“The said Lands ... shall be purchased only for Us”: The effect of the Royal Proclamation on government

FRAMEWORK FOR LAND RIGHTS

The Royal Proclamation is not an ancient document but it has remained in effect for 250 years, even if it is not well known by Canadians. It became the framework for treaty-making in relation to land rights in the decades after 1763, and as such it is a core document in Crown–First Nations relations. The principles that it established underlie a large part of the work of Aboriginal Affairs and Northern Development Canada and the Ontario Ministry of Aboriginal Affairs (MAA). Simply put, there would not be any territorial treaties, land claims, or ministries of Aboriginal affairs without the Royal Proclamation.

In the Royal Proclamation, then King George III claimed sovereignty over a large territory in North America but went on to say that “such Parts of Our [Brit­ish] Dominions and Territories as, not having been ceded to, or purchased by Us, are reserved to them [First Nations], or any of them, as their Hunting Grounds ... .” The document continues, “if, at any Time, any of the said Indians should be inclined to dispose of the said Lands, that same shall be purchased only for Us [the Crown], in Our Name, at some publick Meeting or Assembly of the said Indians to be held for that Purpose by the Governor or Commander in Chief of Our Colonies ... .” In other words, the Proclamation recognizes First Nations rights to lands not yet ceded, but also establishes a framework for dealing with those rights. First Nations’ lands could only be sold to representatives of the Crown, at public meetings called for that purpose. The Royal Proclamation created legal obligations on Crown officials: a strict process had to be followed for transferring rights in land from First Nations to the Crown and settlers.

These legal obligations, which have since been enshrined in section 25 of the Canadian Charter of Rights and Freedoms, have been the foundation of treaty-making in Canada since 1763.

In his book *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada*, J.R. Miller has shown that while the Crown and First Nations concluded commercial compacts, military alliances, and treaties of peace and friendship since the early 17th century, the Royal Proclamation ushered in a new phase of treaty-making. The territorial treaties signed since the Royal Proclamation provided for the exchange of First Nations lands for one-time pay­ments (Upper Canadian Treaties) or a combination of reserves, annuity payments, and one-time payments of money and provisions (the Robinson Treaties of 1850 and the Post-Confederation Treaties). Many of these treaties also guaranteed hunting, fishing, and gathering rights to First Nations. As a result, First Nations have a continuing interest in off-reserve Crown lands.

THE MINISTRY’S FUNCTION

One of the most important functions of the Ministry of Aboriginal Affairs is to address First Nations land claims. While the Constitution Act of 1867 assigned to the federal government exclusive law-making authority for “Indians, and Lands reserved for the Indians,” including the power to make treaties with First Nations, Ontario becomes involved in land claims if it was responsible for the actions giving rise to a claim, if it benefited from those actions, or if it holds Crown land that may be involved in the settlement of a claim. Land claims arise from one of two circumstances: the Crown’s failure to fulfill its obligations according to the terms of a specific treaty; or its failure to abide by the terms of the Royal Proclamation.

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BY BRANDON MORRIS AND JAY CASSEL

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