(Re)negotiating treaties: Navigating within and between settler–Anishinaabe legal landscapes

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TREATIES AS CONTACT ZONES

Viewing pre-Confederation treaties and current treaty-related lawsuits as contact zones presents an opportunity for researchers to document and explore cross-cultural treaty understandings. By contact zone, I am referring to the "social spaces where disparate cultures meet, clash, and grapple with each other, often in highly asymmetrical relations of domination and subordination—like colonialism, slavery, or their aftermaths as they are lived out across the globe today" (Pratt, 2008, p. 4). In cases concerning Crown treaty rights and responsibilities such as *Restoule v. Canada (Attorney General)* (2018), this contact zone may hold the potential to advance social relations and relational decision making.

In such contact zones, legal actors can be observed navigating their way through power imbalances, historical inaccuracies and misunderstandings, and current socio-political climates. However, in the courtroom, lawyers and judges are in a privileged position where they can also reaffirm the state's power through curated treaty narratives and procedures (Christie, 2000; Craft, 2017; Stark, 2017). By framing treaty promises as obligations rather than responsibilities, and by favouring a specific understanding or narrative, Canada has been able to control what treaties are and what they mean for First Nations and non-Indigenous relations (Stark, 2017). However, in the age of reconciliation, lawsuits like *Restoule* may challenge these narratives and prompt change on many legal levels. Yet, we must also ask how *Restoule* makes space for Anishinaabe resurgence.

TREATIES INSIDE AND OUTSIDE THE COURTROOM

Restoule (2018) is a pivotal case. It began in 2014 when representatives from the 21 Anishinaabe signee nations of the Robinson–Huron Treaty (1850) sued the Crown, represented by the Ontario and federal governments. They claimed that the Crown failed to uphold its treaty obligations to increase annuity payments to the communities from the $4 agreed on in 1875. Simultaneously, the plaintiffs enacted Anishinaabe legal processes through the revitalization of the General Council to renew alliances and responsibilities between these Anishinaabe nations annually at treaty gatherings around the territory (Bohaker, 2020).

Every year around early September, usually coinciding with the anniversary of the original treaty signing, this alliance reconvenes in a chosen community for a few days to discuss progress on *Restoule* with the communities, share treaty knowledge, tell stories, and feast. In September 2022, Nipissing First Nation and Dokis First Nation co-hosted the event in Garden Village, Nipissing First Nation. Having the privilege to attend this semi-public event as a settler alongside my spouse and his family from Nipissing First Nation presented me with new insights into Anishinaabe treaty understandings, rights, and responsibilities. For settlers interested in treaty relationships, this event is important for creating deep understanding and fostering long-term relationships. For non-Indigenous attendees, adhering to protocols, not attending closed meetings, giving up space in conversations, and observing cultural practices means that settlers give up any notion of power—a key aspect of how settlers can best support First Nations resurgence. Moreover, at this gathering, local Anishinaabe creators were able to set up booths and sell their handmade items, creating an economic boom in the area that extended to the online sphere after the event.

Returning to *Restoule*, there may indeed be space for Anishinaabe resurgence resulting from the gatherings and economies they inspired. Given that the annuity payments come from the Crown's profits from the resources extracted on treaty lands, this court case could set the precedent for other treaty annuity payments and resource extraction negotiations on First Nations' lands. In *Restoule*, payments to the 21 Anishinaabe nations could potentially run into billions of dollars and highlight for the public the history of broken treaties in Canada. The part 1 decision in 2018 ruled in favour of the plaintiffs, and the part 2 decision in 2020 found that the province of Ontario does not have Crown immunity, a ruling that was appealed in 2021. In 2022, the provincial appeal judges affirmed the original decision with some adjustments, although the province of Ontario has appealed to the Supreme Court of Canada. This round of appeals is set to begin in the fall of 2023. In the meantime, the process for how the Crown will calculate and meet the treaty annuity obliga-

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tions will be decided in part 3 of the case, which began in January 2023.

According to a recent Yellowhead Institute special report (Gray & King, 2022), *Restoule* is important for many reasons: the inclusion of ceremony and Anishinaabemowin in the courtroom, the inclusion of elder knowledge, and treaty interpretation according to Anishinaabe law by the presiding judge in the 2018 part 1 decision. Yet, while there are parts of the case that set the tone for equitable and relational treaty relations, further research would have to determine to what extent the resulting narratives and discourses accurately convey Anishinaabe perspectives on treaty relationships.

Indeed, to properly understand treaty relationships as they were originally intended by the Anishinaabe peoples, Anishinaabe law must be understood as a holistic system consisting of the rules and decisions that govern daily lives, whether politically, socially, or individually (Borrows, 2010). Moreover, the precedents used in decision making are gathered from observation of the human and non-human world (Borrows, 2010). The people are connected to Anishinaabe law and experience it directly through individual decisions, collective responsibilities, foundational stories, and storywork (Borrows, 2010; Stark, 2017). This is vastly different from the Canadian legal system, which is based on texts, precedents, specialized knowledges, and policing.

The use of storywork to convey and understand law is a crucial part of Anishinaabe law that the Canadian legal system is not designed to navigate. For instance, storywork is a system of meaning making in which a story's meaning is not overtly stated but is left open to understanding, and the meaning comes from the relationship between the listener and the story (Wilson & Hughes, 2019, p. 9). When it comes to treaty stories, these various stories include not only the textually based evidence of the treaty relationship as it was written down by colonial agents in the 1800s, but also the local community stories that highlight individuals and agency in decision making around treaty signings and interpretations. Such local stories often present useful information about Anishinaabe law, responsibilities, agency, and self-determination that are directly related to place and community.

RESTOULE AND RECONCILIATION

Reconciliation can be understood as an attempt by non-Indigenous people to mend their relationship with Indigenous peoples primarily by addressing past injustices and current systemic issues. Through this understanding, then, *Restoule* may be a step in that direction, given the inclusion of Anishinaabe perspectives and ways of knowing. However, reconciliation is a contentious term that can be co-opted to recreate settler colonial powers, especially when it fails to consider Indigenous resurgence, reparations, and change (Jung, 2018; Wyile, 2019). Indeed, revealing and addressing historically unbalanced power relations and systems that favour settlers is only part of the work. Non-Indigenous peoples and settlers must also take a step back, foster deep long-term relationships, and create spaces for Indigenous peoples to declare what is best for them and their communities in a non-patriarchal and non-hierarchical way. In the case of *Restoule*, how to proceed with renewing treaty relationships should begin with bottom-up approaches that promote the resurgence of Anishinaabe communities.

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