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## Stage Three: Displacement and Assimilation

**IN THE WANING DECADES** of the 1700s and the early years of the 1800s, it became increasingly clear that a fundamental change was occurring in the relationship between Aboriginal and non-Aboriginal peoples. Confined initially to the eastern part of the country, change in the relationship was soon experienced in central Canada as well. At least three factors were at work.

The first was the rapid and dramatic increase in the non-Aboriginal population, owing to the massive influx of Loyalists after the American Revolution and swelling immigration, especially from the British Isles. Beginning in the 1780s, thousands of Loyalists poured into the Maritimes, sharply increasing pressures on the Aboriginal land and resource base. The landless new immigrants pursued agriculture and the export of timber, and although parcels of land had been set aside for the Indian peoples of the region, squatting and other incursions on the Aboriginal land base inevitably occurred. At that time the Mi'kmaq and Maliseet populations were also declining because of disease and other factors, and colonial governments appeared to have neither the will nor the means to counter illegal occupation of the remaining lands of the indigenous population.

Lower Canada, with its long-established reserve land policy, was not drastically affected by in-migration. It was different in Upper Canada, however, where reserves were fewer and population pressures proportionately greater. It is estimated that by 1812 the non-Aboriginal population of that colony outnumbered the Aboriginal population by as much as 10 to 1, with the ratio increasing further in the ensuing decades.<sup>1</sup> Illegal squatting occurred on Indian lands, as in the Maritimes, but it was more common for purchases of Indian lands to be made through the negotiation of treaties. Purchased lands were then made available by the Crown for non-

## Aboriginal settlement.

In addition to the dramatic shift in population ratios, a second and equally important factor undermining the more balanced relationship of the early contact period was change in the colonial economic base. The fur trade was already declining in eastern Canada by the latter part of the 1700s. The 1821 merger of the two major rivals, the North West Company and the Hudson's Bay Company, signalled the end of the Montreal-based fur trade and with it the relative prosperity of the Aboriginal nations dependent on it. The fur trade continued to be important in the north and west for many more decades — indeed, it did not begin in what became British Columbia until the late 1700s.<sup>2</sup> But in eastern Canada, the fur trade — and the era of co-operative division of labour between Aboriginal and non-Aboriginal people it represented — were over.

It was replaced by a new situation, one in which the economies of the two peoples were increasingly incompatible. More and more, non-Aboriginal immigrants were interested in establishing permanent settlements on the land, clearing it for agricultural purposes, and taking advantage of the timber, fish and other resources to meet their own needs or to supply markets elsewhere. They were determined not to be frustrated or delayed unduly by those who claimed title to the land and used it in the Aboriginal way. In something of a return to earlier notions of the 'civilized' and 'savage' uses of land, Aboriginal people came to be regarded as impediments to productive development. Moreover, as Aboriginal economies declined because of the loss of the land, the scarcity of game and the continuing ravages of disease, relief payments to alleviate the threat of starvation became a regular feature of colonial financial administration. In short order, formerly autonomous Aboriginal nations came to be viewed, by prosperous and expanding Crown colonies, as little more than an unproductive drain on the public purse.

The normalization of relations between the United States and Great Britain following the War of 1812 was a third factor in the changed relationship that emerged at this time. No longer courted as military allies, a role they had enjoyed for two centuries, First Nations were forgotten for their major contributions in the many skirmishes and battles that were so important in earlier decades. By 1830, in fact, responsibility for 'Indian policy' — formerly a quasi-diplomatic vocation — had been transferred from military to civil authorities. The preoccupation of policy makers turned to social rather than military concerns, and soon schemes were devised to begin the process of

dismantling Aboriginal nations and integrating their populations into the burgeoning settler society around them.

In retrospect it is clear that the non-Aboriginal settlers, because of their sheer numbers and economic and military strength, now had the capacity to impose a new relationship on Aboriginal peoples. Their motive for so doing was equally clear: to pursue an economic development program increasingly incompatible with the rights and ways of life of the Aboriginal peoples on whose lands this new economic activity was to take place. To justify their actions, the non-Aboriginal settler society was well served by a belief system that judged Aboriginal people to be inferior. Based originally on religious and philosophical grounds, this sense of cultural and moral superiority would be buttressed by additional, pseudo-scientific theories, developed during the nineteenth century, that rested ultimately on ethnocentric and racist premises.

The influx of large numbers of settlers, soldiers, administrators and others into lands inhabited by indigenous populations was not, of course, unique to North America. It was a phenomenon of a period of history when European colonial empires expanded worldwide in the second wave of a movement that began in the late 1400s. Nor was the colonization process a uniform one, for it took different forms in different parts of the world.

In Brazil, for example, the Portuguese imported African slaves to produce crops such as sugar on large plantations run by small numbers of European settlers. In Mexico and much of the rest of Latin America, 'mixed' colonies developed, where a substantial minority of non-indigenous settlers sought to create societies modelled on the Spanish homeland but with an emphasis on absorbing the indigenous population. In other parts of the world, the colonial presence took the form of small settlements involving few settlers and few claims to territory, but emphasizing the development of trading relationships. And in India, the British governed a vast dependency through a relatively small, alien administration.<sup>3</sup>

Canada, Australia, New Zealand and the United States represented another model of colonial expansion. As with much of Africa, there were few pre-existing centralized state structures among the indigenous inhabitants.<sup>4</sup> In addition, Aboriginal population density was low — or fell precipitously as a result of disease after contact — and geographic conditions were considered ideal for European agriculture and ways of life. These territories were targeted for settlement. Not only were they considered worthless without an

increase in the size and 'civilization' of the workforce, they also served as safety valves for the rapidly growing population of European home countries. Europe could usefully shed its poorest citizens by offering them land and work in the colonies. Once installed there, they became low-wage producers and high-price consumers of imports from the home economy. Under this policy, even 'gaol birds' could be made useful; prisons were emptied and their populations shipped by the boat load to Virginia and Georgia in the eighteenth century and Australia in the early nineteenth century.

Regardless of the approach to colonialism practised, however, the impact on indigenous populations was profound. Perhaps the most appropriate term to describe that impact is 'displacement'. Aboriginal peoples were displaced physically — they were denied access to their traditional territories and in many cases actually forced to move to new locations selected for them by colonial authorities. They were also displaced socially and culturally, subject to intensive missionary activity and the establishment of schools — which undermined their ability to pass on traditional values to their children, imposed male-oriented Victorian values, and attacked traditional activities such as significant dances and other ceremonies. In North America they were also displaced politically, forced by colonial laws to abandon or at least disguise traditional governing structures and processes in favour of colonial-style municipal institutions.

In Canada, the period saw the end of most aspects of the formal nation-to-nation relationship of rough equality that had developed in the earlier stage of relations. Paradoxically, however, the negotiation of treaties continued, but side by side with legislated dispossession, through the *Indian Act*. Aboriginal peoples lost control and management of their own lands and resources, and their traditional customs and forms of organization were interfered with in the interest of remaking Aboriginal people in the image of the newcomers. This did not occur all at once across the country, but gradually even western and northern First Nations came under the influence of the new regime.

In this chapter, we begin with a brief description of the early legislation that sought to 'civilize' and 'enfranchise' the Aboriginal population in the period leading up to and immediately following Confederation.<sup>5</sup> Second, we turn to a short description of the development of Métis culture, economy and self-government in the 1800s. The period of contact and co-operation described in the previous chapter produced not only a unique relationship between Aboriginal and non-Aboriginal people, but also unique Aboriginal populations

of mixed ancestry and culture — the Métis Nation in the west and other Métis communities in the east.<sup>6</sup> Pressed by the rapid westward expansion of the Canadian federation, the Métis Nation became part of the Canadian nation-building process in the area that would become the prairie provinces and the Northwest Territories.

Third, we describe continuation of the treaty-making process in the 1800s and early 1900s, beginning in Ontario and moving west and north. From the Crown perspective it seemed clear that these treaties were little more than real estate transactions designed to free Aboriginal lands for settlement and resource development. From the Aboriginal perspective, however, the process was broader, more akin to the establishment of enduring nation-to-nation links, whereby both nations agreed to share the land and work together to maintain peaceful and respectful relations. Thus, while the treaty process continued to have the trappings of a nation-to-nation relationship among equals, as before, the intentions and perspectives of the two sides diverged. Sharp differences in perspective about the treaty process continue to divide Aboriginal and non-Aboriginal governments today.

