, Craft says in her book. Being part of the land, they understand that they will continue to make decisions in regards to it. According to Elders, any relationship negotiated within the context of Treaty must adhere to these principles.

Agreements negotiated among First Nations groups engaged these kinds of ideas long before agreements were made with Europeans. One example of this type of agreement is the Dish With One Spoon, a Treaty negotiated between the Anishinaabe and the Haudenosaunee. The dish represented territory the peoples shared in what is today southern Ontario, while the spoon represented the wealth of the land. The absence of a knife within this Treaty spoke to the need to maintain peace for the benefit of all. Importantly, all participants in the agreement had the responsibility to ensure that the dish would never be empty by taking care of the land and of all of the living beings on it. The Creator and the laws were integral to the agreement. The Treaty was intended to last as long as the people lived on the earth.



A reproduction of the Dish With One Spoon wampum belt. The dish and spoon image is constructed with authentic wampum from circa 1650, collected from Seneca territory in Western New York. Acrylic beads were used to complete the belt.

Mina'igo-ziibiing (Pine Creek) First Nation in Manitoba describes oceans, lakes, and rivers as the veins of a human body, the plants like hair, and the ground like flesh. And, as Indigenous legal scholar Aimée Craft writes in *Breathing Life into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One*, this relationship between the people and the land means that they are inseparable, and that the land is a living entity that requires care for which the people are responsible.

Cree author Harold Johnson points out in *Two Families: Treaties and Government* that the land “is the place I belong to. This is where my ancestors are buried, where their atoms are carried up by insects to become part of the forest, where the animals eat the plants in the forest, and where my ancestors’ atoms are in the animals that I eat, in my turn. I am a part of this place. I do not say that I own this land; rather, the land owns me.”

Within this view, First Nations groups retain the primary attachment of their relationship with the land, regardless

The Dish With One Spoon Treaty was recorded like many others — on a wampum belt, which could be read as a way to remember the agreements made by previous generations. Instead of specifying concrete or specific terms in a time-limited way, these agreements established mutually beneficial and agreed-upon principles that were intended to last for many generations. Each party had a responsibility to make sure that its actions conformed to the principles established in the Treaty. As a result, they were flexible agreements intended to maintain a spirit, rather than a strict set of rules that could not adapt to changing circumstances.

To generate a mutual understanding of the roles and responsibilities of each party, many groups called on the principles of kinship. As Anishinaabe Elder Barbara Rattlesnake, from Dootinaawi-ziibiing (Valley River) First Nation in Manitoba, maintains in *Untuwe Pi Kin He: Who We Are*, relationships are not limited to those people with whom a blood relation exists. Under the Treaties,



Young dancers take part in a pow wow at Heritage Park Historical Village in Calgary. The implications of how Treaties are interpreted today will have significant impacts on future generations of both First Nations and non-Indigenous peoples.

settlers and First Nations peoples could relate to each other as adopted relatives. For example, under the Two-Row Wampum, negotiated in 1613 between the Dutch and the Haudenosaunee in what is now New York State, the Dutch suggested that the Mohawk refer to them as fathers.

The Mohawk proposed an alternative relationship — brother — indicating a more equitable and autonomous relationship. The brotherhood was affirmed nearly 150 years later, in 1764, at the Treaty of Niagara, where over two thousand chiefs renewed and extended the Covenant Chain of Friendship, a multi-nation alliance between First Nations and the British Crown.

During the Numbered Treaty period, between 1871 and 1921, Crown Treaty negotiators used Indigenous kinship systems to their advantage to try to convey important principles. For instance, government negotiators made frequent references to the Great Mother (Queen Victoria) in their presentations to Anishinaabe people. According to Craft, the more than 1,100 people gathered at Stone Fort (Lower Fort Garry near Selkirk, Manitoba) for the negotiation of Treaty 1 would have understood a mother figure as loving, kind, and responsible for protecting her children.

At the same time, the value of respect for the child meant that mothers encouraged children to make their own decisions about how they wished to live. As such, engaging the idea of the Queen as the Great Mother would have signalled to the Anishinaabe that the British Crown intended to deal fairly with them and to protect them without interfering in their affairs for many generations. Treaty promises were made to last as long as “the sun shines, the grass grows, and rivers flow.” This refers to the land as well as to kin relationships, whether literal or figurative. In fact, many Elders have also suggested the term “waters,” which relates to the waters of a woman when a child is born.

As Johnson explains, settlers also became new relatives through Treaty. They became *kiciwamanawak*, or cousins, and are regarded by First Nations people as equals, not as superiors. First Nations assumed that Europeans would learn to live in balance with the land by watching Indigenous people, who had done so for thousands of years.

Johnson explains, “no one thought you would try to take everything for yourselves, and that we would have to beg for leftovers.... The Treaties that gave your family the right to occupy this territory were also an opportunity for you to learn how to live in this territory.”



Rights of Passage: Canada at 150, an exhibit at the Canadian Museum for Human Rights in Winnipeg, illustrates how Treaties are not being interpreted in ways that are true to their intent.

This powerful reversal is essentially the crux of the issue: From the First Nations' point of view, the Treaties granted Europeans access to the territory; settlers had the right to use some of the territory within the context of the Creator's laws.

Misunderstandings were sometimes due to incomplete or inaccurate translations. As John S. Long reveals in *Treaty No. 9: Making the Agreement to Share the Land in Far Northern Ontario in 1905*, during the Treaty 9 negotiations translators referred to *onaakonigewin*, the closest Ojibway word for law. *Onaakonigewin* refers to a decision necessary to achieving a good life, but not necessarily to an actual law as understood by Europeans. As Johnson proposes, "The authority assigned to the written text is a subversion of what really happened."

This was demonstrated during the negotiation of Treaty 1, when the agreement recorded in writing on the ninth and final day of negotiations failed to register the complete agreement as it had been spoken and heard, Craft writes in *Breathing Life Into the Stone Fort Treaty*. In 1875, a second Treaty was negotiated with the same groups to reconcile these differences.

Government negotiators engaged First Nations ideas and protocols in their approach, providing some reassurance regarding respect and reciprocity. For example, Alexander Morris, Treaty Commissioner at Treaty 6, explained to those assembled in 1876 at Fort Carlton, in present-day Saskatchewan, that what he was offering was not intended to take away from their mode of life, which they could enjoy just as they had before.

The presence of sacred objects during negotiations also reassured First Nations. As Nehetho Elder D'Arcy Linklater of Nisichawayasihk (Nelson House) Cree Nation explains in *Dtantu Balai Betl Nahidei: Our Relations To The Newcomers*, many sacred elements were used during the making of the Treaty, including the pipe, the tobacco, the stem, and the medicine. Similarly, Anishinaabe Elder Florence Paynter of Sandy Bay First Nation in Manitoba describes the use of the pipe in Treaty ceremonies as a way of signalling the Creator's presence and approval of the agreement.

In addition, Treaty medals — distributed at the signing of each Numbered Treaty — contained symbols of mutual benefit and respect. The medal's main image depicted a military officer and a First Nations leader shaking hands over a buried hatchet — symbolizing peace and equality. The background included the rising sun and several teepees — indicating that the people would be allowed to retain their own ways of life within a kinship relationship that would last for generations. Since the medal, as well as Treaty negotiators themselves, called upon natural elements with spiritual qualities, these agreements were perceived by First Nations signatories to be bound with their spirits for successive generations. Elder Bone explains in *Untuwe Pi Kin He: Who We Are*: "You have to tie where our original rights came, and that is from the Creator."

Instead of simply seeing two parties at the Treaty negotiations, then, we should see three: First Nations,

## Lessons From the Earth Apprendre de la terre

### People, Not Profit

According to many Indigenous traditions, people have a responsibility to care for the environment.

Because of industrial development, the people of Grassy Narrows First Nation live on a river system polluted by methylmercury dumped by a paper mill in the 1960s. In addition, clear-cutting of forests on their territory threatens their ability to hunt and trap. This jeopardizes the local economy and the ability of the people to live on the land.

For decades, the community of Grassy Narrows has struggled for justice. Defenders believe that teaching youth about resource-based traditions can help restore health and wellbeing.

### Les gens plutôt que le profit

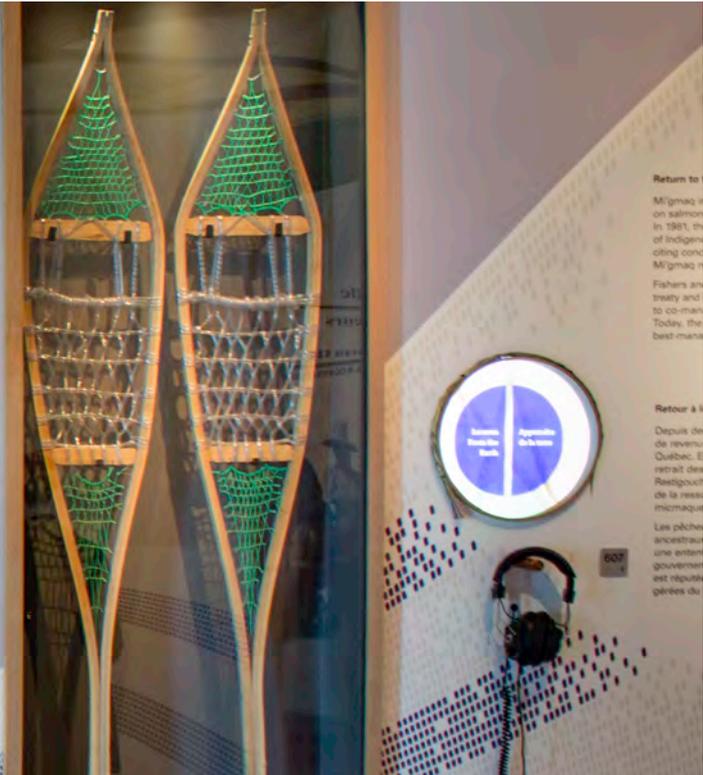
Selon de nombreuses traditions autochtones, les gens ont la responsabilité de préserver l'environnement.

À cause du développement industriel, le bassin hydrographique du territoire où vivent les membres de la Première Nation de Grassy Narrows est pollué par du méthylmercure rejeté par une usine de papier dans les années 1960. De plus, les coupes à blanc pratiquées sur leur territoire nuisent à la chasse et au piégeage. Cela met en jeu l'économie locale et la possibilité pour la nation de vivre sur ses terres.

Depuis des décennies, la communauté de Grassy Narrows réclame justice. Ceux et celles qui défendent le territoire sont convaincus qu'en enseignant aux jeunes l'utilisation traditionnelle des ressources, on pourra restaurer la santé et le bien-être.



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ANDREW WORMAN

settlers, and the Creator. The Creator's laws framed First Nations' understanding of and agreements to Treaty making. This kind of understanding is not a revision but rather a correction of a narrative written by non-Indigenous peoples that has failed to fully recognize the humanity of First Nation peoples and therefore their existence as nations with their own belief systems, ways of life, and governance structures.

Treaty agreements are not for the history books alone. Today the principle of free, prior, and informed consent animates

*As a society, we find ourselves in a pivotal moment, and what we do next, with respect to Treaties as well as to the overall relationship between settlers and Indigenous peoples, will set the course for the future.*

political and cultural debates about land, appropriation, and other pressing issues. This principle requires that the relationships pursued today engage First Nations perspectives and priorities meaningfully and with consent.

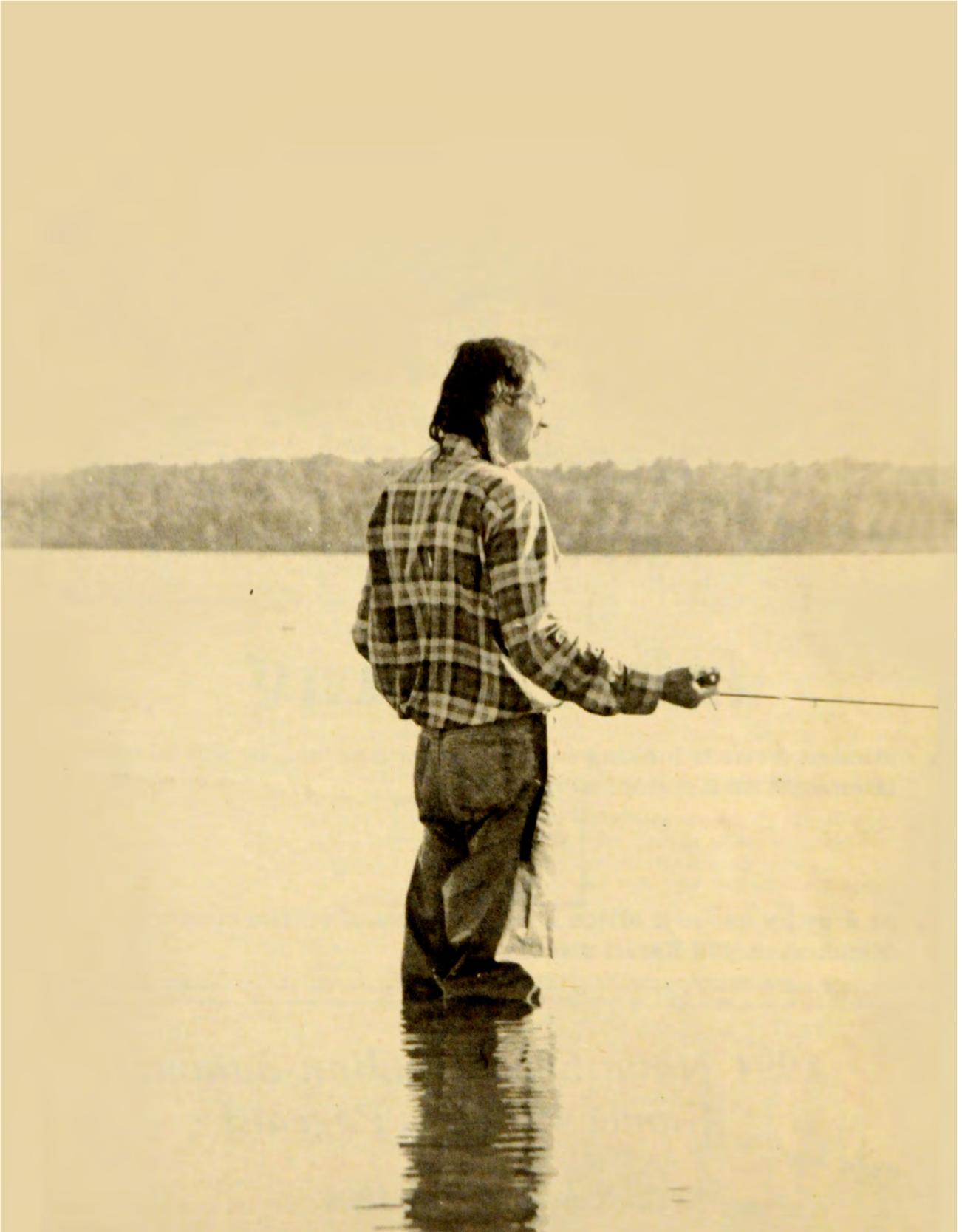
A temporary exhibit at the Canadian Museum for Human Rights in Winnipeg illustrates how Treaties are not being interpreted in ways that are true to their intent. Entitled Rights of Passage, it includes the story of Wasagamack First Nation in Manitoba, which in 2015 received a cheque in the amount of \$79.38 to cover twenty years (from 1996 to 2015) of ammunition and twine as promised in the terms of their 1909 agreement to Treaty 5.

