

Reflections on 1763 in Far Northern Ontario

FRAUGHT RELATIONSHIPS

The tensions in the Royal Proclamation have ebbed and flowed over the past 250 years and, of course, are still with us today. The treaty relationships that unite First Peoples with other Canadians are inherently problematic, as a result of our differing understandings (or perhaps outright ignorance) of history. Notwithstanding the Proclamation, and the gubernatorial proclamations that reinforced it, many of the early treaties in what is now Ontario were fraught with dissatisfaction on the part of First Peoples, even before 1812. After Confederation, treaty-makers sometimes resorted to almost take-it-or-leave-it bargaining. Following the 1888 *St. Catherine's Milling* decision, outright deception sometimes led to diametrically opposed written and oral versions of the treaty relationship. The respectful principles embodied in the Proclamation languished for decades.

According to the Proclamation, Indigenous lands could be acquired only if the occupants were “inclined to dispose of [them] at some public Meeting or Assembly of the said Indians, to be held for that Purpose”—implying that free, informed, prior, and collective consent were essential. In 1794, Sir Guy Carleton, 1st Baron Dorchester, issued additional instructions. Treaty deliberations must be carried out “with great Solemnity and Ceremony according to the Ancient Usages and Customs of the Indians, the Principal Chiefs and leading Men of the Nation or Nations to whom the lands being first assembled.” If the governor himself could not attend, he could appoint two representatives. The superintendent general of Indian affairs or his deputy was to use “such Interpreters as best understand the Language of the Nation or Nations treated with.” Treaties were to be signed in triplicate “in Public Council” only “[a]fter explaining to the Indians the Nature and extent of the Bargain, the situation and bounds of the Lands and the price

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to be paid.” The Indigenous party was to be given one copy of the treaty, together with any “Descriptive Plans”; “by that means [they] will always be able to ascertain what they have sold and future Uneasiness and Discontents [will] be thereby avoided.”

“OUTSIDERS”

The Proclamation was enhanced in a very different way after 1835. A cluster of assimilative doctrines, formulated by the British House of Commons Select Committee on Aborigines, started to be applied throughout Britain’s settler colonies. Aboriginal peoples would be treated as “outsiders” who needed to become integrated into modern society as labourers, domestic servants, or farm hands. They would be regulated through separate laws until they were ready to be citizens. And so long as they were wards of the government, they would need government-appointed “protectors.” Maintaining order and control was paramount. Aboriginal children would be radically changed through

schooling, heavily steeped in Christianity. Boarding schools (later called residential schools) and child welfare laws were employed to facilitate what we now recognize as genocide in this context.

In 1871, when the first of the post-Confederation treaties was signed, very different principles of consent were at work. Adams G. Archibald, a Father of Confederation and at different times lieutenant governor of Manitoba and Nova Scotia, became frustrated on his third day of treaty-making at Lower Fort Garry. He told spokesmen for the one thousand people before him:

[W]hether they wished it or not, immigrants would come in and fill up the country; that every year from this one[,] twice as many in number as their whole people there assembled would pour into the Province, and in a little while would spread all over it, and that now was the time for them to come to an arrangement.

In this context, it is no surprise that the treaty-signing was delayed over how to select and allocate reserves. “In defining the limits of their reserves,” Archibald wrote, “they wished to have about two-thirds of the Province.” Sharing the land, in Aboriginal eyes, apparently meant keeping most of it, so they could maintain their cultures and economies.

THE PLEASURE OF THE CROWN

When the highest court in the British Empire decreed in *St. Catherine's Milling and Lumber Company v. The Queen* in 1888 that Aboriginal title depended solely on the pleasure of the Crown, there was no real incentive to explain the full nature of Treaty Nos. 8 through 11 to the Indigenous peoples those treaties sought to encapsulate. With or without their signatures on the parchment, the Crown could erase Aboriginal title at will. And consent could be manufactured.

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By 1905, when Treaty No. 9 was signed, treaty-making meant hours, not days (or years, in the case of Treaty No. 3). At Fort Hope, a question from Moonias, a prominent member of the local Anishinaabe community, suggests that the notion that they would “cede, release, surrender and yield up” their lands forever was not understood:

He said that ever since he was able to earn anything, and that was from the time he was very young, he had never been given something for nothing; that he always had to pay for everything that he got, even if it was only a paper of pins. “Now,” he said, “you gentlemen come to us from the King offering to give us benefits for which we can make no return. How is this?”

Reserve locations, and perhaps their size, were discussed only after the treaty was signed. On the parchment that was signed, a blanket extinguishment clause was substituted for any careful delineation of any lands surrendered. At Marten Falls, William Whitehead signed the treaty—but afterward, he twice spoke out, demanding a reserve for his small band for many miles on both sides of the Albany River. “[I]t was put forcibly before them,” wrote Daniel George MacMartin, a treaty commissioner nominated by Ontario, “that they could hunt wherever they pleased.”

That is not what the parchment said.

One question always preceded treaty-signing. What about our hunting, trapping and fishing?

In contrast to this oral explanation, the parchment said that their hunting, trapping, and fishing could be curtailed in two ways. First, it was subject to regulation—that is, by the laws of the Dominion. Second, harvesting would not be permitted on lands, which might one day be “taken up” for mining, forestry, railroads, town sites, and the like.

Preceding the marks that signify Indigenous concurrence with the treaty, at each of the six locations where Treaty No. 9 was signed that summer, are the words “after having been first interpreted & explained.” A different interpreter was used at each signing. Prior to signing, the treaty was explained only to the few who would sign. Even with these limitations, one question always preceded treaty signing. What about our hunting, trapping, and fishing? The answer—the promise—always given, that these activities would not be curtailed. This assurance meant much more than feeding one’s family. It meant that each

family will have unmolested use of its traditional territory, will be able to educate its children in the ancestral language, and will be allowed to collectively resolve its conflicts.

AN ORAL TREATY

What was the purpose of Treaty No. 9? The commissioners simply said that the King, who wished the First Peoples to be happy and prosperous, had sent them. As a sign of his good intentions, there was a feast of bannock and tea, a flag for their chief, and cash—\$8 upon signing the treaty, and thereafter \$4 per person in perpetuity. No mention was made of the *Indian Act*. Treaty No. 9 was not explained at a public meeting. There was little concern for the quality of the interpreters—who do not seem to have been asked to explain the words on the parchments. The Indigenous signatories were not given a copy of it; and there was no plan or map to indicate what lands had been surrendered. The Proclamation was seemingly ignored. If the King’s red carpet was rolled out in 1763, by 1905 it was rolled up and left under a desk in Ottawa at treaty time.

Yet, it seems that there was consensual agreement. An *oral* treaty of peace and friendship was concluded, signified by gift-giving and explicitly guaranteeing continued use of ancestral lands. This appears to be what was offered—and accepted. 🍁



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