The fourth section of this chapter begins with a discussion of Confederation, which was a momentous event for non-Aboriginal society but of little positive significance for Aboriginal peoples. Described as a federation of the provinces or a compact between two peoples, the English and the French, it completely excluded Aboriginal peoples as active participants. They and their rights and privileges seem to have disappeared almost completely from the consciousness of Canadians, except for the provision in section 91(24) of the *Constitution Act, 1867* making "Indians, and Lands reserved for the Indians" a federal responsibility, an object of future federal legislation. Through the vehicle of the *Indian Act* and related legislation, section 91(24) served as the source of authority for federal government intervention in the internal affairs of Indian societies, as it attempted to promote the eventual break-up of Aboriginal societies and the assimilation of Aboriginal people into mainstream — that is, non-Aboriginal — society.

From the early nineteenth century until about the end of the 1960s, displacement, the downgrading of the relationship, and an overall devaluing of the shared history of Aboriginal and non-Aboriginal peoples in the northern half of the North American continent was accepted in mainstream Canadian society. It is only recently that the full history of the relationship has begun to come to light and an attempt made to come to grips with the implications of

the displacement period. Although the descriptions that follow do not paint an attractive picture, these images must be grasped and understood if the current period of negotiation and renewal is to succeed in restoring a balanced relationship between Aboriginal and non-Aboriginal people in Canada.

## 1. The Imposition of a Colonial Relationship

The general peace ushered in by the end of the War of 1812 and the Napoleonic wars set the stage for dramatic changes in the relationship between Aboriginal and non-Aboriginal people. As immigrants poured in and as the British home government "swept away the paupers" — its surplus people, no longer needed for military campaigning — the settler population in eastern and central Canada grew rapidly, soon outstripping that of the Aboriginal nations in both areas. The fur trade and traditional harvesting economy declined in importance and the need for Aboriginal nations as military allies waned, and soon Aboriginal people were living on the margins of the new colonial economies, treated less and less as nations worthy of consideration in the political councils of the now secure British colonies.

Former enemies of the victorious British, the Mi'kmaq and Maliseet, were simply ignored, left to find their own way in the rapidly changing world. Dispossessed of much of their land, separated from resources and impoverished, they were also ravaged by disease, and in the early 1800s they seemed to be on the road to virtual extinction.

In Upper Canada, however, in the potentially rich agricultural heartland of the emerging nation, Aboriginal peoples were treated differently. Thus, the Indian affairs department consistently applied the principles of the *Royal Proclamation of 1763*, recognizing Aboriginal rights to land and self-government. This led to a series of treaties, signed between 1815 and 1825, that cleared the southern part of the colony for settlement. With the two Robinson Treaties in 1850, further territory north of the Great Lakes was opened for resource exploitation and, later, settlement.

Since the *Royal Proclamation of 1763*, the relationship between Aboriginal nations and the British Crown had been one of co-operation and protection. As described earlier, in exchange for co-operation in the partnership that characterized the relationship between them at that time, the King had extended royal protection to Aboriginal lands and political autonomy. After

1830, however, following the change in the relationship just described, a new policy, designed specifically to help Aboriginal people adjust to the new economic and political realities, took hold. Partly humanitarian, partly pragmatic, its goal was to 'civilize' Aboriginal people through educational, economic and social programs delivered primarily by the Christian churches and missionary societies. Thus, the British imperial government, in association with protestant mission societies in the province of Upper Canada, embarked on the new policy of civilization with the willing assistance of many Aboriginal nations.<sup>7</sup> Communities in the southern part of Upper Canada were to be located on their reserves in serviced settlement sites, complete with houses, barns, churches and schools, and given training in agriculture and the other arts and crafts of settler life.

Indian reserves were not a new factor in relations between the Aboriginal peoples and the newcomers to North America. The French had established the practice of setting aside lands for their Indian allies in New France, believing that a settled and secure environment would promote adoption of Christianity. The Jesuits established the first true reserve in this sense in New France, at Sillery, as early as 1637. Others soon followed.<sup>8</sup> Thus, when the British embarked on their own program of attempting to convert and civilize the Indians of what is now southern Ontario, they had a precedent to draw upon.<sup>9</sup>

Throughout the nineteenth century and into the twentieth, first the British Crown and then the new dominion of Canada entered into treaties in Ontario, the prairie provinces and parts of the north, under which Indians agreed to the creation of reserves (along with other benefits) in exchange for their agreement to share their lands and resources with the newcomers. These treaties, described later in this volume, were modelled to a considerable extent on the Robinson treaties (also discussed later), were in written form, and were quite specific about the amount of land to be included in a reserve and the fact that traditional Indian hunting, fishing and trapping activities were not to be interfered with.

*Letter to Queen Victoria from Louis-Benjamin Peminuit Paul, received in the Colonial Office, London, 25 January 1841.*

To the Queen

Madame: I am Paussamigh Pemmeenauweet...and am called by the White Man Louis-Benjamin Pominout. I am the Chief of my People the Micmac Tribe of Indians in your Province of Nova Scotia and I was recognized and declared to be the Chief by our good friend Sir John Cope Sherbrooke in the White Man's fashion Twenty Five Years ago; I have yet the Paper which he gave me.

Sorry to hear that the king is dead. I am glad to hear that we have a good Queen whose Father I saw in this country. He loved the Indians.

I cannot cross the great Lake to talk to you for my Canoe is too small, and I am old and weak. I cannot look upon you for my eyes not see so far. You cannot hear my voice across the Great Waters. I therefore send this Wampum and Paper talk to tell the Queen I am in trouble. My people are in trouble. I have seen upwards of a Thousand Moons. When I was young I had plenty: now I am old, poor and sickly too. My people are poor. No Hunting Grounds — No Beaver — No Otter — no nothing. Indians poor — poor for ever. No Store — no Chest — no Clothes. All these Woods once ours. Our Fathers possessed them all. Now we cannot cut a Tree to warm our Wigwam in Winter unless the White Man please. The Micmacs now receive no presents, but one small Blanket for a whole family. The Governor is a good man but he cannot help us now. We look to you the Queen. The White Wampum tell that we hope in you. Pity your poor Indians in Nova Scotia.

White Man has taken all that was ours. He has plenty of everything here. But we are told that the White Man has sent to you for more. No wonder that I should speak for myself and my people.

The man that takes this over the great Water will tell you what we want to be done for us. Let us not perish. Your Indian Children love you, and will fight for you against all your enemies.

My Head and my Heart shall go to One above for you.



Pausauhmiġ Pemmeenauweet, Chief of the Micmac Tribe of Indians in Nova Scotia. His mark +.

*Source:* Ruth Holmes Whitehead, *The Old Man Told Us: Excerpts from Micmac History 1500-1950* (Halifax: Nimbus Publishing Limited, 1991), pp. 218-219.

Not all reserves in Canada were created by treaty, however. Those in Quebec were established by grants from the French Crown to missionary orders, on the theory that the Crown had all right and title to the lands in question. Some in Ontario were created by the purchase of lands outside the traditional territories of the Indian peoples for whom they were intended. The Six Nations reserve at Brantford falls into this category. Purchased originally from the Mississauga of the Credit in 1784, it was granted to the Six Nations by the Crown in 1788. Other reserves were created by order in council as circumstances required, and a few others were established by trust agreements with missionary societies, which were to hold the lands for the benefit of their Indian charges. There were even a few instances of Indian bands purchasing privately held lands using their own monies, with the reserves then being held by the Crown for their benefit.<sup>10</sup>

In the Atlantic region there were no treaties under which reserves were created. On the cession of Acadia to Great Britain by France, the British view was that there was no requirement to treat with the Mi'kmaq and Maliseet nations for their lands. Never protected by imperial authorities to the same extent as the western First Nations, the relatively small remaining Aboriginal population in the Maritimes was scattered and isolated and, by the early 1800s, decimated by epidemics and considered to be headed for extinction. Indian administration was decentralized, and there was no imperial Indian department,<sup>11</sup> so there was no regular allocation of imperial monies for Indian people and their needs.

Reserves were established by colonial authorities as a result of Indians' petitions or their sorry circumstances, rather than the policy of a central authority. Accordingly, a few reserves were set aside in New Brunswick by licences of occupation granted to individual Indians on behalf of them and their families or the band they represented. These licences were then confirmed by order in council. In Nova Scotia, on the other hand, lands were set aside by order in council to be held in trust for Indians as if they were owned by them. In Prince Edward Island, a private benefactor allowed Indians to live on one reserve. Later, private land was purchased using

government funds and other reserves were created.<sup>12</sup> No reserve was created in Newfoundland until 1984, because that province did not recognize the existence of status Indians within its boundaries following its entry into Confederation in 1949.<sup>13</sup>

Unlike the reserves in Ontario and western and northern Canada, however, imperial and colonial officials did not feel it necessary in Quebec and the Maritimes to follow the surrender requirements of the *Royal Proclamation of 1763*, so the local Indian commissioners appointed to protect and supervise Indian land transactions also had the power to dispose of reserve land without Indian consent. In all cases, however, and wherever they are located, Indian reserves have been plagued since their creation by illegal non-Indian squatters and the unlicensed use and exploitation of timber and other resources on Indian lands. Thus, as described in our later discussion of the *Indian Act*, protective legislation was passed in the nineteenth century to deal with these and related problems. Indeed, the Indian Act is itself the classic example of protective legislation.