In 1908, this paltry sum might have ensured that band members could sustain their way of life, but it's not what signatories envisioned would sustain their descendants a century later. The inadequate payment betrays the true intent and spirit of an agreement that was intended to provide for the peace and prosperity of many generations.

Treaties can be part of the foundational fabric of this society, but only if society embraces them for the agreements they were intended to be: agreements based on the principles

of friendship, peace, and respect for all future generations. As a society, we find ourselves in a pivotal moment, and what we do next — with respect to Treaties as well as to the overall relationship between settlers and First Nations peoples — will set the course for the future.

“To get to the future, we need a vision, then we must imagine the steps we must take to get to that vision,” says Harold Johnson, the Cree author. “We cannot ignore our vision because it seems utopian, too grand, unachievable. Neither can we refuse to take the first steps because they are too small, too inconsequential.... We will both be part of whatever future we create, *kiciwamanawak*.”



Donald Marshall Jr., a Mi'kmaw from Cape Breton, Nova Scotia, fishes in 1991. In 1993, he was charged with selling eels without a license. It sparked a legal battle over Treaty rights that went all the way to the Supreme Court of Canada.



# Interpreting the Treaties

*Historical agreements between the Crown and First Nations are fraught with ambiguity.*

by Douglas Brown and William Wicken

In 1993, Donald Marshall Jr., a Mi'kmaw from Nova Scotia's Cape Breton Island, sold 201 kilograms of eel to a New Brunswick company. The federal government charged Marshall with selling fish without a licence. He claimed that a 1760 Treaty his ancestors had signed with the British gave him a right to sell fish. Forcing him to buy a commercial licence, he said, was an unreasonable burden on his Treaty (constitutional) rights. After a six-year court battle, the Supreme Court of Canada agreed, though it also said that Treaty right could be abridged for conservation and other reasons.

The *Marshall* case illustrated how First Nations people, historians, lawyers, and judges interpret Treaties differently. One challenge is that the Treaties were written in English and contained phrases difficult to translate into First Nations languages. In a 1725 Treaty, for instance, the First Nations agreed to not interfere “with settlements already made or lawfully to be made.” How was that phrase understood? Did British officials interpret it differently from Indigenous speakers? Historians tackling this problem often outline the historical context in which a phrase was written to conceptualize each party's understanding.

We should recognize, however, that “lawfully” is an ambiguous term. What law? British law? Indigenous law? Or a mixture of the two?

While we may not be able to answer these questions definitively, asking them allows us to conceptualize what Indigenous peoples might have thought.

We know more about how eighteenth-century Europeans viewed these issues because they wrote and preserved their records. Thus, we are more likely to know how they understood the phrase “lawfully to be made,” because we can reconstruct the society in which those words were used. We know less about Indigenous peoples before 1763, as they did not keep records about historical events in the same way as Europeans.

We know, however, that First Nations kept oral memories of the Treaties, and that these memories were transmitted to later generations. But historians have not always integrated these oral histories into their interpretations.

We get glimpses of these oral histories in the Atlantic region, where First Nations speakers referred to previous Treaties they had signed. In 1749, for instance, when Nova Scotia Governor Edward Cornwallis asked the Maliseet if they remembered an earlier Treaty they had signed, their speaker replied that they had a copy of it and said, “we are come to renew it.”

A century later, in a petition to Queen Victoria, Mi'kmaw leaders said that “we can neither disbelieve nor forget what we have heard from our fathers when peace was made.” And in a courtroom in Port Hood, Cape Breton Island, in July 1928, Joe Christmas, then seventy-four years old, said he had “heard that according to Treaty we had right to hunt and fish at any time. I cannot read. Heard it from our Grandfathers. Heard that King of England made Treaty with Micmacs [Mi'kmaq]. With the whole tribe.”

Like other First Nations in eastern North America, the Mi'kmaq and Maliseet also recorded their memories in wampum belts. These belts were composed of thousands of shells that were woven together and that depicted symbolic figures. They were used in diplomatic exchanges with European officials and with other Indigenous peoples. These belts thereafter became mnemonic devices used to remember past agreements.

These examples show that Indigenous people retained copies of the Treaties, passed oral histories on to future generations, and recorded memories in wampum belts. However, the further back in time memories stretch the more difficult recovering these perspectives becomes. This renders understanding some Treaties challenging.

Another challenge is that European colonization tore First Nations communities asunder, causing difficulties in conceptualizing what their people understood when the Treaties were made.

Because Indigenous societies experienced dramatic change after 1600, historians have difficulty reconstructing their histories. For example, by the early nineteenth century, the Beothuk of Newfoundland and Labrador had ceased to exist as a distinct people. They had small, if any, trading



Tsaminik Rankin, an Algonquin spiritual leader from the Pikokan Reserve in Abitibi, Quebec, purifies to the four directions with the peace pipe used in the Great Peace in 1701. The ceremony, held in Montreal in June 2001, marked the three hundredth anniversary of the Great Peace, a Treaty between First Nations and the colonists of New France.

relationships with seasonal European fishing parties, and their numbers fell when European settlements interfered with their hunting and fishing grounds. Often malnourished, they were very vulnerable to European-borne diseases, especially tuberculosis. Violent tensions between settlers and Beothuks also took a toll.

We know much about Beothuk culture, history, and language from Shanawdithit — a young woman who spent the last year of her life in the care of a philanthropist and scientist who preserved her drawings and stories. When Shanawdithit died in 1829, she was believed to be the last of her people, but other members of her community had probably already integrated into the Mi'kmaw population of southern Newfoundland.

The Innu, Maliseet, and Mi'kmaq also lived in Atlantic Canada at the time of European contact. European-borne diseases, such as smallpox and influenza, also dramatically affected their populations.

Conflicts inevitably ensued when settlers encroached on Indigenous land. In the 1600s, the colony of Massachusetts was at war with the Abenaki, Narragansett, Pequot, and Wampanoag. Many Indigenous people were killed, sold into slavery, or absorbed into settler communities. Others fled to Canada's St. Lawrence Valley region and formed communities there. These included the Abenaki, who settled

at Wolinak and Odanak in Quebec. These communities continue to exist today.

One First Nations population that was able to resist the British and French was the Haudenosaunee Confederacy, also known as the Six Nations. Because the Haudenosaunee lived near waterways connecting New York and Montreal to the interior, they could interrupt the European trade in furs. That made them a focus of European aggression and diplomacy.

As a result, by the late 1600s the Confederacy had splintered into French and British factions.

Some families moved to Kahnawake near Montreal and to Kanasetake near Oka, Quebec, both of which are still important First Nations communities. Other First Nations peoples lived adjacent to the Great Lakes.

Some people, such as the Lenape, Miami, and Shawnee, were refugees as the growing British colonies had forced them westward into the Ohio Valley. The other major confederacy was the Anishinaabeg, who lived north and west of lakes Erie and Ontario. Composed of Chippewa, Odawa, Ojibwe, and Potawatomi, the Anishinaabeg had by the late 1600s become important allies of New France.

As all of this shows, First Nations peoples experienced profound dislocation after 1600.

Before 1600, First Nations made Treaties among themselves. These agreements were recorded and exchanged



The Hiawatha belt symbolizes the agreement between the five original Haudenosaunee nations and their promise to support each other in unity. The central symbol is a tree representing the Onondaga Nation – where the Peacemaker planted the Tree of Peace and under which the leaders of the Five Nations buried their weapons. Four white squares, from left to right, represent the Seneca, Cayuga, Oneida, and Mohawk peoples. Lines extending from the nations stand for a path that other nations might follow, if they agree to live in peace and to join the Confederacy. The Tuscarora became the sixth member of the League in the 1720s.

in belts of wampum. By accepting the belt, a party agreed to its content. The belt was kept as a testament to the Treaty that had been made.

Beginning in the 1600s, the British and French made Treaties with various First Nations in order to regulate relationships with them and also to secure access to Indigenous lands and trading networks. In Connecticut, Massachusetts, and Rhode Island, the colonists understood these Treaties as land surrenders. The agreements were written on paper and contained legal language delineating the lands that had been sold. The First Nations people, however, likely understood these agreements differently.

By the eighteenth century, wampum had become the means through which European officials communicated with the Haudenosaunee and other nations. For instance, in 1766, an English merchant wrote that before leaving Montreal he had received from Kahnawake and Kanesatake deputies “a belt & speech, desiring me to represent their behavior to the King [George III], which I have done through Lord Shelburne, one of His Majesty’s principal Secretaries of State; in consequence of which, I have received the enclosed letter from Lord Shelburne, signifying His Majesty’s pleasure thereupon, which fully shows his entire approbation of their friendly conduct and assurance of the continuation of His tender regard & protection.”

War between New France and the Haudenosaunee began in the 1640s and ended with the Great Peace of 1701. The Treaty signed in Montreal during the summer formally brought an end to six decades of conflict in French-Haudenosaunee relations. The peace was also signed by various western Indigenous peoples,

who were aligned with the French, including the Anishinaabeg, Fox, Sauk, and Winnebago nations. Under the Treaty, the Haudenosaunee agreed to remain neutral in future conflicts between Great Britain and France; they also gained access to trade with western First Nations.

From 1701 to 1763, conflict between Great Britain and France complicated relationships with Indigenous nations. Though these two countries had been at war before, the eighteenth century marked a new conjuncture. The Seven Years War (1756–63), waged in Europe, South Asia, the Caribbean, and Central and North America, was principally about which nation would control European global trading networks. By the 1750s, this trade had reached into every corner of the globe.

In the North Atlantic, the African slave trade and profits garnered from the Caribbean sugar plantations were important prizes in the conflict. France’s and Great Britain’s North American colonies were part of this trading network. The French colony of Île-Royale (Cape Breton Island) produced dried cod, which was exported to feed the African-Caribbean slaves. Similarly, New England benefitted from producing rum, which was manufactured from molasses, an extract of the sugar-refining process.

In North America, the centre of British-French conflict during the Seven Years War was the Ohio Valley. Canadian interest in the region, and a growing French population between Illinois and Louisiana, threatened British interests there. Located south of lakes Erie and Ontario, the valley had become, by the mid-1700s, an area of expansion for the colonies of New York, Pennsylvania, and Virginia. Thomas

Jefferson and George Washington, each Founding Fathers of the United States, were among those with a financial investment in the region.

In the ensuing conflict, British officials made promises about their future intentions regarding First Nations lands. This was necessary, as the Anishinaabeg, Lenape, Shawnee, and other western First Nations were allies of New France, and their support for the French could have undermined British war aims. These promises became the foundation of the Royal Proclamation of 1763.

This document was principally concerned with restructuring British colonial governments following France's surrender of its North American colonies in the Treaty of Paris (1763).

The Proclamation also reserved lands west of the Appalachians (from present-day Ontario westward) as the "Indians hunting grounds" and forbade all non-Indigenous people from settling there, except with the Crown's consent. The Proclamation said that consent could be given once a First Nation had formally surrendered its lands, and only officials representing the King could accept a land surrender.

The Proclamation also established that lands previously

The Peace and Friendship Treaties the British made with the Mi'kmaq, Maliseet, and Passamaquoddy illustrate the legal and historical issues the European invasion of First Nations lands poses.

Before 1763, France and Great Britain also battled over Acadia, which then included Nova Scotia, Prince Edward Island, and New Brunswick. For the Mi'kmaq, Maliseet, Passamaquoddy and other peoples, this region was their homeland, their hunting and fishing grounds, the source of their medicines, their sacred and burial sites, and the physical and spiritual foundation of their histories, cultures, and languages.

As Mi'kmaq leaders explained to the French governor of Île-Royale in 1720, "but learn from us that were born on this earth upon which you walk, before even the trees that you see beginning to grow and to leave the earth. It is ours and nothing can ever force us to abandon it."

By the 1720s, the Mi'kmaq and Maliseet had become concerned with British incursions onto their territories, and between 1722 and 1725 war erupted. In 1725, Massachusetts, New Hampshire, and Nova Scotia signed a Treaty of Peace and Friendship with the Mi'kmaq, Maliseet, and

***The Treaties established a unique legal relationship between the British and the First Nations. The British chose to negotiate terms with the Mi'kmaq and Maliseet. They did not do so with the Canadian or Acadian populations. We might say, therefore, that the British and First Nations were determining how they would live together.***

reserved could not be alienated other than by the First Nations' explicit consent. As deputies from the Six Nations told Sir William Johnson, the superintendent of Indian Affairs for the northern region of British North America, in May 1763, "We have often sold Lands to the white People, but then it was done with consent of the whole in some General Meeting...."

Again, the idea of "selling" land was likely understood differently by Europeans and First Nations peoples.

Some historians and First Nations communities today argue that the Proclamation also reserved all lands east of the Appalachians as First Nations territory, unless it had been already "sold" or "surrendered."

The importance of the Proclamation can be seen through the letter Thomas Gage, the commander-in-chief of British forces in North America, wrote to Johnson in 1763: "I think it right to enclose you one of those Copys of the Said Proclamation, for your Information of the Regulations which have been made, & particularly as they are So very favorable to all the Indian Tribes, a proper Explanation of the Articles which concern them, I imagine Must have great Influence over their Minds, and induce them to a Conviction that His Majesty is well disposed to favor & protect Them."