*Memorial to His Excellency Sir Edmund Walker Head from the Oneida Indians of Muncey Town and other Bands on the River Thames, 1858*

It is with feelings of sorrow that we hear of the act passed for the purpose of allowing the Indian to enfranchise if he feels desirous of doing so, we are sorry that such an inducement is held out to separate our people. If any person availing himself of this enfranchisement act should fail to do well and lose his little piece of ground — he is forbidden to ever return to his tribe. All red men are brethren and our hearts would bleed to see one of our brethren wandering about the highway without the right of returning to his tribe when in distress.

*Source:* National Archives of Canada, Record Group 10 (Indian Affairs) [hereafter NAC RG10], volume 245, part 2, number 11801-11900, microfilm reel C12339.

British Columbia presents an entirely different and still problematic situation. Between 1850 and 1854, William Douglas, governor of the Vancouver Island colony, entered into 14 treaties with the Indian peoples of southern Vancouver Island.<sup>14</sup> Under these treaties, provision was made for the creation of reserves on terms similar to those in effect in Ontario and, later, western and northern Canada. A shortage of funds to compensate Indian

peoples for their lands and a growing unwillingness among the settler population to recognize Indian rights to land hampered the reserve policy. Later, colonial authorities adopted a policy of allocating very small reserves to Indian bands. Pressured by the federal government to enlarge the reserves, after the province's entry into Confederation in 1871, British Columbia refused, in keeping with Canadian policy. A complicated series of federal/provincial negotiations, commissions of inquiry and parliamentary hearings led eventually to resolution of the issue in 1938. However, except for a portion of Vancouver Island (the Douglas treaties) and the northeastern corner of the province (Treaty 8), most of the land in British Columbia is not covered by treaties.<sup>15</sup>

In addition to creating reserves, in Upper Canada the policy to civilize the Indians was supplemented by legislation, the *1857 Act to Encourage the Gradual Civilization of the Indian Tribes in this Province*. It provided for the voluntary enfranchisement — freedom from Indian status — of individuals of good character as determined by a board of examiners. Upon enfranchisement, volunteers would no longer be considered 'Indians' and would acquire instead the rights common to ordinary, non-Aboriginal settlers. In addition, they would take a portion of tribal land with them. They and such property would no longer be 'Indian' in the eyes of the law. Reformers saw enfranchisement as a privilege, not something to be acquired lightly.

The enfranchisement policy was a direct attack on the social cohesion of Aboriginal nations, and it shattered the partnership for development that had existed between the Crown and Aboriginal peoples up to that point. Although Aboriginal people had co-operated with many aspects of the civilization policy — even to the point of financing it in some instances — enfranchisement was wholly unacceptable. Importantly, it was a threat to the integrity and land base of communities, an attempt to "break them to pieces" one leader charged. Aboriginal nations petitioned the imperial government for repeal of the Gradual Civilization Act and were suspected by colonial authorities of organizing a boycott to prevent Indians from seeking enfranchisement. The Six Nations council, for example, declared publicly its opposition to "their people taking the advantages offered" by the act.

For their part, Indian affairs officials were determined to move educated Indians away from what they saw as the backward culture of the reserves and were entirely unsympathetic to Indian concerns or complaints. Only one man, Elias Hill, is known to have volunteered for enfranchisement over the

two decades following passage of the act. The evident failure of the voluntary enfranchisement policy led the Indian affairs department to campaign throughout the remaining pre-Confederation period for an end to the independence of the Aboriginal governments that the *Royal Proclamation of 1763* had apparently promised to protect. "Petty Chieftainship" should be abolished, the government was advised, and a "Governor and a sufficient number of magistrates and officers" put in charge of reserve communities.<sup>16</sup> Following Confederation, drastic measures along the lines proposed by Indian affairs officials were enacted through the *Indian Act* and related legislation. As events would ultimately reveal, these measures also would fail to accomplish their avowed goal of undermining Aboriginal self-government, although they would put reserve governments and Aboriginal cultures under pressures from which they are beginning to escape only now.

## **2. The Forging of Métis Identity**

The usual emphasis of Métis history by geographical area and chronological period is on the Red River Settlement and the Canadian prairies for the years between 1869 and 1885 — the time of Louis Riel's leadership. Both emphases have undoubted importance to Canadian history in general and to the history of the people identified as 'the Métis' through most of the twentieth century. A wider, longer view is important, however, to place that population in its broader context. (See Volume 4, Chapter 5 for a fuller account of Métis history.)

The first emergence of Métis people was not inadvertent. Intermarriage of newcomers with First Nations people was a deliberate strategy of seventeenth-century church and state officials in New France, as they intended to develop a powerful presence in North America to counter that of their European rivals, the Dutch and the English. From the standpoint of the French state, newcomers intermarrying with Aboriginal women and thus leading them to Christianity and all that was considered superior in French peasant culture, would secure the expanding presence of France by assimilationist influence. And since Aboriginal protocols of diplomacy and trade included the custom of intermarriage with allies, the assimilationist project was expected to be helpful with the expanding trade sought by newcomers interested in fur. The British would later experiment with a similar policy in Nova Scotia.

France experienced results beyond its capacity to control in two respects.

First, its influence expanded over vastly more territory than the French could ever hope to dominate by royal edict or troops. Second, France had to contend with the unexpected phenomenon of reverse assimilation, in the sense that the natives of France who became *coureurs de bois* to cement the all-important trading connections with Aboriginal people — learning their languages, intermarrying, and living among them — often remained there permanently. Officially, France ceased to sanction intermarriage after the 1670s, but so long as a fur trade was promoted from Montreal, economic incentives encouraged the original dynamic.<sup>17</sup> Because promotion of the fur trade continued until 1821, a large Métis population developed throughout the Great Lakes basin. In the interim, of course, the Montreal merchants connected with the basin had become or were replaced by British subjects following the cession of New France to Great Britain in 1763.

As early as 1713, the British had gained a significant foothold on French territory in the present-day Maritime provinces by the Treaty of Utrecht, temporarily ending more than a decade of struggle for control of the continent. After 1714, the British tried to transform newly acquired Nova Scotia into an extension of New England, and they discouraged year-round occupation of Newfoundland and Labrador, preferring to see both new acquisitions occupied merely as seasonal adjuncts to the summer fishery launched from the British Isles. Inevitably some year-round communities were established, the largest on the island of Newfoundland. However, some fishermen ventured to Labrador. The people exploiting the cod and salmon fishery from ships were known as 'floaters'. The sojourners who worked onshore through the summer were called 'stationers'. Significant for the ethnogenesis of Métis people in Labrador was the British fishery equivalent of the French fur trade *coureurs de bois*. Fishermen taking up permanent residence came to be known as 'liveyers'. They were not floaters or stationers — no kind of sojourner — but live-heres, accepted by the Aboriginal people as persons prepared to adapt and for whom there was space as well as resources south of Lake Melville. In subsequent generations of isolation and continuing adaptation, they emerged as another Aboriginal people in their own right, virtually without interference from any but a small stream of assimilable newcomers well into the twentieth century.

The destination of Anglo-Europeans seeking to create a new Europe moved further west after the British acquisition of New France in 1763. The *Royal Proclamation of 1763* did not mention the Métis people or Métis communities that had developed in the territory that was deemed to be 'Indian' rather than

'settled'. Presumably, if any thought were given to their existence, they were to be dealt with as 'Indians' wherever such persons lived 'with' or 'as' First Nations people or Inuit.<sup>18</sup>

The matter the British never clarified so long as imperial officials administered Indian policy as an imperial interest, not to be tampered with by colonists (nearly one full century, until 1850), was the defining difference between Aboriginal people so apparently European that they were taken to be 'settlers' rather than 'Indians'. The British insisted that Aboriginal people had to be part of a known Indian community to be counted as 'Indians', or, if living apart, as a community of their own, to be recognized by other Indian people as an 'Indian band' in its own right. Aboriginal people who did not meet either test were deemed to be "Half-caste squatters", dubious settlers in advance of legitimate settlement. The number of such cases encountered between 1763 and 1850 is unknown, perhaps unknowable, but the reports of imperial officials in the 1830s and 1840s suggest that the number was large enough to pose "a good deal of trouble to the Government if they had anything to claim under strict Treasury Regulations."<sup>19</sup> On this account, it would appear that the Métis population of eastern Canada was truly significant in both numbers and extent.

Even so, the usual practice of officials was merely to nudge Métis 'squatters' out of each new district as it came open for 'actual settlement'. Occasionally they persisted, to be absorbed into the general population of later generations of settlers, or they persisted self-consciously apart, as for example near Peterborough, where the Burleigh Falls community of today traces its beginnings to Aboriginal origins well in advance of legal settlement. More typical were the people who responded to such discouragement by simply moving on, even further into the interior.

Centuries of contact in the fur trade deep in the interior of the continent meant that there were many destinations for migrants pushed westward. Dozens of Aboriginal communities existed 'between' the older First Nations societies and the fur trade outposts established by the transient merchants. Near each fur trade post occupied by sojourners were communities of permanent residents. Recent research has documented the development of Métis communities at no fewer than 53 such locations between 1763 and 1830.<sup>20</sup> Since pressure on their patterns of settlement and culture was as unrelenting in the wider Great Lakes basin as in southern Ontario, the flow of migration continued and tended to converge at the forks of the Red and Assiniboine

rivers, where fur traders from Montreal had established a key transfer point for provisioning their western-most operations with locally procured pemmican, the dried buffalo meat fuel for the human power of the great canoes of the voyageurs.

The routes from the Great Lakes country made up one significant set of avenues converging on the Red River community. Another flowed from the north, stemming from the interactions of British traders and Indian people involved in the fur trade organized by the Hudson's Bay Company under a royal charter dating from 1670. The territory under the authority of the Hudson's Bay Company was huge. It extended throughout the entire Hudson Bay drainage basin, extending from the Rocky Mountains in the west and the Mackenzie Delta in the north-west to northern Labrador in the east and as far as present-day North Dakota in the south. Although neither the Hudson's Bay Company (HBC) nor the British Crown was interested in establishing settlements or assimilating First Nations people in the territory of the company's chartered monopoly, the same dynamics of trade and diplomacy that fostered intermarriage between European fishermen and fur traders and First Nations people in the east gave rise to a Métis population in the north-west as well.

From the standpoint of fur trade history, the ever expanding Hudson Bay-based trade of the HBC spelled certain conflict with the Montreal-based operations of rival companies like the North West Company, even after the change in the Montrealers' connection from France to Britain. The certainty that such conflict would embroil Aboriginal people took a more threatening turn in 1810, when the HBC decided to sanction wholesale migration of farmers from Scotland to develop the agricultural potential of a vast tract astride the Montrealers' pemmican supply line in the Red River Valley. Métis people, whose establishment in the vicinity was attributable in large part to their flight from similar schemes elsewhere, organized with North West Company encouragement to resist this intrusion with force. In the famous Battle of Seven Oaks in 1816, they showed remarkable resolve to retreat no more. Their victory that day in June dramatized their proclamation of a "New Nation" that was no mere rhetorical affirmation.

Their success did interfere seriously with the HBC's settlement project, but the company was determined to defeat its Montreal rivals in trade. What followed from 1816 to 1821 was intense competition, with each firm meeting the other post for post and the two sets of employees scrambling for the prize of the

trade, occasionally to the point of armed combat. By 1821 the contest between the companies was resolved in a merger. More than 100 posts became instantly redundant. Almost 1300 employees were no longer needed. Most Hudson's Bay Company and North West Company employees were sojourners who chose to return to their own homelands, but about 15 per cent were employees with fur trade families who found it more agreeable to retire to a location in the native land of their spouses and children. The area the HBC designated as the appropriate location for retirement was Red River. The arrival of hundreds of retirees in the early 1820s proved no threat to the Métis Nation developing there already. Indeed, the infusion tended to consolidate the earlier development.

There were initially two distinct mixed-ancestry populations in the west, each linked largely to one company or the other. The French-speaking Métis were associated mostly with the North West Company and its Montreal-based predecessors. The English-speaking 'half-breeds' were aligned chiefly with the pre-merger Hudson's Bay Company.<sup>21</sup> Historians have not reached consensus on how much the two streams of migration — the French 'Métis' and the English 'half-breeds' — merged into one population over the next several decades. They do agree, however, that many paths led to Red River, and what developed there between 1820 and 1870 represented a florescence of distinct culture in which both streams participated. The new nation was not simply a population that happened to be of mixed European/Aboriginal ancestry; the Métis Nation was a population with its own language, Michif (though many dialects), a distinctive mode of dress, cuisine, vehicles of transport, modes of celebration in music and dance, and a completely democratic though quasi-military political organization, complete with national flag, bardic tradition and vibrant folklore of national history.<sup>22</sup>

At the same time, the paths that led to Red River still had smaller, though similarly self-conscious Métis communities at their more northerly end points. They, as well as the Red River Settlement, faced potential disruption of the continuity of their histories at the end of the 1860s as severe as any that had occurred in the east in the preceding century. This arose from two converging developments: the devolution of control over settler/Aboriginal relations from Britain to the colonies in 1850; and the colonies becoming increasingly well poised to form a political entity intent on seizing control of all of British North America. The first development occurred at the stroke of a pen; the second followed a more tortuous course of provincial and interprovincial politics spanning the decade after 1867.



When the dominion of Canada emerged in 1867, its government intended to make immediate headway on an expansionist agenda that was one of the primary reasons for Confederation. The government made plain its intention to take over all the territory of Hudson's Bay Company operations within a matter of weeks of the beginning of the first session of the first parliament.

Hearing rumours of the change, Aboriginal people expected accommodation of their interests: compensation for what might have to be diminished, retention of an essential minimum necessary to thrive in the new circumstances. The treaties Canada negotiated with First Nations in the 1870s (and later) had both characteristics — at least in principle. But the treatment accorded Métis people was complicated by their uncertain status in the eyes of British and Canadian policy makers (see Volume 4, Chapter 5).

The people of the Red River settlement hoped to clarify their situation even before the transfer of Hudson's Bay Company territory. The details of their resistance led by Louis Riel, and the negotiations that resulted in the Manitoba Act (also discussed in Volume 4, Chapter 5) are well known. Responding to pressure from Great Britain as well as to the community, which was approaching 12,000 people, Canada did appear to agree to an accommodation. There was a compensatory promise of "fair and equitable" grants to people whose access to open prairie was expected to be restricted by future development. There was a positive affirmation of continuity, in the form of secure tenure of all occupied lands, and a promise of 1.4 million acres to benefit "the children of the half-breed heads of families". Equally important, the negotiations leading to passage of the *Manitoba Act* and admission of the community to the Canadian federation as a province in its own right appeared to confirm the existence and importance of Métis self-government. The overall arrangement was so eminently satisfactory to the Métis provisional government that on 24 June 1870 its members ratified what many have since referred to as their 'treaty' without one dissenting voice.

The community did not persist as expected. Although the vitality of the Métis Nation today shows that a nucleus survived, the large, contiguous, self-governing Métis homeland in Manitoba never came into being. Within 10 years, nearly all positions of genuine political power had passed to newcomers; much of the original Métis population had dispersed; and the minority that remained was largely landless, a marginal proletariat in its own homeland. The reasons for, and the consequences of, this frustration of Métis

Nation expectations in Manitoba are discussed in Volume 4, Chapter 5.

### **The Buffalo Hunt**

On the 15th day of June 1840, carts were seen to emerge from every nook and corner of the settlement, bound for the plains....

From Fort Garry the cavalcade and camp-followers went crowding on to the public road, and thence, stretching from point to point, till the third day in the evening, when they reached Pembina, the great rendez-vous on such occasions. ...Here the roll was called, and general muster taken, when they numbered on this occasion 1,630 souls; and here the rules and regulations for the journey were finally settled....

The first step was to hold a council for the nomination of chiefs or officers, for conducting the expedition. Ten captains were named, the senior on this occasion being Jean Baptiste Wilkie, an English Métis, brought up among the French...

All being ready to leave Pembina, the captains and other chief men hold another council, and lay down the rules to be observed during the expedition. Those made on the present occasion were:—

1. No buffalo to be run on the Sabbath-day.
2. No party to fork off, lag behind, or go before, without permission.
3. No person or party to run buffalo before the general order.
4. Every captain with his men, in turn, to patrol the camp, and keep guard.
5. For the first trespass against these laws, the offender to have his saddle and bridle cut up.
6. For the second offence, the coat to be taken off the offender's back, and be cut up.
7. For the third offence, the offender to be flogged.

8. Any person convicted of theft, even to the value of a sinew, to be brought to the middle of the camp, and the crier to call out his or her name three times, adding the word "Thief" at each time.

*Source: Alexander Ross, The Red River Settlement: Its Rise, Progress, and Present State* (Edmonton: Hurtig Publishers, 1972), pp. 245, 248-250.