Passamaquoddy to stabilize relations in the area. In the Treaty, the First Nations agreed not to interfere with the British in their "settlements already made or lawfully to be made or in their carrying on their Trade or other affairs within the said Province."

The British in turn promised that "the said Indians shall not be Molested in their Persons, Hunting Fishing and Shooting & Planting on their planting Grounds nor in any other of their Lawfull occasions."

However, "lawfully" and "lawfull" were not defined. The signatories also did not define where the First Nations people would be hunting, fishing, shooting, or planting. This makes it difficult to interpret how each side understood the Treaty.

Comments were made by one First Nations speaker from the Penobscot River region after he was told that the British had obtained sovereignty over Acadia "according to its ancient limits" through the 1713 Treaty of Utrecht: "You say, my brother, that the French have given you Plaisance, Port Royal and the surrounding lands, keeping only for themselves the river on which Quebec is situated. He would give you what he wants, but for me, I have my land that I gave to no-one and that I will not give. I want always to remain the master of it. I know the limits and when someone wishes to live there, he will pay. That the English take the



A Treaty Day parade travels through downtown Halifax in October 2016. The annual event celebrates the living Treaties of 1752 between the Mi'kmaq and the Crown.

wood, fish or hunt game, there is enough there for everyone, I will not stop them.”

The 1725 Treaty did not establish a stable peace. French administrators in Île-Royale offered presents to those First Nations peoples who attacked British settlements, while the British decision to establish a new settlement at Halifax in June 1749 created additional tensions. Though the Mi'kmaq reaffirmed the peace in 1752, conflict simmered, exacerbated by the growing British-French global war. With the British conquest of Quebec and Montreal in 1759–60, the Mi'kmaq and Maliseet made peace with the British.

Though other Treaties were made in 1778 and 1779, these Treaties reaffirmed the peace after some communities had supported the American revolutionary forces.

The Peace and Friendship Treaties made between 1725 and 1779 followed a similar pattern, as both sides understood that the peace was best maintained by adding new clauses and amending others. In this way, the Treaties became organic documents.

The Treaties established a unique legal relationship between the British and First Nations. The British chose to negotiate

terms with the Mi'kmaq and Maliseet. They did not do so with the Canadian or Acadian populations. We might say, therefore, that the British and the First Nations were determining how they would live together.

After 1763, the legal basis of British settlements was unclear. Since the Mi'kmaq and Maliseet had not surrendered their lands in the Treaties, on what legal principle did the British grant lands to settlers and exploit the region's resources? These and other questions have been dealt with in various court cases. In Nova Scotia this has led to the creation of a “rights negotiation” process (Kwilmu'kw Maw-klusuaqn) that began in 2002 and continues to operate today to resolve such outstanding issues.

To the Mi'kmaq and the Maliseet the Treaties are part of a sacred relationship like marriage, containing the “vows” each party agreed to maintain for as long as the British occupied their Atlantic homeland. This is why the oral history of the Mi'kmaq and the Maliseet kept alive the memory of this relationship and why they also view the Treaties as the nation-to-nation foundation on which their relationships with Canadian governments should continue to be built.



PHOTO COURTESY OF PHILIP COTE

Above: Artist Philip Cote stands before a mural he created at Massey College’s Chapel Royal in Toronto to commemorate the Treaty of Niagara. The mural is the first permanent art installation in Canada to commemorate the 1764 Treaty.

Below: Elizabeth Dowdeswell, Lieutenant-Governor of Ontario, presents tobacco to Elder Garry Sault of the Mississaugas of the New Credit First Nation during the 2017 dedication of Massey College’s Chapel Royal. College Head Hugh Segal looks on.



PHOTO COURTESY OF GARY BECHT



# Ties of Kinship

*The Treaty of Niagara is seen by some as marking the true founding of Canada.*

by Philip Cote and Nathan Tidridge

Until recently, both Confederation and the *Indian Act* that flowed from it eclipsed most of the Treaty relationships in the minds of the non-Indigenous population of Canada. Today the country finds itself returning to the Treaties and rekindling the relationships that sustained the many peoples on these lands for centuries prior to 1867.

Part of this national introspection is the rediscovery by non-Indigenous peoples of the ancient and enduring relationships between First Nations and the sovereign that were enshrined in such Treaties as the 1764 Treaty of Niagara.

For generations, history textbooks have described the Royal Proclamation of 1763 as the “Indian Magna Carta” — a document from which Indigenous rights originate in their relationships with Canada. Yet, as Elders and Knowledge Keepers across the continent have reminded us, King George III’s proclamation is only half of the story (specifically, the non-Indigenous half).

After all, the Royal Proclamation itself is merely a written document capturing a static moment in time. “Treaty” can also be defined as an action word, a living agreement that evolves over time. Similarly, the wampum belts (woven by hand using sinew with quahog and whelk shells) that embody Treaties can never be captured in one interpretation. “Contextualization of the Proclamation reveals that one cannot interpret its meaning using the written words of the document alone,” writes John Borrows, the Canada Research Chair in Indigenous Law, in his article “Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government.” Borrows continues: “To interpret the principles of the Proclamation using this procedure would conceal First Nations perspectives and inappropriately privilege one culture’s practice over another.”

When copies of the Royal Proclamation of 1763 were circulated amongst the First Nations surrounding the Great Lakes, Sir William Johnson, the King’s superintendent of Indian affairs, knew that the document was meaningless unless it was ratified by First Nations communities. Simply

imposing British interests in the Great Lakes watershed by using military force clearly wasn’t going to work. Governor Jeffery Amherst tried. He even advocated genocidal tactics, such as deploying blankets infested with the smallpox virus, but was quickly reminded by First Nations leaders, including Chief Pontiac of the Odawa Nation, that the British were no match for the people of the region. Noting the capture of nine British forts by Pontiac, imperial officials abandoned Amherst’s campaigns, heeding Johnson’s counsel for diplomacy using Indigenous protocols brought forward by his partner, Molly Brant (a Mohawk Clan Mother of the Haudenosaunee Confederacy). The result was the Great Council at Niagara in 1764 between the British Crown (represented by Johnson) and at least twenty-four First Nations from across the Great Lakes region.

After a month of negotiations — including the exchange of eighty-four wampum belts — the Treaty of Niagara was forged, extending the Silver Covenant Chain of Friendship into the heart of the continent and establishing a familial relationship between King George III and his descendants and First Nations peoples across the land. Many people see this Treaty, and the wampum belts exchanged at its inception, as the true founding of what we now call Canada. Its legacy is not a written agreement but rather a series of discussions and debates that, paraphrasing Borrows, made principles implied by the written document explicit using First Nations forms of communication, such as wampum, as a mnemonic device. Documents exist in wampum instead of parchment. Wampum belts were woven at the request of Indigenous delegates as well as non-Indigenous delegates.

At the heart of the Treaty of Niagara (as with most Treaties) is a relationship with the sovereign grounded in ties of kinship. The dynamic created when the Crown and First Nations peoples became family entrenches the need for trust, honest communication, and honour. If familial love is woven into a Treaty relationship it allows for disagreement without disrespect. With its core principles, a familial relationship



requires flexibility in order to exist. As new dynamics or unforeseen conflicts emerge, they have to be negotiated by the Treaty partners in order to have them incorporated into the relationship.

As an institution, the Crown provided the framework needed for non-Indigenous peoples to establish Treaty relationships. It was through the Crown, especially the institution's ability to transcend the settlers themselves, that the ideals of non-Indigenous society could be effectively translated.

As an institution, the Crown is purposely vague in its definition, which enables it to reflect the highest aspirations — indeed the honour — of the society it encompasses. Like the Treaties, the Crown exists in an abstract realm that must be constantly renewed and cultivated by those it is intended to serve. Indeed, one of the primary roles of the Queen (as Queen of Canada) is to be the living embodiment of the Canadian state and all its nuances. The Crown provides the legal and political concepts upon which the Canadian democracy sits, yet it also simultaneously exists in a metaphysical realm that embodies a complex society, making abstract concepts, stories, and expressions palpable.

Today, you can visit the spot at Niagara-on-the-Lake, Ontario, where Johnson stood after crossing the river from Fort Niagara to greet his First Nations counterparts. There Johnson presented the Covenant Chain Wampum, a belt he commissioned to embody the Treaty he had worked to establish with a delegation of over two thousand First Nations representatives.

And yet, in 2018, there stands no monument or plaque to commemorate the place where a foundational Treaty that led to the creation of Canada was concluded. In fact, there was no space in Canada dedicated to commemorating and educating people about the Treaty of Niagara until Queen Elizabeth II

created the Chapel Royal at the University of Toronto's Massey College on June 21, 2017.

What is a “chapel royal”? Put simply, chapels royal evolved from a retinue of chaplains and choirboys that followed the pre-Norman kings and queens of England during their travels around the country. In a historical quirk (Canada is the only Commonwealth country to actually have them), chapels royal were imported by the sovereigns of the day and became fused with their personal relationships to First Nations peoples.

Queen Anne established the Mohawk Chapel at Fort Hunter in what is now New York State in 1710. It was destroyed during the American Revolution, but new chapels were built in British territory in the mid-1780s by First Nations who, due to the war, crossed the border to find safety. Her Majesty's Royal Chapel of the Mohawks near present-day Brantford, Ontario, and Christ Church, Her Majesty's Chapel Royal of the Mohawk near Deseronto, Ontario, were recognized as chapels royal by King Edward VII in 1904.

The creation of the Massey Chapel Royal recalled the ancient and enduring bonds established through Treaties that predate Canada itself, while at the same time providing a space to learn about and to discuss one of the most important relationships established on these lands.

When the importance of the family relationship between the Queen and First Nations peoples is understood, it becomes natural that such a space would have been created in the year of Canada's sesquicentennial. This was a familial act of reconciliation that recalled ancient obligations and connected them with the future of Canada.

One of the centrepieces of the Massey Chapel Royal is a mural executed by Philip Cote, a First Nations artist and this article's co-author. On permanent display near the entrance,



PHOTO COURTESY OF NATHAN TIDRIDGE

A replica of the Treaty of Niagara wampum belt.

the mural literally (this is a subterranean chapel) grounds visitors to the chapel with an Indigenous voice the moment they walk in the door.

The mural illustrates the negotiation of the Treaty of Niagara and the nature of First Nations Treaties as living agreements that evolve and change. The Silver Covenant Chain of Friendship Wampum, one of the belts presented by Johnson at the Treaty's conclusion, is highlighted to represent the union of First Nations people and the Crown. A replica of the Covenant Chain Wampum is on display near the chapel's altar, and it is depicted on a mosaic executed by Sarah Hall, a renowned glass artist. Key figures such as Molly Brant, Johnson, and Pontiac are depicted, as are delegates from Huron-Wendat, Haudenosaunee, Shawnee, Suk Fox, Anishinaabeg, and Mississauga nations. Visitors to the chapel are thus invited to understand the full story of the Council of Niagara and what was discussed.

Invoking Treaty, the Massey Chapel Royal is a living space dedicated to the fact that the stories of First Nations and non-Indigenous peoples did not begin or end with the Royal Proclamation. Rather, the Royal Proclamation is part of relationships that stretch back generations, and it was not ratified by First Nations peoples until it reflected that reality.

Now as then, these relationships are contemporary, something that is reflected by the revival of many of the protocols now being practised at the chapel between representatives of the Queen and members of the Mississaugas of the New Credit First Nation.

Tied to the chapel is the annual Chapel Royal Symposium. Its vision statement declares: "There must be truth before reconciliation." The Symposium is committed to exploring the relationships established by the 1764 Treaty of Niagara and the Silver Covenant Chain of Friendship. It is also

dedicated to exploring essential truths of the relationships between the Crown and First Nations peoples throughout the centuries.

The inaugural symposium was held on February 1 and 2, 2018, featuring speakers Alan Corbiere and John Borrows. At the same event, the Native Students Association of the University of Toronto hosted a traditional blanket exercise.

While the *British North America Act* empowered successive Canadian governments to act as if the Treaties never existed, the special relationships between the sovereign and First Nations peoples were not extinguished. The latter fact has been highlighted by countless delegations to Buckingham Palace and petitions handed to viceregal representatives right up until the present day.

A statement released by British Columbia Lieutenant-Governor Judith Guichon reaffirms her familial relationship with Indigenous peoples, connecting it with Canada's current efforts at reconciliation: "The words reconciliation, Treaty, and love are all verbs and therefore require ongoing action. The viceregal family, being connected by kinship, has the means to continuously work towards genuine reconciliation. There is no one end point to reconciliation. The vision must be of respectful relationships with ongoing responsibility to future generations. Just as the definition of the Crown remains elusive, so too the act of making Treaty holistically will differ from nation to nation. However, with trust as a foundation, honesty, communication, integrity, and love will be as constant as the Crown."

The Crown has long acted as a conduit for non-Indigenous peoples to connect with their First Nations partners. Generations of neglect have tarnished their relationship, straining it to the point of almost breaking its links; but the opportunity is there for renewal. Our national symbols are expected to reflect the highest ideals — and the honour — of Canadian society.





# The Numbered Treaties

*Western Canada's Treaties were intended to provide frameworks for respectful coexistence.*

by Wabi Benais Mistatim Equay (Cynthia Bird)

In Canada, Treaties represent the source of First Nations peoples' unique nation-to-nation relationship with the Crown. In Western Canada, the Numbered Treaties 1 to 11 are a series of historic post-Confederation Treaties that were made in rapid succession over a short period of time from 1871 to 1921 between First Nations peoples and the Crown (Canada). They are as relevant today as they were when they were signed.

The Numbered Treaties were used as political tools to secure alliances and to ensure that both parties could achieve the goals they had set out for their peoples — both at the time of Treaty-making and into the future.

Treaty-making was historically used among First Nations peoples for such purposes as inter-tribal trade alliances, peace, friendship, safe passage, and access to shared resources within another nation's ancestral lands. Respect and reciprocity were foundational principles that resulted in tribal alliances among nations, such as the Council of Three Fires (Three Fires Confederacy);

Five Nations that evolved to Six Nations (Iroquois Haudenosaunee Confederacy); Wabanaki Confederacy; and Seven Council Fires (Oceti Sakowin).

Examples of early inter-tribal nation-to-nation Treaties among First Nations were the Dish With One Spoon Treaty (one of the earliest known North American Treaties), and the Great Binding Law (circa 1722).