The poignancy, irony and special relevance of the Manitoba experience to Métis people beyond Manitoba is that resentful Métis people migrated, mainly westward and northward, in the 1870s and 1880s to remote communities that were already demanding Manitoba Acts of their own. What those communities received was far less than even the disappointing benefits of the *Manitoba Act*. Further land was distributed, nominally at least, to Métis of the Northwest Territories, under a statute called the *Dominion Lands Act*, but the process was no more successful than the Manitoba process had been in terms of assuring satisfactory land-based Métis communities. In some areas, especially in the east, no attempt to recognize or deal with Métis Aboriginal rights was ever made.

The federal government's suppression and neglect of Métis aspirations was demonstrated most dramatically by its military destruction of Batoche in 1885, in response to the Saskatchewan Métis' desperate step of asking Louis Riel to form a second provisional government based there. Both Métis and Plains Indians were deeply concerned by the relentless influx of newcomers to the prairies, the threat this posed to their lands and ways of life, and the sudden disappearance of the buffalo in the 1880s. While the federal government dithered in coming to grips with Métis and Indian grievances, Riel proceeded to form a provisional government. Under the leadership of Gabriel Dumont, a military force of plainsmen was also formed, but the federal government countered by sending a strong military expedition to the north-west in the spring of 1885. The Métis forces were crushed at Batoche, and Riel was hanged, after being convicted of treason, at Regina on 16 November 1885. Big Bear and Poundmaker, who had provided strong leadership to the Plains Indian forces, were arrested and sentenced to three years' imprisonment.

The administrative pattern for dealing with Métis people after the trial and execution of Riel for his alleged crime of treason was to issue orders in council creating commissions to convene the Aboriginal people of a district for the purpose of securing adherence to an existing treaty or negotiating a

new one. At the conclusion of the proceedings, persons included on treaty lists as 'Indians' would receive a small cash gratuity and the promise of inclusion in the benefits accorded to the other persons of that particular 'Indian band'. Métis people of the same district would have the option as individuals to join treaties or receive 'half-breed' scrip redeemable in land or a cash gratuity — nothing more. All told there were 14 such commissions canvassing western Canada. The last operated in the Mackenzie River district in 1921.

The process had been condemned from the beginning. No less an official than A.M. Burgess, deputy minister of the interior from the 1870s until nearly the end of the century, reported in 1895 that "the state of the half-breed population of Manitoba and the North-West has not only not improved since the time of the transfer of the country to Canada in 1870 but that it has gradually become worse...".<sup>23</sup> Still, no other accommodation was contemplated. Canada did not recognize Métis communities as such. Canada defined Métis rights in purely individual terms, the one-time-only claim that certain 'half-breeds' might make for scrip. When they received that gratuity, any potential claim arising from their aboriginality was deemed to be 'extinguished'.

Inexplicably, Métis communities beyond the reach of the *Manitoba Act* and the *Dominion Lands Act* did not even receive that consideration. Thus, the historical claims of many Métis people across Canada today have their basis in the inadequacy of the scrip system dating from the 1870s and '80s. For others, it is a matter of their Aboriginal rights never having been recognized or dealt with. Canada's belated recognition in 1992 of Louis Riel as a father of Confederation for his role in the Manitoba provisional government of 1869-1870 is a significant but small admission of a larger pattern of grievances that calls for more substantive remedies in the future.

### **3. Treaty Making in Ontario, the West and the North**

After the War of 1812, colonial powers no longer felt the need to maintain their treaties and alliances as they had formerly, and instead they turned their attention to obtaining Indian lands for settlers, particularly agricultural land for the United Empire Loyalists in southern Ontario. So began a new and intensive policy of purchasing Indian lands. From 1815 to the 1850s, there were literally hundreds of land transactions, whereby First Nations, many of which had previously made treaties of alliance, peace and friendship with the

Crown, transferred their land to the Crown.<sup>24</sup>

In all these land transactions, the Crown's purpose was to secure First Nations lands for settlement and development. In some, and perhaps many, of these transactions, the Indian nations thought they were conveying their land to the Crown for the limited purpose of authorizing the Crown to 'protect' their lands from incoming settlement:

Our Great Father...said: 'The white people are getting thick around you and we are afraid they, or the yankees will cheat you out of your land, you had better put it into the hands of your very Great Father the King to keep for you till you want to settle. And he will appropriate it for your good and he will take care of it; and will take you under his wing, and keep you under his arm, & give you schools, and build houses for you when you want to settle'. Some of these words we thought were good; but we did not like to give up all our lands, as some were afraid that our great father would keep our land... so we said 'yes', keep our land for us. Our great father then thinking it would be best for us sold all our land to some white men. This made us very sorry for we did not wish to sell it...'<sup>25</sup>

The loss of their lands and livelihoods impoverished the First Nations, despite the proceeds, which were marginal, from the sale of their lands:

Though they have many thousand pounds in the hands of others, yet very little is at their own command. The amount of annuities paid to each, is about six to ten dollars a year, which does not supply their real wants one month, the rest of the time they fish, hunt or beg.<sup>26</sup>

The documents that conveyed Indian title to the Crown for specific land areas became standardized over time, although they were sometimes inaccurate.<sup>27</sup> Typically the Crown paid for these lands in goods delivered at the time the agreement or treaty was made, in the form of 'annuities' (presents). Revenues from the surrender and sale of Indian lands paid for education, health, housing and other services received by Indian nations, as well as making a substantial contribution to general government revenues:<sup>28</sup>

To a significant degree the Mississauga and Chippewa [and the Ojibwa generally] financed the foundation of Upper Canada's prosperity at the expense of their self-sufficiency and economic independence. Government

profits in the nineteenth century from the sale of Indian land amounted to the difference between the purchase price and the fair market value... If the Mississauga and Chippewa had received market value for their lands, the British treasury would have been obligated to finance the development of Upper Canada while the aboriginal population would have become the financial elite of the New World.<sup>29</sup>

After the initial purchase of land, there were invariably second or third purchases, and gradually, as the sale of their lands progressed, First Nations were confined to smaller and smaller tracts, typically in areas that were least suited to European settlement, agriculture or resource extraction. At the same time, the economies and resource use patterns of First Nations were undermined.

### **3.1 The 1836 Manitoulin and Saugeen Treaties**

Sir Francis Bond Head, the lieutenant governor of Upper Canada between 1836 and 1838, was strongly sceptical of the prevailing civilization policy, especially the idea of establishing model farms and villages where Indian people would come under 'civilizing' influences. He was, however, interested in securing Indian lands for non-Aboriginal settlers. At a large gathering of Ojibwa and Odawa people at Manitoulin Island in August 1836 — called for the purpose of making the annual distribution of presents — he proposed two major land cessions. One involved the land of the Lower Saugeen Peninsula, the territory of the Saugeen Ojibwa, whom he proposed move either to the Manitoulin Island region or to the northern end of what is now called the Bruce Peninsula, in the area north of Owen Sound. There they would be protected and given assistance with housing and equipment. After some initial resistance to the proposal, the Saugeen Ojibwa agreed to the proposal. Some 607,000 hectares of land were signed over, and a move to the Bruce Peninsula area ensued.<sup>30</sup>

The second territory involved the many islands of the Manitoulin chain, which were to be ceded to the Crown under the proposal, but with the promise that the region would be protected as Aboriginal territory. Bond Head believed that the model villages program would not succeed, in part because he thought that Indian hunters would not make a successful transition to farming. Instead, he proposed to provide a protected place where they could continue their traditional pursuits in a location far removed from non-Aboriginal influences. The abundant lands and resources of Manitoulin Island, he

believed, would make a desirable place for Indian people from all over Upper Canada to reside. The island would become like a house with open doors, a house where even the Potawatomi from Wisconsin and Michigan could settle to avoid the efforts of the United States to move them to the west.

The treaty of 1836 made provision to set aside the Manitoulin Island area as a reserve, and some Indian people made the move to the island — perhaps some 1,000 to 1,400 persons by 1850 — but the government deemed this experiment a failure. By the early 1860s, the demand for land from non-Aboriginal interests led to a further initiative to gain control of the Manitoulin Island lands. In the 1861-62 period, agents of the Crown and the government of the Province of Canada approached the Odawa and Ojibwa nations of Manitoulin, seeking to release the government from its 1836 promise to reserve the lands exclusively for Indian use. The agents of the Crown assumed that the 1836 agreement gave the Crown title to the island, a premise rejected by the Indian nations, as expressed in this statement by Chief Edowishcosh, an Odawa chief from Sheshegwaning:

I have heard what you have said, and the words you have been sent to say to us. I wish to tell you what my brother Chiefs and warriors, women and children say. The Great Spirit gave our forefathers land to live upon, and our forefathers wished us to keep it. The land upon which we now are is our own, and we intend to keep it. The whites should not come and take our land from us, they ought to have stayed on the other side of the salt water to work the land there. The Great Spirit would be angry with us if we parted with our land, and we don't want to make him angry. That is all I have to say.<sup>31</sup>

The negotiations conducted by commissioners William McDougall and William Spragge<sup>32</sup> in October 1862 were tense and difficult, with opposition particularly strong in the eastern portion of the island where the government's quest was deemed to be a betrayal of its 1836 promise. McDougall adjourned the proceedings over a weekend, "informing the Indians that those who were disposed to continue the negotiations would remain while those who had resolved to reject every proposition of the government might go home".<sup>33</sup> On the following Monday, he presented a revised proposal excluding from the negotiations and subsequent agreement the territory and inhabitants of the eastern portion of the island. Since a majority of the island's Indian inhabitants resided in the east, the agreement to open the bulk of the island to non-Aboriginal settlement was struck with a minority of the Indian inhabitants.<sup>34</sup>

## 3.2 The Lake Huron and Lake Superior Treaties of 1850

In 1841 Upper and Lower Canada joined together to become the Province of Canada and subsequently leases were issued to companies to explore and mine in Ojibwa territories. Resistance by the Ojibwa to non-Aboriginal miners and surveyors had been evident for some time. From 1846 to 1849 hostilities simmered, and in 1849 Chief Shingwakonce and Chief Nebanagoching from Sault Ste. Marie addressed the governor general in Montreal, expressing their frustration with four years of failure to address their concerns about mining incursions on their lands:

Can you lay claim to our land? If so, by what right? Have you conquered it from us? You have not, for when you first came among us your children were few and weak, and the war cry of the Ojibway struck terror to the heart of the pale face. But you came not as an enemy, you visited us in the character of a friend. Have you purchased it from us, or have we surrendered it to you? If so when? and how? and where are the treaties?<sup>35</sup>

On behalf of the Crown, Commissioner William Robinson proposed that treaties be made to pursue the objectives of settlement north of the lakes, to mine valuable minerals, and to assert British jurisdiction in the face of American incursions in the area.<sup>36</sup> In September 1850 negotiations for the Robinson Huron and Superior treaties were concluded. Ojibwa chiefs succeeded in obtaining reservations of land as well as a provision that would give them a share of revenues from the exploitation of resources in their territories. Annuities, or cash payments, were to increase as revenues increased. However, the provision for an increase in the extremely small annuities was adjusted only once in the 1870s. When the Ojibwa request a further increase to reflect the real profits, the federal government's response is to rely on the English text of the treaty, which states that such further sums are limited to what "Her Majesty may be graciously pleased to order".<sup>37</sup>

While the wording in both treaties provided that Ojibwa hunting and fishing would be undisturbed, the written treaty describes the agreement as a total surrender of territory, terminology that had not been agreed to in negotiations. It appears that the Ojibwa understood that the treaties involved only a limited use of their land for purposes of exploiting subsurface rights where minerals were discovered.<sup>38</sup> There was, however, a common understanding between



Robinson and the Indian nations that the Ojibwa would be able to carry out harvesting, both traditional and commercial, throughout their traditional territories as they were accustomed to doing.<sup>39</sup>

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## 4. The Numbered Treaties

As we have seen, Crown policy was to proceed with treaties as land was required for settlement and development. In making what came to be called the numbered treaties of the west, treaty commissioners were instructed to "establish friendly relations" with the Indians and to report on a course of action for the removal of any obstructions that stood in the way of the anticipated flow of population into the fertile lands that lay between Manitoba and the Rocky Mountains.<sup>40</sup>

In negotiating the numbered treaties that followed, the Crown followed the pattern of approaching First Nations to 'surrender' large tracts of land in return for annual cash payments and other 'benefits'. These negotiations were conducted in the oral traditions of the Indian nations. Once agreement was reached, a text was produced that purported to represent the substance of the agreements. However, arrangements respecting land are one area where there was fundamental misunderstanding about what the parties thought or assumed they were doing when they made the treaties. The situation varied from one treaty to another, but in general the Indian nations, based on their cultural and oral traditions, understood they were sharing the land, not 'surrendering' it. While the surrender clauses of the early land sales in Ontario were included in the later written numbered treaties, it is questionable whether their implications were known to the Indian parties, since these legal and real estate concepts would have been incomprehensible to many Aboriginal people. Further, it would have been difficult, if not impossible, to translate the legal language expressing these concepts into the Indian languages. Aboriginal people often understood that they were being compensated for the use of their lands and that they were not being asked to give up or surrender them, but to allow settlers to move onto their lands peaceably.

In these negotiations the Indian parties were concerned primarily with

retaining and protecting their lands, their ways of life, and the continuation of their traditional economies based on hunting, fishing, trapping and gathering. In these areas they were firm and immovable in treaty negotiations. Though they were agreeable to sharing, they were not agreeable to major changes in their ways of life. Further, they were not asked to agree to this; it was common for Crown representatives to assure treaty nations that their traditional way of life would not be affected by the signing of the treaty. Indeed, an examination of the reports of the treaty commissioners reveals that these matters, not the sale of land, occupied most of the discussion during treaty negotiations.

Although the extent to which these basic differences and assumptions were communicated effectively and understood depended on the historical circumstances of those events in particular locales, on the whole the First Nations did not agree to having their lands taken over by the Crown, nor did they agree to come under the control of the Crown. Their understanding was that they would share their lands and resources in a treaty relationship that would respect their agreement to co-exist as separate nations but linked in a partnership with the Crown.<sup>41</sup>

Other aspects of the treaty negotiations were also significant. The numbered treaties provided for tracts of land to be set apart and protected as reserves for the Indian parties. In the Robinson treaties, for example, the reserve lands were retained or reserved from the general surrender of Indian title. In the later numbered treaties, the texts were drafted to indicate that all Indian title was surrendered to the Crown, and from those tracts the Crown was obliged to set apart 'Crown land' for reserves on a population-based formula.

As the Indian parties in possession of these huge tracts of land demanded a fair and equitable exchange, the Crown not only offered cash payments upon signing and annually thereafter, but agreed to provide agricultural and economic assistance, schools and teachers, and other goods and benefits depending on the particular group they were negotiating with. Ammunition and gunpowder (for hunting), twine (for fishing nets), agricultural implements (ploughs) and livestock (horses and cattle) were offered, should the Indian nations wish to take up agriculture as a way of life, although they were not compelled to do so. Treaty 6 included the promise of assistance in the event of famine and health care, in the form of a "medicine chest".<sup>42</sup> The authority of the chiefs and headmen was recognized by gifts of medals and suits of clothes.

While there were common elements to the treaties, there were also distinctive circumstances that led to some variation from one treaty to another. To give the flavour of the different treaties, we provide a brief description of them, grouped into five categories (see Table 6.1 and Figure 6.1). An early western treaty was the Selkirk Treaty of 1817.

**TABLE 6.1 Registered Indian Population by Treaty and On- and Off-Reserve, 1991**

<b>Treaty</b>	<b>Total</b>	<b>On-reserve</b>	<b>Off-reserve</b>
Pre-Confederation	18,223	12,570	5,653
Lower Cayuga	2,226	1,336	890
Upper Cayuga	2,181	892	1,289
Robinson-Huron	20,066	8,816	11,250
Robinson-Superior	6,432	2,809	3,623
Williams	5,145	2,337	2,808
Treaty 1	16,574	9,028	7,546
Treaty 2	8,809	4,972	3,837
Treaty 3	10,790	5,191	5,599
Treaty 4	32,071	12,839	19,232
Treaty 5	46,409	35,780	10,629
Treaty 6	66,867	44,396	22,471
Treaty 7	17,945	13,713	4,232
Treaty 8	28,292	15,346	12,946
Treaty 9	21,356	13,952	7,404
Treaty 10	5,099	3,348	1,751
Treaty 11	8,898	7,338	1,560
<b>Total</b>	<b>317,383</b>	<b>194,663</b>	<b>122,720</b>

*Source:* Department of Indian Affairs and Northern Development, "Registered Indian Population by Band, Treaty, and Region, Canada, 1991", unpublished table (1991); and "Indian Register Population by Sex and Residence" (1991).