These early Treaties provided frameworks for relationships of coexistence. They encompassed First Nations epistemologies and ceremonial protocols — their beliefs, values, relationships, laws, languages, pipe ceremonies symbolizing their nationhood,

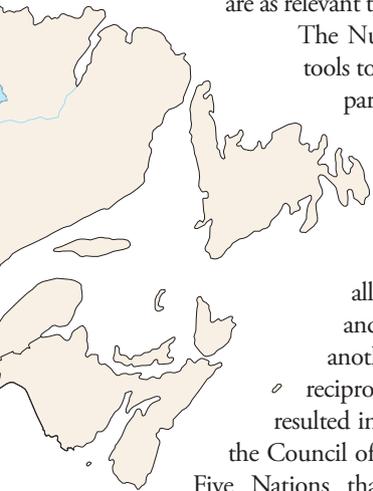
and sense of responsibility for the past, present, and future. This principle of responsibility and protocol remains part of First Nations gatherings where oral history is the vehicle used to recall events of the past to help to understand how we got to where we are today.

The commemoration of the 250th anniversary of the Treaty of Niagara, held in 2014, is an example of this accountability. At this event, nations gathered to hear the retelling of historical relations and commitments recorded on historical wampum belts from that period. It is within this context that First Nations people continue to make and to renew Treaty relationships and to engage in dialogues to reiterate the original spirit and intent of agreements that have survived hundreds of years. Elders and Knowledge Keepers who have retained their first languages, their traditional teachings, and their connection to the Creator and to Natural Law remain central to these processes.

“We have a responsibility to keep the Treaty alive in our lifetimes for our future generations,” said Giizis-Inini, Anishinaabe Elder Harry Bone. “The horizon that we see — we are the ones who have to look after the future, and we have to secure these teachings for the next generations.”

Diplomacy leading up to the Numbered Treaties in Western Canada is part of First Nations' Treaty-making history that remains a major contribution by First Nations peoples to nation-building for present-day Canada. The coming of new people from other lands was part of First Nations' prophecies; so new peoples were expected. First Nations viewed Treaty-making with Newcomers as an extension of the nation-to-nation Treaties they created with each other, as nations.

These early relations between First Nations peoples and European Newcomers were peaceful, friendly, and respectful, for the most part. Trade, military, and alliance agreements were



critical for European empires to gain a hold in the Americas. As relationships evolved and the competing interests of the British, French, and Americans became more aggressive, First Nations needed to be more strategic in their alliances.

Following their experiences with the Seven Years War (1756–63), the Royal Proclamation of 1763, the Treaty of Niagara (1764), the War of 1812, the Selkirk Treaty of 1817, Canadian Confederation in 1867, and the Riel Resistance (1870), it was evident to First Nations peoples that the influx of settlement would continue to impact their ways of life and to alter their relationships to their ancestral lands. They knew they would need to rely on their Treaty-making diplomacy to try to build and to solidify a relationship that would provide them with strategic alliances and assurances that their way of life and their relationship to what was left of their ancestral lands would be secured for successive generations. In exchange, they knew they would be sharing some of their land with the Newcomers.

However, First Nations peoples never envisioned that the long-term outcome of such Treaty relations would be their occupying less than three per cent (3.5 million hectares) of their homeland, on 617 small communities the federal government calls “reserves.”

***The Treaties were seen as reiterating peaceful alliances, securing assurances for both parties to share the wealth associated with First Nations ancestral lands, and ensuring the respectful right for each party to retain their own way of life.***

The Numbered Treaties were made between 1871 and 1921 but not during a twenty-two-year gap between 1877 and 1899. Historians attribute the gap to the Canadian government’s priorities of supporting agricultural settlement across the prairies and securing access to land for the railway before turning its interests to what the northern country could provide by way of mining resources, harvesting timber, and accompanying settlement. During this period, First Nations were reviewing the terms and conditions of the signed Treaties and beginning to organize across Treaty territories so they could strengthen their voice.

Both parties to these historic Numbered Treaties had a sense of urgency. The 1880 book *The Treaties of Canada with the Indians of Manitoba and the North-West Territories*, by Alexander Morris, says First Nations peoples saw the Numbered Treaties as a way of solidifying a peaceful and enduring kinship relationship with the Crown. The Treaties were seen as reiterating peaceful alliances, securing assurances for both parties to share the wealth associated with First Nations ancestral lands, and ensuring the respectful right for each party to retain its own way of life.

The Numbered Treaties in the Prairie provinces were also about dealing with urgent practical matters of the day, such as the need for new livelihoods, the health needs of people

afflicted by epidemics, and ongoing settler encroachment on First Nations’ lands. Legal scholar Aimée Craft, in her 2013 book *Breathing Life Into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One*, states that in 1871 the First Nations’ spirit and intent of Treaty making was about establishing kinship relationships and incorporating established protocols that had worked for them in their previous trade agreements with the Hudson’s Bay Company and other commercial traders.

As Elder Bone recounts, First Nations peoples understood the Royal Proclamation as King George III’s document, which recognized First Nations peoples as nations with their own territories; First Nations peoples believed that the Crown would provide protection to them in exchange for sharing their lands. First Nations peoples expected that the spirit and intent of this understanding would prevail in good faith.

For Canada, the Numbered Treaties made it possible for then Prime Minister John A. Macdonald to secure alliances and “dominion” over lands to the west and north, connecting the east to the west from sea to sea and allowing for settlement and agriculture. This would also prevent the Americans from annexing the Northwest. As Arthur Ray, Jim Miller, and Frank

Tough state in their book, *Bounty and Benevolence: A History of Saskatchewan Treaties*, it was necessary for the Crown (Canada) to make Treaty with the First Nations so that the Crown could guarantee peace and acquire land for settlement; in exchange, the First Nations would receive the Crown’s bounty and benevolence. The newly confederated Canada was focused on bringing territories like Rupert’s Land and the North-West Territory into Confederation. The Royal Proclamation of 1763 remained a guideline for Canada to achieve this goal in a timely manner. First Nations peoples were key to achieving this goal.

First Nations had not anticipated the Canadian government’s plans to administer its constitutional responsibility for “Indians and lands reserved for Indians” by introducing restrictive policies such as the *Indian Act* of 1876 (the same year Treaty No. 6 was signed) and the pass system of 1885, which regulated the movement of First Nations people off reserve lands.

These policies shifted the Treaty relationship from a respectful kinship relationship that First Nations believed they had secured through the Treaty-making process to a trustee-ward relationship in which they had no voice and no control over their lives or their lands. An era of respectful Treaty relations had come to an abrupt halt.

In the years since the Treaty-making negotiations, oral history accounts have asserted that some of the promises that



Chief Louis Espagnol (Sahquakegick) of the Eshkemanetigon (Spanish River Band) at Biscotasing, Ontario, in 1905 during the making of Treaty No. 9.

were made did not find their way into the written texts of the Numbered Treaty documents. For example, historical evidence shows that the Crown's attitude to Treaty-making shifted from the 1870s to the 1880s.

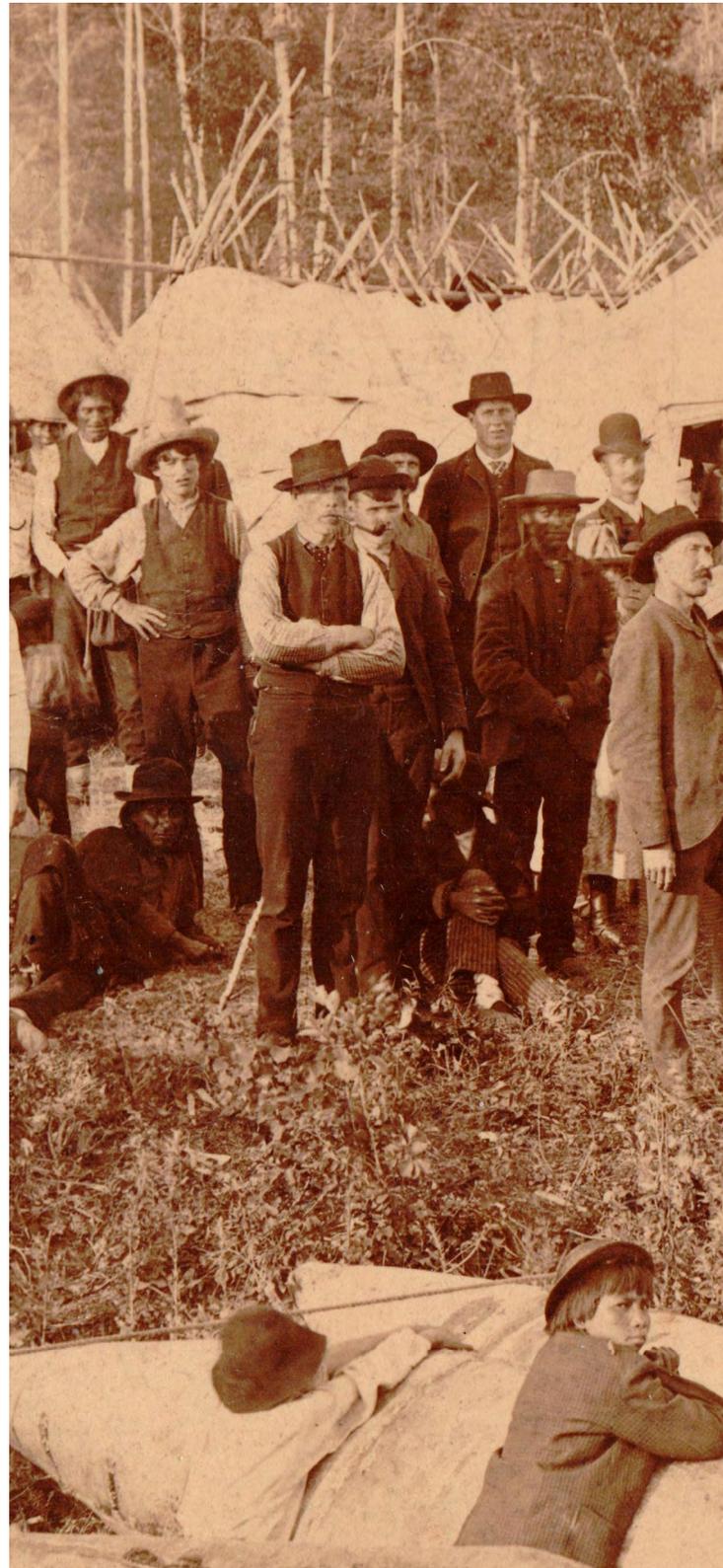
Immediately following 1871, First Nations made attempts to have the Crown deal with the “outside promises” (as documented by Craft) of Treaty No. 1 (1871); the Paypom Treaty document associated with Treaty No. 3 (1873) promises (the Paypom document is an original set of notes made for Chief Powasson at the signing of Treaty No. 3); and the Black Book associated with Treaty No. 5 (1875) (as described by Elder William G. Lathlin and Elder D’Arcy Linklater), which is yet to be found.

These instances serve as a reminder that oral history is critical for gaining a deeper understanding of what was said and what was recorded or not recorded. The oral history of First Nations peoples is beginning to bring balance to the narrative about the pre- and post-Confederation history of this land now called Canada. This is shifting the narrative about Canada's history, bringing more balance to the story and bringing it into alignment with truth telling.

Modern historians such as Ray, Miller, and Tough have acknowledged that First Nations peoples were more active in shaping Treaties in this country than has been documented by earlier historians. This interpretation is most consistent with the oral tradition of First Nations Elders regarding Treaty knowledge; the emerging breadth of publications on our shared history by Indigenous peoples, including works by Craft and Donna Sutherland; and works by others who provide a fuller understanding of policy and Treaty making. It is refreshing to witness when historical thinking begins to shift, and restorative history begins to emerge, to bring balance to truth. Today our shared reality is that, as First Nations peoples, Canadians, and “new Canadians,” we are all now eating out of the “Dish With One Spoon.”

As historian Rick Hill, Tuscarora from Six Nations of the Grand River Territory, recounts the teaching from the Dish With One Spoon Treaty: “Only take what you need, always leave something in the dish for everybody else, and keep the dish clean.” This reality requires everyone to take responsibility for the original spirit and intent of this first Treaty and all successive Treaties. In this way, all citizens can do their part to assure that successive generations can continue to learn about their benefits — acquired through Treaty making — from First Nations’ shared ancestral lands and to commit to growing in their understanding of the enduring Treaty relationship.

Yes, indeed, we are all Treaty people. The Numbered Treaties are part of this shared benefit that is extended to all Canadians and to future generations. The challenge for all Canadians is to find ways to work together to better understand the original spirit and intent of Treaties made with the Crown (Canada).



THE MANTOBA MUSEUM



This is an original photograph of the conclusion of negotiations for Treaty No. 3 at the North West Angle. It was taken by Wright Bros. Photographers of Rat Portage, now Kenora, Ontario. The photo shows a gathering of First Nations Treaty negotiators. In the front row are four men, three of whom are wearing medals that represent Canada's Treaty promises. Two of the men hold pipes with long pipe stems of the type used to invoke the Creator as witness to verify First Nations' and the Crown's commitments to the terms of the Treaty.



## Artifacts from the Numbered Treaties

Courtesy of the Manitoba Museum. Photos and text by Dr. Maureen Matthews.

**Above:** The first medal offered in Treaty negotiations in 1871 – the small medal (top left) with oak leaves – was rejected by chiefs who judged it inadequate for Treaty making. The second, larger medal (centre), based on Canada’s Confederation medal, was initially well received, until Chiefs realized it was only silver plated. Silver in Anishinaabe is *zhooniyaawaabik*, money metal, and it should be pure. This medal was not and the Chiefs rejected it when the silver began to wear off. Finally, in 1873, the Commissioner presented the now famous handshake medal of pure silver, top right, which was used until Queen Victoria’s death in 1901.

**Opposite page, top:** This headdress, which dates to the 1870s, is one of the oldest in the Manitoba Museum and highlights First Nations leadership at the time of Treaty making. Most of the Chiefs who negotiated the Treaties had long experience with the fur trade and trade Treaties. The First Nations experience with the Numbered Treaties would have been framed by the kind of prior fur trade relationships they had established and First Nations ideas about leadership and consensual decision making, which are embodied in this headdress.