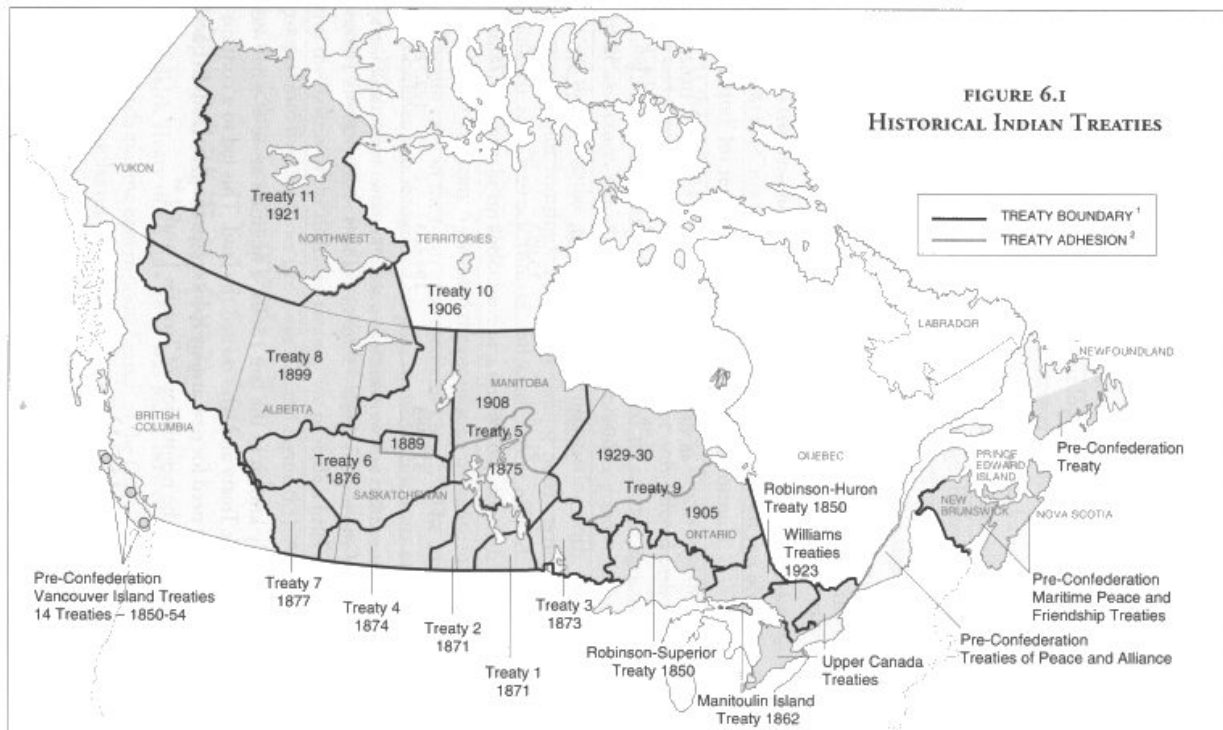


FIGURE 6.1  
HISTORICAL INDIAN TREATIES

Notes: 1. Treaty boundary lines are approximate.

2. Extension of a treaty boundary as a result of later signatories who adhered to the terms of the original treaty.

Source: Information taken from the National Atlas Information Services map sheet number MCR4162 © 1991. Her Majesty the Queen in Right of Canada with permission of Natural Resources Canada.

## 4.1 The Selkirk Treaty (1817)

The Selkirk Treaty of 18 July 1817 was made between Lord Selkirk and three Ojibwa chiefs and the eastern-most branch of the Cree. The treaty secured a tract of land of two miles on either side of the Red River as a settlement site for 1,000 Scottish families in consideration of 100 pounds of tobacco and other goods in rent annually.<sup>43</sup> However, when the proposed transfer of Rupert's Land to Canada became widely known in the late 1860s, a question arose of what was agreed to in the Selkirk Treaty and who owned the land. This led to a continuing discussion about the need for new arrangements respecting the lands in question, and ultimately, to the negotiation of Treaties 1 and 2.<sup>44</sup>

## 4.2 Treaties 1 and 2 (1871)

Traditional historical interpretations have tended to portray the treaty-making process as a Crown initiative, with a benevolent Crown extending its largesse to the less fortunate nations. However, the numbered treaties came about because First Nations demanded that special arrangements be made through treaties before the Crown could expect to use Indian lands and resources.

They were not prepared to give up their lands, on which they depended for their livelihood, without a formal arrangement that would protect adequate lands and resources for their own use.

[There are] those who propagate the myth...that Canada began to negotiate treaties with the Indians of the West in 1871 as part of an overall plan to develop the agricultural potential of the West, open the land for railway construction, and bind the prairies to Canada in a network of commercial and economic ties. Although there is an element of truth to these statements, the fact remains that in 1871, Canada had no plan on how to deal with the Indians and the negotiation of treaties was not at the initiative of the Canadian government, but at the insistence of the Ojibwa Indians of the North-West Angle and the Saulteaux of the tiny province of Manitoba. What is ignored by the traditional interpretation is that the treaty process only started after Yellow Quill's band of Saulteaux turned back settlers who tried to go west of Portage la Prairie, and after other Saulteaux leaders insisted upon enforcement of the Selkirk Treaty or, more often, insisted upon making a new treaty. Also ignored is the fact that the Ojibwa of the North-West Angle demanded rents, and created the fear of violence against prospective settlers who crossed their land or made use of their territory, if Ojibwa rights to their lands were not recognized. This pressure and fear of resulting violence is what motivated the government to begin the treaty-making process.<sup>45</sup>

By 1870 the Ojibwa at Portage notified the Crown that they wished to make a treaty and discuss compensation and that they had "in some instances obstructed settlers and surveyors".<sup>46</sup> They also warned settlers not to cut wood or take possession of the lands on which they were squatting and indicated that "they were unwilling to allow the settlers the free use of the country for themselves or their cattle."<sup>47</sup> However, they did allow the settlers to remain until a treaty was concluded. Pressure from the Indian nations to protect what was theirs and the Crown's desire to secure Indian lands compelled them to meet and negotiate mutually acceptable terms to accommodate one another.

Following an unsuccessful attempt to negotiate a treaty in the Fort Frances region in early 1871, treaty discussions were begun with the peoples of the Treaty 1 and 2 areas in the summer of the same year. In his address to the Ojibwa, the lieutenant governor of Manitoba and the Northwest Territories, Adams G. Archibald, invoked the name of the Queen, who wished them to till land and raise food, and store it up against a time of want. ...[but she had] no

idea of compelling you to do so. This she leaves to your choice, and you need not live like the white man unless you can be persuaded to do so of your own free will....

Your Great Mother, therefore, will lay aside for you 'lots' of land to be used by you and your children forever. She will not allow the white man to intrude upon these lots. She will make rules to keep them for you...as long as the sun shall shine...<sup>48</sup>

Archibald emphasized that they would not be compelled to settle on reserves and that they would be able to continue their traditional way of life and hunt as they always had. Negotiations respecting land, the size of reserves, and the size of annuities (compensation) were long and difficult. Commissioners had trouble "in getting them to understand the views of the Government — they wishing to have two thirds of the province as a reserve." Eventually a treaty was concluded, but only after the Portage Indians decided to withdraw from negotiations.<sup>49</sup> The question of how much land would be retained by First Nations was finally resolved by compromise when Lieutenant Governor Archibald agreed to survey additional land around their farming communities, provide additional lands further west as their land base became too small for their population, and provide additional lands to the plains Ojibwa.<sup>50</sup>

However, the written text did not include the guarantees that had been made respecting land, hunting and fishing, and the maintenance of their way of life, nor did it contain what were termed "outside" promises respecting agricultural implements, livestock, hunting equipment, and the other promises that had been extracted. In fact, the text was not that different from the Robinson Huron and Superior treaties, for it "surrendered" land in exchange for annuities, schools and reserves based on a formula of 160 acres per person.

In a subsequent inquiry into the matter, it was discovered that Commissioner Wemyss M. Simpson had neglected to include a record of the outside promises when he forwarded the text of the treaty to Ottawa. Although a subsequent memo from Commissioner Simpson rectified the error, the outside promises were ignored for some time by the federal government. Commissioner Alexander Morris acknowledged this in his report to Ottawa:

When Treaties One and Two were made, certain verbal promises were unfortunately made to the Indians, which were not included in the written text of the treaties, nor recognized or referred, to when these Treaties were

ratified by the Privy Council. This, naturally, led to misunderstanding with the Indians, and to widespread dissatisfaction among them.<sup>51</sup>

The matter of the outside promises was not settled until 1876.