**Opposite page, bottom:** This pipe belonged to the Cree Chief Piapot, who signed an adhesion to Treaty No. 4 in 1875 at Fort Qu’appelle, Saskatchewan. Piapot believed he was getting a reserve for his people in their hunting grounds in the Cypress Hills of Western Saskatchewan. However, when he was assigned a reserve on the opposite side of the province, he fought the unfairness of it for the rest of his life. Piapot gave this pipe to the minister who conducted his daughter’s wedding and it was later donated to the Manitoba Museum. For First Nations peoples, the pipe is a symbol of their nationhood and sovereignty, as it represents a direct connection to the Creator.





COURTESY OF JIM OSKINEEGISH

*Turtle Mother*, by Jim Oskineegish.



# Living Well Together

*Understanding Treaties as agreements to share.*

by Aimée Craft

*“A long time ago when the Treaties were made, one of the Chiefs got up and pointed towards the heavens and he said, ‘The sun is my father, and the land is my mother. They teach us we have a responsibility in our generation, in our lifetime. ... Up to the horizons, beyond that is the seven generations, as far as you can see, that’s our responsibility — to teach those generations about our wisdom and our knowledge about our people.’ We have a responsibility to keep the Treaty alive in our lifetime for future generations.” – Anishinaabe Elder Harry Bone*

Anishinaabe law tells us that land is not to be owned. Rather, we are in a relationship of respect with the land, with a sense of belonging to the land or “being of the land.” Non-Indigenous legal systems, however, are primarily based in ideas of land ownership and possession. Treaties were made by Indigenous nations and representatives of the Crown in order to settle land questions. For example, the Anishinaabe of Treaty 1 petitioned the Lieutenant-Governor of Manitoba to enter into a Treaty negotiation in order to ensure protection against the encroachment of white settlers who were taking timber from Anishinaabe lands.

The history of Treaty making and Treaty interpretation in Canada has been varied and sometimes controversial. Canadian law has been used as a tool to oppress Indigenous people and to dispossess them of their sacred relationships with land.

Although protection for Treaties was made explicit in the Canadian constitution in 1982, the prior disregard for Treaty promises and the ongoing breaches of Treaties by Canadian and provincial governments have continued to create disharmony between Indigenous people and the Crown.

For decades, Treaties have been interpreted by Canadian courts and the Canadian government to the detriment

of Indigenous people. Courts have generally ignored the Indigenous legal principles that were instrumental in the making of Treaties. Provincial and federal governments continue to view historic Treaties as primarily relating to the acquisition of lands and resources. Indigenous understandings rooted in Indigenous laws have been systematically cast aside in favour of Western legal concepts that privilege notions of private land ownership and resource exploitation.

As I argue in my book, *Breathing Life Into the Stone Fort Treaty: An Anishinabe Understanding of Treaty One*, Treaty interpretation and implementation should take into account Indigenous laws and legal systems.

According to Indigenous laws, Treaties are jointly negotiated agreements between nations that confirm promises to live in relationships of sharing. They are grounded in respect, renewal, and reciprocity.

Not all historic Treaties were created equally or similarly. In eastern Canada, Peace and Friendship Treaties helped to establish peaceful relations with newcomers before Canada was a concept (or a political reality). From the early days of the fur trade era, voyageurs, company men, traders, and companies created allegiances and kinship with Indigenous people, establishing what historian Jim Miller has characterized



British Columbia cabinet minister and Nisga'a Chief Frank Calder speaks to media in 1973. Calder spearheaded a legal fight to have the courts recognize Nisga'a title to lands in British Columbia. The *Calder* case reached the Supreme Court of Canada and was a catalyst for change in relation to how land claims were negotiated across Canada.

as commercial compacts or fur trade Treaties. The French, Dutch, and English negotiated Treaties that built on those existing relationships.

Shortly after this very early period of Treaty making, a 1763 Royal Proclamation required that any lands acquired from the Indigenous people could only be made open to purchase and settlement by the Crown after a public assembly and via a majority vote by the Indigenous population of the territory. This was an early recognition of Indigenous relationships to land and of the collective nature of land distribution and management by Indigenous nations.

In the mid-nineteenth century, Treaties were made on Vancouver Island (sometimes referred to by the Crown as the Douglas Treaties) and in the immediate vicinity of lakes Huron and Superior. Later, in the later part of the nineteenth century and the early twentieth century, Treaties were made in the prairie region, northwestern Ontario, and the territories. This patchwork quilt of Treaties was negotiated with the Queen to ensure safe passage for the railway, natural resource development, and settlement. All of this historic Treaty making took place after millennia of Treaty diplomacy amongst Indigenous nations.

Modern Treaties, which were made later in the twentieth century and which continue to be negotiated today, resemble contractual nation-to-nation agreements, rather than the

relationship-building documents of previous centuries. These modern Treaties were a direct response to a 1973 Supreme Court of Canada ruling in the *Calder* case, which determined that Aboriginal title to land continued to exist where it had not been extinguished by the Crown.

Following the *Calder* case, the federal government developed a comprehensive land claims policy for the negotiation of Treaties where claims of unextinguished title to the land might be advanced. This policy exempted areas that were covered by previously negotiated Treaties, with the Crown claiming that those lands were previously surrendered. This is in direct contrast with the Indigenous view of Treaties as agreements to share and to live in relationship on and with the land. Indigenous people have always contested strict Western legal interpretations of Treaties. They prefer to define and to implement them in accordance with Indigenous legal traditions and oral histories.

Courts have attempted to interpret and to define Treaties many times over. Through a series of cases that span a few decades, the Supreme Court developed principles for Treaty interpretation that view Treaties as unique agreements, or as solemn exchanges of promises, made by the Crown and Indigenous peoples. Supreme Court justices have found that Treaties do not fit into international legal frameworks or regular contractual-type arrangements. In the *Badger*

case, which concerned Indigenous hunting rights, the court said Treaties are “sacred promises, and the Crown’s honour requires the Court to assume that the Crown intended to fulfill its promises.”

In order to honour those sacred promises, the Supreme Court determined that ambiguities are to be resolved in favour of Indigenous people. Also, Indigenous understandings of words and legal concepts are to be preferred over more legalistic and technical constructions. Legal duties such as the honour of the Crown and fiduciary obligations should serve as protections to the solemn promises that were made during Treaty negotiations.

This same court has nonetheless enabled Treaty rights to be infringed upon, where the Crown can show that “broader societal” (primarily non-Indigenous) interests outweigh Indigenous priorities and perspectives. For instance, the court balances or “reconciles” the use of land for hydro-electric projects, oil and gas development, mining, and other activities where there has been prior Indigenous occupation of — and aspirations for — those lands.

Half a century ago, it was illegal for Indigenous people in Canada, including Treaty nations, to hire a lawyer or to bring a legal claim against the Crown. Further, the courts have confirmed that Treaty promises were able to be unilaterally

over natural resources in the West were transferred from the federal government to the provinces.

These agreements provided a right for First Nations to continue to hunt, trap, and fish for food but limited these activities to unoccupied Crown land and to land on which Indigenous people have a right of access. While the NRTA expanded the right to harvest beyond traditional or Treaty territory, it limited this right to subsistence — no commercial right could be claimed, even if this had previously been provided for in a Treaty.

What is particular about historic Treaty relationships in Canada is that they are founded in two distinct legal systems coming together to forge a relationship so that two parties could live well together within the same territory.

Understanding Treaty relationships and promises therefore requires applying both Indigenous and non-Indigenous perspectives. The oral histories of Treaty negotiations have a place in the Treaty interpretation process. The courts have indicated that strict rules of evidence have to be adapted to place oral history on an equal footing with historical documentation. They will consider the contextual factors that surrounded Treaty negotiations to determine the common intention that reconciled the interests of both parties at the time the Treaty was signed.

### *Understanding Treaty relationships and promises requires applying both Indigenous and non-Indigenous perspectives. The oral histories of Treaty negotiations have a place in the Treaty interpretation process.*

modified by the Crown prior to the 1982 constitutional protection. For example, commercial rights to harvest wildlife, which were negotiated as part of Treaty promises, were extinguished unilaterally by the Crown prior to their constitutional protection.

This presumed right to impact or to reduce the exercise of Treaty rights has been employed in the past by federal and provincial governments to limit access to hunting, trapping, fishing, and gathering areas.

These are important restrictions to many Indigenous people who continue to practise land-based and traditional lifestyles in their home territories.

They are also a direct affront to the promises of Treaty that aimed to preserve not only a way of life but also the autonomy and self-sufficiency of the Indigenous Treaty signatories.

There are some notable moments where Canadian law has been used to breach Treaty relationships. These include the creation of the *Indian Act* in 1876 (a mere five years after the negotiation of Treaty 1), and the pass system that was imposed by policy (but never legislated) and enforced by the North-West Mounted Police. Further, through legislation and the Natural Resource Transfer Agreements (NRTA), jurisdiction

Many claims advanced by Indigenous people are met with strict legal interpretations of the Treaties, which generally state that the Indigenous nations agreed to “cede, release, surrender, and yield up” the land. However, the Indigenous legal concepts articulated by the Anishinaabe of Treaty 1, for example, show that the surrender of land is not possible when one is “made of the land” or “belongs to the land.”

This is a relationship of connection to land, rather than possession of it. There is no evidence that the idea of surrender was invoked at the Treaty negotiation itself, which leads to the conclusion that the Anishinaabe legal perspective should prevail.

The Truth and Reconciliation Commission of Canada set out a framework for reconciliation that requires the revitalization of Indigenous law and legal traditions. The United Nations Declaration on the Rights of Indigenous Peoples also recognizes Indigenous people’s laws, traditions, and customs. These Indigenous laws are essential to understanding how Indigenous people entered into the Treaty relationship with the Crown.

For example, when the Treaty commissioners and Lieutenant-Governor of Manitoba entered into Treaty 1 negotiations with

the Anishinaabe, they commended them for not participating in the Métis resistance, claiming that they would be rewarded for their loyalty to their mother, the Queen. Throughout the Treaty negotiations, the commissioner referred to Queen Victoria as a mother to the Anishinaabe, promising that she would treat all her children equally. The word for mother was easily translated between English and Ojibway, and the Chiefs responded that through the words of the Crown negotiators they could “hear their mother’s voice.”

The concept of a mother-and-child relationship was deceiving in this context. The Queen’s representatives would have understood the position of the child as one of subservience, of not being able to decide for themselves or to have any rights until the age of majority. The Anishinaabe, however, understood the mother’s role as one of extending kindness, love, and care for a child in a way that would foster the child’s autonomy and equality to all other children. This Anishinaabe perspective would align with a modern articulation of a sharing Treaty in which Indigenous self-determination is prioritized.

Treaties are law, both in the eyes of the Canadian state and within Indigenous legal systems. They are legal instruments that function as living, breathing affirmations of relationships between nations.

The law, however, as applied by Canadian courts and governments, has disproportionately been used to allow for the infringement upon and erosion of Treaties. This undermining of Treaty promises and disregard for Indigenous understandings of the Treaty relationship has persisted in Canadian law to the point where, in some cases, there is no longer a meaningful ability to exercise the rights the Treaties aim to protect.

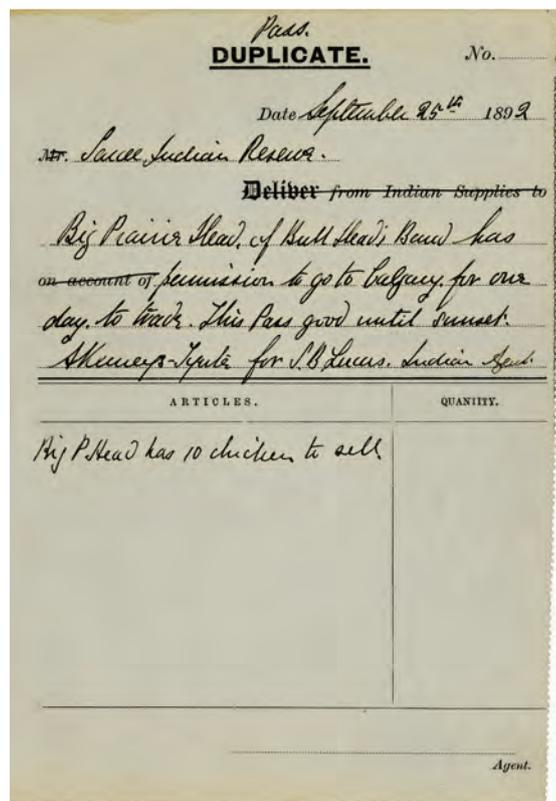
The United Nations Declaration on the Rights of Indigenous Peoples expresses the right of Indigenous peoples to have their Treaties recognized, observed, and enforced. In order to do so, Treaties must be placed in their historical, political, and cultural contexts. Although Indigenous people and nations continue to bring claims for breaches of the terms of Treaty (known as “specific claims” under Canadian policy), these claims are frustrated by government-imposed policies and evidentiary limits.

The greatest breach of Treaties, however, remains the inability of non-Indigenous governments to understand the fundamental relationship that Indigenous people have for millennia had with the lands and waters. Treaties were made in a sacred and spiritual way — with the help of the Creator, as a third party to the agreement — and the spirit and intent of Treaties is articulated through the understanding and application of Indigenous laws.

The law of Canada has been employed as a tool of dispossession in relation to Indigenous peoples, lands, and resources. Indigenous peoples view Treaties not as a fixed set of terms but rather as relationships of respect and reciprocity that are meant to be renewed. The Treaty relationship was meant to evolve over time, based on non-interference and respect for each other and for the land that was shared.

The importance of Indigenous laws in historic Treaty making has been misunderstood and undervalued, resulting in a very one-sided Eurocentric approach to Treaties. Possession, ownership, exclusion, and exploitation cannot define our relationships with the lands and waters.

We must today breathe life into the original intent of the Treaties. We must live well together, as our ancestors agreed, for as long as the grass grows, the sun shines, and the waters flow.



## Treaty rights and wrongs

For centuries, Indigenous peoples have fought to maintain their cultures and ways of living in the face of attempts to force their assimilation into non-Indigenous society. These images depict the legacy of attempts to restrict the rights of First Nations peoples as well as moments when First Nations peoples have asserted their rights to build a better tomorrow.

**Clockwise from top left:** An example of a pass issued under the pass system, enacted in 1885, which illegally restricted the movement of First Nations people living on reserves.

An unidentified First Nations farmer ploughs land in Western Canada, circa 1920. In the late-nineteenth century, the federal government attempted to force First Nations people in the West to settle on reserves and become farmers.

Children at Fort Simpson Indian Residential School in the Northwest Territories hold letters that spell the word “Goodbye,” circa 1922. The trauma of the residential school system continues to impact Indigenous peoples today.

First Nations youth assert their rights during an Idle No More march in 2013.

Gitxsan dancers perform outside the Supreme Court of Canada in 1997 as Gitxsan leaders inside argue the *Delgamuukw* case regarding Aboriginal title in British Columbia.





Quebec

Royal Proclamation of 1763

**Algonquin Territory  
circa 1850-1867**

Sudbury

Mohawk /  
Algonquin

Montreal

Ottawa

Algonquin /  
Mississaugas

Ontario

Kingston

Toronto

Algonquin Nation Territory circa 1850-1867. This map is provisional. Boundaries are based on results of research to date and may change as discovered (Algonquin Nation Secretariat, 2018).

The orange line shows portions of the boundary covered by the Royal Proclamation of 1763, issued by King George III following the end of the Seven Years War. The Proclamation contains important provisions regarding First Nations' rights to their traditional territories.



# Algonquin Territory

*Indigenous title to land in the Ottawa Valley is an issue that is yet to be resolved.*

by Peter Di Gangi

The traditional territory of the Algonquin people has always included the Ottawa Valley and adjacent lands, straddling the border between what is now Quebec and Ontario. Unlike most of Ontario and the Prairies, Algonquin territory has never been dealt with by a land-sharing Treaty. Algonquin title continues to exist.

With the arrival of the Europeans, the ancestors of today's Algonquins were already well-established in the Ottawa Valley. Initially, the people who now identify as Algonquins were known by a variety of names. The Jesuit priest Pierre François Xavier de Charlevoix, in his 1744 *Journal of a Voyage to North America*, mentions the Algonquins, Nipissings, Timiskamings, Têtes-de-Boules, and Gens des Terres. By the end of the nineteenth century, "Algonquin" had become regularized to refer to those peoples occupying the Ottawa River watershed whose neighbours were the Mohawks (to the east), the Atikamekw and Cree (to the northeast and the north), and the Anishinaabe (to the west and the south).

At present there are ten recognized Algonquin First Nations with a total population of around eleven thousand. Nine of these communities are in Quebec: Kitigan Zibi, Barriere Lake, Kitcisakik, Lac Simon, Abitibiwinni, Long Point, Timiskaming, Kebaowek, and Wolf Lake. Pikwakanagan is in Ontario. Three other First Nations in Ontario are at least partly of Algonquin descent, connected by kinship: Temagami, Wahgoshig, and Matachewan.

Before the coming of the railways, water routes were the primary communication and transportation corridors. The Ottawa River was the highway that connected the St. Lawrence to the Upper Great Lakes and the northern interior. *The Jesuit Relations* of 1636 notes that the Algonquins and

Nipissings controlled this strategic route: "The Hurons and the French now staying in the Huron country, wishing to come down here, pass first through the lands of the Nipisiriens [Nipissings] and they come alongside this [Allumette] Island, the inhabitants of which cause them every year some trouble, by demanding toll from all the canoes of the Hurons, Ottawas and French."

As Gilles Havard documents in *The Great Peace of Montreal of 1701: French-Native Diplomacy in the Seventeenth Century*, the French benefitted commercially and militarily from the access to the upper country that their alliance with the Algonquins and Nipissings guaranteed. But, as can be seen from surviving Hudson's Bay Company account books (for instance, the books from Fort Albany in 1695), the Algonquins also traded with the English at James Bay, depending on where they could get the best deals.

Partly in acknowledgement of the balance of power, and partly from expediency, both the English and the French employed First Nation practices and protocols in their political, trade, and military relations with the Algonquins and other nations, including the use of presents, the exchange of wampum, and Treaty making.

For instance, in July 1759, Sir William Johnson, who managed Indigenous relations for the British, held a council with the Chippeway (Anishinaabe) and addressed Tequakareigh, one of their chiefs: "With a string and two belts of wampum, I bid him welcome and shook him by the hand. By the 2d, which was a black belt, I took the hatchet out of the hands of his, and all the surrounding nations; recommended hunting and trade to them, which would be more for their interest than quarrelling with the English."



Members of the Algonquin community hold a number of wampum belts, some of which memorialize early relations with the French and the English, near Barriere Lake, Quebec, circa 1926.

At this point in the Seven Years War, when the French-English competition for control of northern North America entered its final phase, the British worked hard to obtain the neutrality, if not the outright alliance, of the First Nations allies of the French. These included the Algonquins, not least because they controlled the water routes that provided access to Montreal and Quebec. Late in August 1760, Johnson entered into a Treaty with nine First Nations at Swegatchy (Oswegatchie) near what is now Ogdensburg, New York, “whereby they agreed to remain neuter on condition that we for the future treated them as friends, & forgot our former enmity.” According to the First Nations parties, the Treaty of Swegatchy included the guarantee that the British “would secure to us the quiet & peaceable Possession of the Lands we lived upon.” For the British, this Treaty opened the road to Montreal.

Article 40 of the Articles of Capitulation of Montreal, drafted by French Governor Pierre de Rigaud de Vaudreuil and accepted by the English on September 8, 1760, provided that France’s former First Nations allies would be “maintained in the lands they inhabit; if they chose to remain there; they shall not be molested on any pretence whatsoever.”

The British also entered into a Treaty directly with the First Nations at Kahnawake on September 15 to 16, 1760,

which confirmed the terms of the peace. In the following months, British officials regularly assured the former allies of the French that their land rights would not be prejudiced.

For instance, on July 11, 1761, General Jeffrey Amherst wrote to Johnson: “The Indians may be Assured I will protect them in their Lands; Whether they dispose of them or not, is entirely at their own option, I shall never force them to dispose of any, but will Secure them in what they have; and no otherwise Interfere with their Lands, than by taking such Posts as I may think necessary, for ensuring the protection of this Country for the King.”

Unfortunately, in many cases these promises were not kept, leading to continued friction, including an inter-tribal uprising against the English, led by Pontiac, an Odawa war chief. King George III’s Royal Proclamation of 1763 was partly intended to provide additional assurances to First Nations that “frauds and abuses” and land grabbing by settlers would be stopped. It recognized the pre-existing land rights of the First Nations and established principles for a formal Treaty-making process, whereby First Nations lands could only be taken up by way of consent and fair compensation.

The Algonquins were a part of these events. They were at the Treaties of Swegatchy and Kahnawake and received copies of the Royal Proclamation. There are also wampum



*The Timber Raft*, by Frances Anne Hopkins, 1868, depicts lumber being floated downriver to Quebec for processing. The nineteenth century saw an influx of non-Indigenous loggers who began cutting operations on traditional Algonquin territory.

belts held by the Algonquins that come from this period and that record these events and the commitments made therein. These belts were presented to the prime minister and premiers of Canada during the March 1987 first minister's conference in Ottawa. At that time, Chief Solomon Matchewan, his son Jean-Maurice, and a delegation of Algonquins explained the belts, including the Three Figure Covenant: "The representative of the French-speaking nation on one side and the representative of the English-speaking nation on the other side, and on the centre is the Indian nations. And it was agreed at this time that the Indian nations would always be leaders in their homelands. And anything that was supposed to be negotiated upon, that they would have to negotiate with the Indian people .... This Covenant was confirmed by the Articles of Capitulation of 1760 and the Royal Proclamation of 1763. It is significant that this meeting is taking place on Algonquin land. Our people never surrendered these lands; nevertheless we are being pressured to remain on reserves. This is not what our ancestors intended. This covenant, which was made with the English and French Nations, that is contained in the wampum belt may have faded from your memories, but it has not yet faded from ours."

Between 1766 and 1861 a series of royal instructions, ordinances, and new laws confirmed and reflected the

assurances that had been made by the British with respect to the protection of First Nations lands, including protections against trespass.

One example is a proclamation by Guy Carleton, governor of Quebec, dated December 22, 1766: "The Lieutenant Governor and Council of this province do hereby strictly enjoin and command all the Inhabitants ... to avoid every occasion of giving the Indians offence, and to treat them as Friends & Brothers entitled to His Majesty's Royal protection, & if any of the said Inhabitants have made any settlements on the Indians grounds, to abandon them without delay, under pain in case of Failure herein, of being prosecuted as Disturbers of the peace of the province with the utmost rigour of the law."

However, for a variety of reasons, the assurances regarding the protection of First Nations lands and the need to enter into Treaty before settlement — assurances the British provided from 1760 onward — were not applied to the Algonquins or their territory.

Pressure for land increased in the period following the end of the American Revolution in 1783, when British Loyalists came north to Canada and had to be resettled. The Algonquins became alarmed and began to petition government, requesting that their lands be protected and

that if settlement was to occur Treaties should be made.

At a council between the Nipissings, the Algonquins, and Colonel John Campbell, held on July 14, 1794, the chiefs complained that pressure from settlers was forcing other tribes onto their hunting grounds, so “we cannot provide for our families, we starve during the winter, and thus we cannot pay our debts.”

They also asked that no further lands be taken up by settlers and for one settler in particular to be sent away: “There is one person among them named Captain Fortune who causes great problems for us. He prevents us from setting nets in the river, saying that the fish belong to him and he even forbids us from shooting partridge, claiming they belong to him alone. He forbids us from taking wood to boil our water and goes so far as to throw down our lodges and stop us from camping. We ask you to be so good as to send him away because it could result in one of our young men having some bad business with him. Moreover, the Master of Life has given us the woods and the shore from which to take as much as is appropriate.”

This was followed by a long series of petitions and requests to various imperial and local government officials in the following decades. One of the Algonquin petitions, from the

territory was made not with the Algonquins but with the Mississaugas, for lands north of what is now Kingston, Ontario, and up to the Ottawa River — a fact that was bitterly noted by the Chiefs: “That Your Petitioners have recently heard with surprise that the Mississauga Tribe have sold to the Government of Upper Canada a certain portion of our said Hunting Grounds and that they receive an annuity for the same amounting to £642 10s per annum without our knowledge, consent or participation in any shape or manner whatever, wherefore Your Petitioners claim from Your Excellency justice; that the said sale by the Mississaugas be cancelled and annulled and the said annuity paid to your Petitioners.”

Despite their protests, no land Treaties were made directly with the Algonquins and they never received any compensation for their lands. The timber was too valuable and the imperial government was not prepared to struggle against powerful settler interests at a time when it was looking to off-load its responsibilities and have the colonies pay their own way. At the time of Confederation, the government of Quebec simply refused to consider the notion of Treaty, and for its part the government of Ontario was hostile to any recognition of Algonquin interests on the south side of the Ottawa River.

### ***Today, 258 years after the Treaties of Swegatchy and Kahnawake, and 255 years after the Royal Proclamation of 1763, Algonquin Indigenous title — including to Ottawa, the nation’s capital — remains an outstanding issue.***

fall of 1824, was given to Sir John Johnson, superintendent general of Indian Affairs and the son of Sir William Johnson. The chiefs gave John Johnson the original copy of the Royal Proclamation of 1763 that had been given to them sixty years earlier by his father. At the bottom of the proclamation, he wrote, “At the earnest request of the Algonkins I put my name to this. John Johnson. God Save the King.”

Their alarm only increased as the lumber industry moved up the Ottawa River and its tributaries in the first decades of the nineteenth century.

On June 29, 1835, James Hughes, superintendent of the Indian Department, forwarded a petition from the Algonquins and Nipissings that laid out their case: “They represent their hunting Grounds, to be entirely ruined by the White Settlers to whom they have been conceded, the squatters that have taken possession of certain portions but more particularly by the lumber men, who generally set fire to the woods which destroys their Beaver and Peltries and drives away the Deer. Necessity obliges them to make known their Grievances.”

Ironically, the only land Treaty affecting Algonquin

This hostility even extended to the setting aside of reserve lands for the Algonquins. The people at Golden Lake (Pikwakanagan) were forced to purchase their own lands in 1873. Lands were reluctantly set aside by Quebec at River Desert and Timiskaming in 1851 and at Lac Simon and Rapid Lake in 1961–62. The Algonquins of Abitibiwinini used their own funds to purchase their reserve at Amos in 1956; and Canada purchased a small reserve for Kebaowek in 1974.

Today three Algonquin communities (Wolf Lake, Kiticisakik, and Long Point) still do not have reserve lands of their own. With regard to his community, Chief Harry St. Denis of Wolf Lake says, “The Wolf Lake First Nation is one of the oldest recognized Algonquin First Nations but still remains without a land base, which puts us at a severe disadvantage when providing programs and services to our members. This is an injustice we hope to settle soon either through negotiations, the Specific Claims Tribunal, or the courts.”

So today, 258 years after the Treaties of Swegatchy and Kahnawake, and 255 years after the Royal Proclamation of 1763, Algonquin Indigenous title — including to Ottawa, the nation’s capital — remains an outstanding issue.



The Parliament Buildings, which overlook the Ottawa River, are located on traditional Algonquin territory. The Algonquin land claim covers a territory of thirty-six thousand square kilometres in eastern Ontario – a region populated by more than 1.2 million people.



Dancer Nigel Grenier of Gitksan First Nation wears a traditional mask at a performance in Vancouver in 2015. Grenier is the lead dancer of Dancers of Damelahamid, an Indigenous dance company that performs dances and songs that were for years banned by the federal government in an effort to force the assimilation of First Nations peoples.



# Nations in Waiting

*British Columbia's First Nations are in a unique situation regarding Treaties.*

by Guuduniia LaBoucan

The 1997 Supreme Court of Canada decision known as the *Delgamuukw* case was widely seen as a turning point for Treaty negotiations in British Columbia, according to the BC Treaty Commission. The court declared that Aboriginal title in British Columbia had not been extinguished by the government of the colony of British Columbia before it joined Confederation in 1871.

The *Delgamuukw* case — named after Earl Muldoe Delgamuukw, a Gitksan man and one of the claimants — also set out a three-step test to prove Aboriginal title. Title would be based on sufficient, continuous, and exclusive occupation by a First Nation prior to 1846, the year Britain asserted sovereignty over British Columbia. Thus, a First Nation must prove its Aboriginal title before the courts, as the Tsilhqot'in Nation successfully did in 2014. However, the Tsilhqot'in Nation spent millions of dollars over twenty years in pursuit of its title; many First Nations do not have the resources or the inclination to follow this route. The alternative is to negotiate Treaties with the governments of Canada and British Columbia.

Historically, as per the Royal Proclamation of 1763, the British Crown acknowledged Aboriginal title and negotiated Treaties with First Nations in eastern Canada and parts of the West. However, the fourteen agreements known as the Douglas Treaties, signed between 1850 and 1854 on Vancouver Island, and Treaty 8, signed in 1899 in northeastern British Columbia, remained the only B.C. Treaties until the 1998 Nisga'a Final Agreement. This article explores the background to this unique situation and provides a brief summary of the current British Columbia Treaty process.

After the border between the United States of America and British North America was established west of the Rocky Mountains in 1846, the British Crown was anxious to stop American expansion into the new territory by encouraging British settlement. Historian John Galbraith, in his book *The Hudson's Bay Company as an Imperial Factor, 1821-1869*,

notes the writings of Colonial Secretary Lord Grey: "Looking to the encroaching spirit of the U.S. I think it is of importance to strengthen the British hold upon the territory now assigned to us by encouraging the settlement upon it of British subjects."

In 1849, the colony of Vancouver Island was established by the British Crown. The Hudson's Bay Company (HBC), which had already established Fort Victoria, was granted land and trading rights for ten years by the British Crown. HBC then had to create a colony of British settlers within five years, or the grant would have been forfeited.

According to the Colonial Office's "Confidential Report on Vancouver Island, 1848," HBC's offer to colonize the island was chosen over three other rival proposals because of HBC's superior financial resources and its experience with First Nations on the island.

James Douglas, an HBC chief factor who became governor of Vancouver Island in 1851, negotiated agreements that, from his point of view, saw First Nations surrender traditional territory while preserving some rights to hunt, fish, and gather. The agreements also gave the First Nations title to their villages and to enclosed fields. However, there is evidence that the First Nations that were affected did not perceive that they were surrendering their land.

For instance, Royal British Columbia Museum (RBCM) records show that the Saanich First Nations did not believe the agreements authorized the sale of its lands. Among the RBCM records are newspaper articles based on interviews with Chief David Latasse (born around 1858–1863 and died May 2, 1936) of the Tsartlip First Nation in Saanich. Latasse was a well-known Lekwungen speaker whose recollections of the signing of the Douglas agreements were captured in a 1934 newspaper article: "More than eighty years ago I saw James Douglas ... before the assembled chiefs of the Saanich Indians.... I heard him give his personal word that, if we agreed to let the white man use parts of our land to grow food, all would be to the satisfaction of the Indian peoples.



Diane Sam reads a translation of the Douglas Treaties following a handover ceremony at the Songhees Wellness Centre in Esquimalt, British Columbia, in February 2017.

Blankets and trade were to be paid. We knowing a crop grows each year, looked for gifts each year. What we now call rent. Our chiefs then sold no part of Saanich.”

Even at the time of the article, reporters were confused as to whether Latasse was recalling stories from his own observations or from his father’s lifetime.

Other sources record a similar interpretation. Grant Keddie, in his book *Songhees Pictorial: A History of the Songhees People as seen by Outsiders, 1790–1912*, cites the speech of the Saanich chiefs and councillors to the British Columbia government on April 4, 1932: “The four Bundles of Blanket was merely for peace purposes.... The Indians fully understood what was said as it was Interpreted by Mr. [Joseph] McKay [HBC negotiator], who spoke the Saanich language very well ... Mr. McKay ... saying these blankets is not to buy your lands, but to shake hands ... in good Harmony and good tumtums (heart). When I got enough of your timber I shall leave in peace.... When James Douglas knew he had enough of our timber he left the place.”

Despite this fundamental difference of interpretation regarding the agreements’ purpose, Douglas and others continued to regard purchasing of land as a precursor to settlement. The collection *Papers Connected with the Indian Land Question, 1850-1875* records Colonial Secretary Sir

E.B. Lytton instructing Douglas, in a letter from July 1858, to include “an invariable condition, in all bargains and treaties with the natives for the cession of lands possessed by them, that subsistence should be supplied to them....”

In 1859, Douglas outlined to Lytton his proposed land policy, which envisioned First Nations permanently settled in villages on lands to which they had “a strong attachment” to ensure they would remain there and “be civilized.” As a protection against encroaching settlers, the First Nations could only sell these lands to the Crown. In his dispatch dated March 31, 1861, Douglas requested a loan of three thousand pounds to buy more lands from the First Nations. Douglas wrote that such land purchases were a “very necessary precaution” to avoid First Nations’ “feeling of irritation against the settlers and perhaps disaffection to the Government that would endanger the peace of the country.”

However, the colonial secretary refused this request and wrote back to Douglas: “The acquisition of the title is a purely colonial interest, and the Legislature must not entertain any expectation that the British taxpayer will be burthened to supply the funds....”

Lacking funds for land purchases, Douglas implemented his land policy. In a letter dated March 5, 1861, Douglas directed R.C. Moody, chief commissioner of lands and works,



The 'Ksan Historical Village and Museum at Hazelton, British Columbia, is located on Gitksan traditional territory near the ancient village of Gitanmaax.

to “take measures ... for marking out ... Indian Reserves ... to be defined as they may be severally pointed out by the Natives themselves.” Douglas issued proclamations 13 and 15 asserting Crown ownership of all lands in British Columbia and stating both that the government had the power to reserve portions of unoccupied Crown lands for Indigenous people and that these lands would be excluded from pre-emption (purchase) by settlers. First Nations also had the same rights as settlers to purchase Crown land.

Douglas’s policy was not popular in some quarters, as evidenced by Amor De Cosmos’s editorial column in the Victoria *British Colonist* newspaper dated March 8, 1861. De Cosmos wrote, “Indian title ... is the great bugbear to stop settlement.” The newspaper editor — who later became British Columbia’s premier — counselled that industrious settlers should create reservations for the “red vagrants” where they can earn their living and said, “if they trespass on white settlers punish them severely ... to enable them to form a correct estimate of their own inferiority and settle the Indian title too.” These sentiments reflected many settlers’ viewpoints.

By 1866, the colony of Vancouver Island had amalgamated with the colony of British Columbia and Douglas had been retired for two years. Douglas’s land policy was reversed by people such as Joseph Trutch, chief commissioner of

lands and works. In his 1867 “Report on the Lower Fraser Indian Reserves,” Trutch wrote, “the Indians have no right to the lands they claim, nor are they of any actual value or utility to them; and I cannot see why they should either retain these lands to the prejudice of the ... Colony, or be allowed to make a market of them to either the Government or to individuals.” His policy that First Nations’ reserves established under Douglas were “entirely disproportionate to the numbers or requirements of the Indian Tribes” led to smaller reserves based on ten acres per family and a reduction in existing reserves.

These reductions and adjustments resulted in numerous complaints by First Nations. The Lower Fraser Chiefs wrote to B.C. Governor Frederick Seymour in 1868: “Some days ago came new men who ... shortened our land ... set aside our best land, some of our gardens and gave us in place, some hilly and sandy land, where it is next to impossible to raise any potatoes: our hearts were full of grief day and night ....”

In July 1871, when British Columbia joined Confederation, Trutch was appointed the first Lieutenant-Governor of the new province. Under the terms of union, the Dominion government assumed responsibility for First Nations communities and their lands.

These terms guaranteed that reserve policy was to be

“as liberal as that hitherto pursued.” This meant the ten-acre-per-family formula was the rule. The new province of British Columbia maintained that Aboriginal title had been extinguished prior to Confederation.

In the late 1800s, the discovery of gold in northeastern British Columbia led thousands of gold seekers to the area.

This sudden influx created major tensions between the gold miners and the resident First Nations communities. Father René Fumoleau, in his book *As Long as this Land Shall Last*, includes an excerpt from Major James Walker’s 1897 letter to the minister of the interior and Indian affairs: “Respecting the necessity of making treaties with the Indians of the Athabasca and the Yukon I would draw your attention to the fact that these Indians have not been treated with... [I]n the face of this influx of settlers into that country no time should be lost by the Government in making a treaty with these Indians [who are] more easily dealt with now than they would be when their country is overrun with prospectors and valuable mines be discovered.”

In 1899, in order to allow for settlement and to reduce tensions between the miners and First Nations, Treaty 8 was signed by Canada — despite British Columbia’s continued denial of Aboriginal title. This Treaty covers a land mass of approximately 840,000 kilometres and includes areas of

negotiated with First Nations on the prairies, B.C. Premier William Smithe asked where they had heard this. John Wesley of the Nisga’a replied that they had read it in a law book. Smithe replied, “There is no such law either English or Dominion that I know of and the Indians or their friends have been misled.”

Throughout the next century, the Nisga’a pursued their land claims, including to the Privy Council in England in 1913, and up to the Supreme Court of Canada in 1973 in the landmark *Calder* case (named for Nisga’a Chief Frank Calder). Although the Nisga’a did not get a declaration of Aboriginal title due to a technicality, the *Calder* case prompted the federal government to develop a land-claims process. Thus, Treaty negotiations with the Nisga’a began in 1976.

In 1990, British Columbia, Canada, and the First Nations of British Columbia created a task force to recommend how Treaty negotiations could begin in the province. In its 1991 report, the task force recommended that “First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect and understanding through political negotiations.” That same year, the BC Treaty Commission was established as an independent body to oversee the process. Formal land negotiations began in 1993.

The Treaty process has been slow and expensive. Some First

***The Treaty process is not perfect, but neither is it static. It has undergone growing pains as all the parties and the wider public have adjusted to the reality that Treaties take considerable time and resources to conclude, due to their importance and their uniqueness.***

northern Alberta, northwestern Saskatchewan, northeastern British Columbia, and the southwest part of the Northwest Territories. This was the last Treaty to be signed in British Columbia for nearly a century.

Although the Nisga’a Treaty was signed in 1998, its roots stretch back to 1887. In that year, the province formed the Commission to Enquire into the Condition of Indians of the Northwest Coast. The commission travelled to the Nisga’a and Tsimshian territories to hear their grievances. In his paper “Honouring the Queen’s Flag: A legal and historical perspective on the Nisga’a Treaty,” Hamar Foster, a noted legal scholar, quotes Nisga’a Chief Charles Russ’s comments to the commission: “We took the Queen’s flag and laws to honour them. We never thought when we did that she was taking the land away from us.”

When told that the government could only set up small reserves for the Nisga’a, Russ replied, “It is ours to give to the Queen, and we don’t understand how she could have it to give to us.”

Earlier that year, the Nisga’a chiefs had travelled to Victoria to demand recognition of their Aboriginal title. When the Nisga’a spoke of negotiating a Treaty like those Canada had

Nations were involved in the Treaty process but have opted out. Their reasons for withdrawing were cited by Robert Morales, chief negotiator for the Hul’qumi’num Treaty Group (HTG), which comprises six thousand members from Cowichan Tribes, Chemainus First Nation, Penelakut Tribe, Halalt First Nation, Lyackson First Nation, and Lake Cowichan First Nation.

Morales stated in a 2006 article, entitled “New Treaty, Same Old Problems,” that “the idea of a Treaty process should be good news for the Hul’qumi’num, but the HTG and many other Indigenous peoples in Canada confront a serious human rights situation: Their very cultural survival depends upon the state fulfilling its duties under domestic and international law to negotiate in good faith, but the state has shown a significant lack of good faith.”

The areas of contention regarding the Treaty process include the huge debts being accumulated by First Nations in order to negotiate Treaties; the fact that privately held lands are not on the table for discussion; the lack of compensation for past wrongs; and the fact that lands and resources continue to be alienated while Treaty negotiations are ongoing.

According to the BC Treaty Commission, only seven First



Nisga'a leaders pose for a photo outside the Senate chamber on Parliament Hill following the passage of the Nisga'a Treaty in the Senate on April 13, 2000.

Nations (five Maa-nulth First Nations, Tla'amin Nation, and the Tsawwassen First Nation) have signed final agreements through the B.C. Treaty process as of 2017.

Nearly half of the two hundred "Indian Act" bands in British Columbia are not participating, and the title to related lands remains uncertain. However, to quote the late Chief Joe Mathias, one of the original task force members, "Treaty making is a process, not an event."

The Treaty process is not perfect, but neither is it static. It has undergone growing pains as all the parties and the wider public have adjusted to the reality that Treaties take considerable time and resources to conclude, due to their importance and their uniqueness.

Some key changes to the process include the introduction of condensed agreements in principle, core Treaties that rely on side agreements to work out further details, and incremental Treaty agreements that provide First Nations and British Columbia with economic benefits from land and resources prior to signing a final agreement.

As well, Canada announced that, starting in 2018,

"Indigenous participation in modern Treaty negotiations will be funded through non-repayable contributions."

The federal government has vowed to work with First Nations to come up with a way to deal with the outstanding loans, something that could include forgiving debts.

These measures and others deal in concrete ways with some of the most troubling issues facing Treaty making in British Columbia. The political commitment by both Canada and British Columbia to adopt and to implement the United Nations Declaration on the Rights of Indigenous Peoples bolsters the Treaty process. The declaration affirms the rights of Indigenous peoples to self-determination and the protection of their lands, culture, and spiritual practices for future generations.

The BC Treaty Commission eloquently sums up the interplay between Treaties and the declaration, when it says the right "to a deeper connection to traditional territory underlies the importance of self-government to Indigenous rights and is the promise that constitutionally entrenched Treaties have for reconciliation."



PHOTO BY KEVIN VAN PASSEN / THE GLOBE AND MAIL

Joseph Sylliboy of Millbrook First Nation stands at the foot of a twelve-metre-tall statue of Glooscap at the Millbrook Cultural and Heritage Centre, located on the outskirts of Truro, Nova Scotia. According to Mi'kmaw belief, Glooscap was the first human and was a creator and a protector of the First Nations of the region.



# Finding Forgiveness, Building Trust

*Treaty Education in Nova Scotia is a reconciliation story that has been many years in the making.*

by Jaime Battiste

***“You can achieve a lot more by making people feel like they are part of the solution, instead of making people feel like they are the problem.” – Eskasoni Chief Charlie Joe Dennis***

This introductory quote expresses one of the early memorable lessons I learned about reconciliation in Canada before it became a journey loaded with buzzwords. I was just emerging out of academia and teaching at Cape Breton University, where one of the courses I taught was Aboriginal and Treaty rights. I was full of energy in my work for Eskasoni First Nation (a Mi'kmaq Nation in Cape Breton, Nova Scotia) but was frustrated with the lack of progress in dealing with governments. Chief Charlie Joe Dennis was a patient soul, a wise elder statesman, and very well respected by all. His ability to bring government to the table with the many projects he was passionate about helped teach me the importance of collaboration and treating people as potential allies instead of enemies.

In this article I share parts of a personal journey that have helped me in my current role as Treaty Education lead for Nova Scotia. By including my own reflections about education and reconciliation, I hope to show the process for the development of Treaty Education. Finally, I will highlight parts of the Nova Scotia Treaty Education collaboration that have led to its successes.

Reconciliation through education in Canada is a challenge to Canadian institutions, and continued discussion over its implementation is sorely needed. One could argue that reconciliation is about action, not just words.

However, reconciliation is also about the willingness of all parties to communicate with each other and to move forward together. As lead for the new Nova Scotia Treaty Education initiative, I have aimed to create a safe space for engaging the conversation on Treaties and reconciliation and for creating collaboration to implement Treaty Education in the province's schools. Sharing different narratives about Canada's and Nova Scotia's origins, and in particular the Mi'kmaq story, requires new ways to listen and new approaches to rebuilding relationships long divided by misinformation. For too long,

Treaty issues have been avoided or ignored in most schools across the province.

Civil rights leader Martin Luther King Jr. famously said, “Take the first step in faith; you don't have to see the whole staircase, just take the first step.” Reconciliation has to begin with that first step.

The first step in my journey has been working with Indigenous peoples to help them believe in and work with governments as partners. Lack of trust is one of the biggest obstacles to reconciliation. Indigenous nations have been victimized and oppressed for generations and have been let down many times. However, Elder Noel Starblanket, the former chief of the National Indian Brotherhood (today known as the Assembly of First Nations) offered hope when he stated, “If you want Treaty Education to succeed, your message cannot be about bitterness, anger, or resentment. Your message has to be about hope and moving forward, together!”

Reconciliation is only possible if both parties want to learn from the mistakes of the past and are willing to work to find forgiveness and to rebuild trust. This is not easy in personal relationships; it is even more difficult for entire nations. However, the Indigenous Peoples across Canada have a constitutional recognition of their rights and continue to seek their implementation. With the recent Truth and Reconciliation Commission of Canada's calls to action, we have the inevitable task of finding a way to reconcile the history of Indigenous peoples regarding what recent Supreme Court Chief Justice Beverley McLachlin has described as “cultural genocide.” This reconciliation through education must be balanced in a way that is inclusive and beneficial to Canada.

Over the last century, many Nova Scotians have viewed the Treaties as outdated historical documents. The work of the province's Treaty Education initiative is to ensure that Nova Scotians understand that the Treaties have a significant



Children in Nova Scotia are introduced to the concept of Treaties and the Treaty relationship during a session on Treaty Education.

purpose in today's society. The signed negotiations between representatives of the Crown and First Nations peoples began with the eighteenth-century Treaties of Peace and Friendship and are the building blocks of Canada and Nova Scotia. Thus, "we are all Treaty people" and all have responsibilities to the future because of the past.

As Mi'kmaq Chief Rod Googoo of We'koqma'q First Nation eloquently pointed out in his address to Nova Scotia chiefs during the Mi'kmaq Kina'matnewey Treaty Education Summit, "If you look around Nova Scotia, the Mi'kmaq are not the ones who benefited the most from the signing of the Treaties." (Mi'kmaq Kina'matnewey is a sectorial self-government agency formed under the *Mi'kmaq Education Act* in 1997. Under the act, the Mi'kmaq have authority over Mi'kmaq education.) His point is that all Nova Scotians are Treaty beneficiaries, yet many Mi'kmaq families have not benefited. They have been isolated economically and fragmented into small communities. Statistics on Indigenous populations frequently note their high levels of poverty, unclean water, diabetes, and suicide.

The Supreme Court of Canada has recognized the constitutional validity of Treaties, including those made prior to Confederation. In the *Simon* case of 1985, the court affirmed a 1752 Treaty of Peace and Friendship signed between the Mi'kmaq in Nova Scotia and the Crown. In the *Marshall* case of 1999, the Court found that Mi'kmaq and Maliseet people on the East Coast continue to have the right to hunt, fish, and gather to earn a moderate livelihood under Peace and Friendship Treaties signed in 1760 and 1761.

While the Peace and Friendship Treaties that the Mi'kmaq signed centuries ago have been part of Mi'kmaq understanding, we at the same time welcome the Supreme Court's affirmation of our Treaty rights.

The implementation of Treaty rights brings hope for a better future. Indeed, today's millennials are the first generation to grow up with the reality that Treaties are recognized in Canada.

The government narrative concerning Mi'kmaq peoples within Nova Scotia has changed. Prior to the landmark ruling by the Supreme Court in 1985, the provincial government refused to acknowledge the Mi'kmaq Treaties. But by the following year the province had established October 1 as Treaty Day to recognize the Treaty relationship. And in 2015 Premier Stephen McNeil publicly affirmed, during the signing of the Treaty Education memorandum of understanding, that "we are all Treaty people." This open affirmation was greeted by Mi'kmaq leaders and community members with an unprecedented standing ovation on Treaty Day.

In December of 2015, optimism grew nationally when the Truth and Reconciliation Commission's final report was tabled at a ceremony in Ottawa. During that ceremony, Prime Minister Justin Trudeau shared a story of how, when he had gone to school, his history teacher had skipped over a chapter about Indigenous history, stating that "this chapter is not very interesting, not very important." The prime minister then vowed to "ensure that never again in the future of Canada will students be told that this is not an integral part of everything we are as a country and everything we are as Canadians."

Trudeau also said, "reconciliation is not an Aboriginal issue;



Nova Scotia Premier Stephen McNeil, Chief Leroy Denny, and Chief Robert Gloade sign a memorandum of understanding on Treaty Education in 2015.

it is a Canadian issue.” With these strong statements, it became possible to dream of a Canada where Indigenous nations, provincial education departments, and the federal government work together to embed Indigenous history, culture, and knowledge within current educational structures.

In Nova Scotia, the work on Treaty Education has involved not only teaching about our history but also ensuring that our focus is on the future and on creating change in the next generation. We have borrowed from the Office of the Treaty Commissioner’s Speakers Bureau the analogy of the Head, Heart, and Hand as the foundation of reconciliation. The Head is understanding about the history of First Nations peoples and acknowledging the legacy of harm. The Heart is about feelings, attitudes, and beliefs that come with understanding, including sympathy or empathy, and healing. The Hand is about the actions that go with knowing and feeling.

Reconciliation begins with a raised awareness of the complexities and realities of the past. It cannot happen without having difficult conversations. It involves being prepared to be uncomfortable with the roles and privileges born from colonization. For many Indigenous leaders across Canada, reconciliation is about ensuring that we learn from the past and that the failures of former generations can be the opportunities of future generations.

Through implementing education that values diversity and appreciates the contributions of the First Nations, our current and future leaders will be better able to reconcile the mistakes of the past in a way that we can all be proud of. We can move forward together in the spirit and intent of our Treaties.

Like any policy initiative, the mandate for Treaty Education in Nova Scotia has undergone years of Treaty advocacy by many Mi’kmaq and by government policy leaders. Our journey has been one of collaboration and doing our best to ensure that we engaged all potential stakeholders — whether provincial, federal, or First Nations peoples.

Since 1997 in Nova Scotia, a tripartite forum of federal, provincial, and Mi’kmaq governments has been operating to discuss common areas of concern and jurisdiction, including education. The committee noted that Nova Scotia is lagging behind many of the provinces and territories and needs to ensure that Treaty Education is being taught in provincial and Mi’kmaq Kina’matnewey classrooms.

In 2015, the tripartite forum funded a two-day Treaty Education workshop that included Elders, government leaders, educators, youth, and academic leaders. The purpose of this workshop was to understand the national directions and the need to forge ahead with a comprehensive implementation plan for Treaty Education. Speakers included Marie Battiste from the University of Saskatchewan, Brenda Ahenakew from the Office of the Treaty Commissioner in Saskatchewan, Jeff Orr, Dean of Education at St. Francis Xavier University, and others. This led to the development of several recommendations that were presented to the Mi’kmaq leadership within Mi’kmaq Kina’matnewey.

With the support of the Mi’kmaq leadership, Treaty Education became a Mi’kmaq Kina’matnewey program.

The initial funding of Treaty Education came from eight Mi’kmaq communities as well as Mi’kmaq Kina’matnewey.

I was hired as Treaty Education lead to begin advocacy and to obtain funding.

After several initial discussions with provincial representatives about the merits of the proposal and its long-term objectives, the province gave its support to Treaty Education.

Treaty Education goes beyond agreement with the principles of knowledge and curriculum change; it is also a positive step toward learning about and from Mi'kmaq in our provincial education system.

As well, it addresses the urgent need for quality resources and information to be made available to teachers. I can still remember the statement of one of our hereditary chiefs, Kji Keptin Antle Denny, who recalled that when he went to school there were only two things in history books about our people: "First, that the Mi'kmaq were savages, and second, that the Mi'kmaq were warlike." These negative myths and misconceptions have dominated the perspectives of many non-Mi'kmaq Nova Scotians.

Within the first few weeks of accepting my position as lead, I accompanied provincial representatives on a fact-finding mission to other regions that were excelling in Treaty Education. We learned successful approaches in creating provincial mandates for education.

***While collaboration between Mi'kmaq Knowledge Holders and provincial officials can be difficult, we are guided by an old African proverb: "If you want to go fast, go alone. If you want to go far, go together."***

In 2017, through many discussions with Indigenous and Northern Affairs Canada, in collaboration with the province's Treaty Education Implementation Committee, federal funding was secured for a project to develop resources for students from kindergarten to Grade 6. Also funded was a speaker's bureau team to help to deliver the message of Treaty Education throughout the province.

The 2015 memorandum of understanding between the Mi'kmaq and the province of Nova Scotia states that Treaty Education "would be promoted and supported in every class, every grade, and in every school across Nova Scotia." The signing of the MOU was followed by meetings with Knowledge Holders, which resulted in the creation of a visual framework to help individuals understand Treaty Education in Nova Scotia.

The framework focused on four key questions: 1. Who are the Mi'kmaq? 2. Why are Treaties important? 3. What happened to the Treaty relationship? 4. How do we promote reconciliation moving forward?

After creating this framework, we began the process of implementing Treaty Education within Nova Scotia schools. This work included creating training and resources as well as offering a safe place for discussion and dialogue.

While collaboration between Mi'kmaq Knowledge Holders and provincial officials can be difficult, we are guided by an old African proverb: "If you want to go fast, go alone. If you want to go far, go together." The collaboration process has been extended into 2020 in hopes of changing the current Nova Scotia education system with the full participation of Mi'kmaq educators.

The Head, Heart, and Hand can be engaged in areas other than education, such as the legal system.

For instance, in 2017, after years of advocacy by the Mi'kmaq, a posthumous pardon and apology was granted to the late Grand Chief Gabriel Sylliboy, who in 1927 was convicted of hunting muskrats out of season. At the time, Sylliboy defended himself by asserting his rights under the 1752 Treaty. The free pardon in 2017 gave impetus to the idea that reconciliation goes beyond education.

During the ceremony to grant Sylliboy a free pardon, McNeil quoted Murray Sinclair, chair of the Truth and Reconciliation Commission: "Starting now, we all have an opportunity to show leadership, courage, and conviction in helping heal the wounds of the past as we make a path towards a more just, more fair, and more loving country. This is our beginning; begin that journey of healing."

In another important act of symbolic reconciliation, the Halifax regional council in 2018 decided to remove a statue of Governor Edward Cornwallis from a park named in his honour. Cornwallis was infamous within Mi'kmaq communities as a violator of the 1725–26 Treaty. He also, in 1749, put a bounty on Mi'kmaq scalps.

Many councillors made compelling arguments for the removal of the statue. "This land wasn't lost; it wasn't ours to find," said Councillor Steve Craig in debunking the argument that Cornwallis founded Halifax. Another councillor, Richard Zurawski, urged: "For goodness sakes, let's end the five hundred years of broken promises and take away this visible symbol of supremacy." Mi'kmaq Elder Daniel Paul, who has advocated for the removal of the statue for more than thirty years, stated, "I was beginning to think I wouldn't live long enough to see this day."

While education is an important impetus for change, it will be achieved when Nova Scotians can see the effects of the past on their own histories and are able to address them proactively as these leaders have done. As Treaty is everyone's heritage in Nova Scotia, how we live those Treaties and responsibilities will call us to new forms of awareness, of attitudinal changes, and of consequential action.



Millbrook First Nation Chief Lawrence Paul, left, and Mi'kmaq Grand Chief Ben Sylliboy share a light moment at the start of the annual Treaty Day parade in Halifax in September 2005.

# BRING TREATY EDUCATION INTO YOUR CLASSROOM

## GRADES 7 AND UP

Bring *Treaties and the Treaty Relationship* into your classroom today with our complementary educational package. This free resource includes lesson plans and activities developed by Connie Wyatt Anderson, 2014 recipient of the Governor General's History Award for Excellence in Teaching.

- Available in French and English
- Explore these free learning materials at [CanadasHistory.ca/TreatiesEduPack](https://CanadasHistory.ca/TreatiesEduPack)

## GRADES 2-7

Introduce the concepts of Treaty and the Treaty relationship to younger students with the **September 2018** issue of *Kayak: Canada's History Magazine for Kids* and the complementary educational package.

- Available in French and English
- Request your free copy at [CanadasHistory.ca/TreatiesEducation](https://CanadasHistory.ca/TreatiesEducation)

Participants in Frontier College and Community Education Development Association's Truth and Reconciliation Summer Camp.



## Supporting our shared truth and reconciliation journey **For Good. Forever.**

The Winnipeg Foundation is committed to working with everyone in our community toward a shared goal of reconciliation. Like so many, we're still discovering exactly what that means. We know education plays a significant role.

We signed the Philanthropic Community's Declaration of Action in 2015. It, along with the United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission of Canada's 94 Calls to Action, guide our work.

In 2018, we will distribute \$1 million through a special granting stream for charities to work toward reconciliation. The Winnipeg Foundation recognizes these are just preliminary steps and we are looking forward to exploring new opportunities as we listen, reflect and learn on our shared journey of truth and reconciliation.