### **4.3 The Northwest Angle Treaty — Treaty 3**

The Ojibwa occupied the territory from Rainy River to Lake of the Woods and had an abundant and stable economy based on the commercial production of furs and trade. When traffic passed through their territory, they extracted compensation for use of the right of way through their lands. Reports to Ottawa suggested that the Ojibwa would oppose any attempt to "[open] a highway without any regard to them, through a territory of which they believe themselves to be the sole lords and masters...".<sup>52</sup> Commissioner S.J. Dawson, who had negotiated with the Ojibwa for the right of way for the Dawson route, warned Ottawa that they were encountering people who differed greatly from the "tame" Indians with whom Canada had dealt previously. Although their language was often allegorical, "in their actual dealings they are shrewd and sufficiently awake to their own interests".<sup>53</sup> He advised they were also familiar with treaties made in the United States and that the "experience they have thus gained has rendered them expert diplomatists as compared to Indians who have never had such advantage and they have not failed to impress on their kindred and tribe on Rainy River the value of the lands which they hold on the line of route to Red River." That the Ojibwa were aware of the results of non-Aboriginal settlement was evident in their views of what it entailed:

We see how the Indians are treated far away. The white man comes, looks at their flowers, their trees, and their rivers; others soon follow; the lands of the Indians pass from their hands, and they have nowhere a home.<sup>54</sup>

Because of their clear sense of ownership, the Ojibwa would not allow use of their lands, timber or waterways without compensation. They were steadfast in the defence of their country and opposed non-Aboriginal expansion without the prerequisite treaty arrangements:

We are not afraid of the white man; the people whom you go to see at Red River are our Cousins as well as yours, so that friendship between us is proper and natural. We have seen evidence of the power of your Country in



the numerous warriors which she has sent forth. The soldiers have been most orderly and quick and they have held out the hand of friendship to the Indians. We believe what you tell us when you say that in your land the Indians have always been treated with clemency and justice and we are not apprehensive for the future, but do not bring Settlers and Surveyors amongst us to measure and occupy our lands until a clear understanding has been arrived at as to what our relations are to be in the time to come.<sup>55</sup>

The Ojibwa clearly expected to meet the challenges brought by the advent of settlement. They approached treaty making with knowledge that their lands were valuable and that they would direct and control change, as indicated by Chief Mo-We-Do-Pe-Nais:

All this is our property where you have come. ...This is what we think, that the Great Spirit has planted us on this ground where we are, as you were where you came from. We think where we are is our property. I will tell you what he said to us when he planted us here; the rules that we should follow...

...Our hands are poor but our heads are rich, and it is riches that we ask so that we may be able to support our families as long as the sun rises and the water runs.

...The sound of the rustling of the gold is under my feet where I stand; we have a rich country; it is the Great Spirit who gave us this; where we stand upon is the Indians' property, and belongs to them. ...The white man has robbed us of our riches, and we don't wish to give them up again without getting something in their place.<sup>56</sup>

The negotiation of Treaty 3 was also long and difficult, but after two failed attempts a treaty was concluded in 1873. Throughout the negotiations the Ojibwa held fast to their terms, and Crown negotiators were forced to make concessions. The Ojibwa were concerned primarily with preserving their economic base and securing compensation or rents for the use of their lands. They also took great pains to ensure that the Crown would fulfil the terms. Chief Mo-We-Do-Pe-Nais wanted to know how the treaty would be implemented and safeguarded, insisting that the promises made should be fulfilled by the agents of the Crown. In reply Commissioner Morris gave assurances that the "ear of the Queen's Government" would always be open, and that the Queen would "deal with her servants that do not do their duty in a proper manner".<sup>57</sup>

Freedom of movement for the Ojibwa throughout their territories was taken for granted, and they took the further step of negotiating free passes on the train that would cross their lands. The liquor trade in their country was to be halted, and they would not be conscripted to fight against their brothers in the United States should there be war between the Americans and the British. It was important to clarify this point, since the treaties of alliance between the eastern First Nations and the British and French had specified mutual obligations in the event of war.

With respect to the lands the Ojibwa would reserve for themselves, their spokesman said, "We do not want anyone to mark out our reserves, we have already marked them out...". In the end, the Ojibwa succeeded in getting far more than the Crown had been willing to consider, including an increase in the size of reserves from a quarter-section to a full section. Provision was also made for domestic animals, farming equipment, annuities (compensation), clothing and education. Subsequent treaties generally included these provisions as a standard part of the agreement. In addition, those who were not present at treaty negotiations were asked to sign adhesions to the treaty for their traditional territories.<sup>58</sup>

#### **4.4 Treaties 4, 5, 6 and 7 <sup>59</sup>**

Treaties with the First Nations of the plains, who were in possession of the western plains and who had to be dealt with if the new dominion was to extend its jurisdiction from east to west, were negotiated between 1874 and 1877. Observing the influx of more people into their country and the changes it brought gave the Indian nations reason for alarm:

What wonder that the Indian mind was disturbed, and what wonder was it that a Plain Chief, as he looked upon the strange wires stretching through his land, exclaimed to his people, "We have done wrong to allow that wire to be placed there, before the Government obtained our leave to do so."<sup>60</sup>

The rich agricultural plains were coveted by the Crown and had the greatest potential, aside from forest and mineral developments, to generate the economic prosperity that settlement would bring. This would not be easy, since the plains nations had military confederacies to guard their lands against encroachment.<sup>61</sup>

The plains nations have often been portrayed in history as submissive in the 1870s because of the disappearance of the buffalo and the subsequent loss of their traditional livelihood. It is true that buffalo were becoming scarce and the plains nations were concerned about their livelihood, but they did not experience severe starvation until the 1880s when the buffalo virtually disappeared.<sup>62</sup> Records of negotiations and of the circumstances surrounding treaty making show that the plains nations were anything but weak and in fact posed a considerable threat to the new dominion if not treated with the utmost care. This apprehension was reinforced by the appearance of Sitting Bull on the Canadian side of the border after his successful defeat of General Custer at Little Big Horn. During this period, Canada was also cognizant of the threat of annexation of the western territories by the United States, particularly during the Alaska boundary negotiations, which revealed that the United States contemplated expanding north to the 50th/51st boundary.

At Treaty 4 negotiations, Commissioner Morris requested that the Queen's subjects be allowed to come and settle among them and farm the land. If the Indian nations agreed, their Great Mother the Queen would see that their needs were met, and the Queen's power and authority would protect them from encroachment by settlement. Treaty commissioners took great care to emphasize the physical aspects of the "caring relationship" and emphasized that the Indian nations would benefit from treaties with the Queen. They were assured that no harm would come to them as a result of the treaty and that their way of life would be safeguarded.

Since many of their people were not present, those that were expressed their inability to negotiate, saying they had no authority to speak for those not present.<sup>63</sup> Further, political differences between the Cree and the Saulteaux erupted and delayed negotiations, resulting in a highly charged atmosphere. The compensation given to the Hudson's Bay Company in exchange for their rights in Rupert's Land became an issue that required enormous diplomatic skill on Morris's part before negotiations, when the Indians demanded that they be given the payment, since they were the owners of the land.

In the end, and in part because of all the difficulties in negotiating the treaty, Morris offered and the chiefs present agreed to accept the terms of Treaty 3, the terms of which had already been communicated to them by the Ojibwa with whom they were in close communication.<sup>64</sup>

Treaty 5 was negotiated in September 1875 between the Swampy Cree and others and the Crown as represented by Commissioner Morris. A treaty in the vicinity of Lake Winnipeg was deemed necessary because of the requirements of navigation and the need to make arrangements for settlement and other developments so that "settlers and traders might have undisturbed access to its waters, shores, islands, inlets and tributary streams".<sup>65</sup> According to Morris's report, the terms of Treaty 5 were similar to Treaties 3 and 4, except that reserved land would be provided on the basis of 160 acres for each family. The record of negotiations kept by commissioners had little detail about the extent of negotiations and essentially revolved around what was being 'offered' by commissioners and the location of the lands the Swampy Cree would retain. As the Crown was intent on gaining access to and controlling the waterways, the location of reserves generated some discussion. The Cree were assured, however, that they would be able to retain lands in their traditional territories.

Before the negotiation of Treaty 6, reports had been received that unrest and discontent prevailed among the Assiniboine and Cree, owing to construction of the telegraph line, the survey of the Pacific Railway line, and geographical survey crews. A report from W.S. Christie, chief factor of the Hudson's Bay Company in Edmonton, about the cause of the unrest contained a message from Chief Sweetgrass, a prominent chief of the Cree country:

Great Father, — I shake hands with you, and bid you welcome. We heard our lands were sold and we did not like it; we don't want to sell our lands; it is our property, and no one has a right to sell them.... Our country is getting ruined of fur-bearing animals...our sole support... our country is no longer able to support us.... Make provision for us against years of starvation.... small-pox took away many of our people... we want you to stop the Americans from coming to trade on our lands.<sup>66</sup>

By this time, it was becoming evident that the buffalo, their livelihood, was suffering from over-hunting. The potential negative impact on Indian economies was becoming too obvious to ignore:

I was also informed by these Indians that the Crees and Plain Assiniboines were united on two points: 1st. That they would not receive any presents from Government until a definite time for treaty was stated. 2nd. Though they deplored the necessity of resorting to extreme measures, yet they were

unanimous in their determination to oppose the running of lines, or the making of roads through their country, until a settlement between the Government and them had been effected.<sup>67</sup>

Treaty 6 negotiations were conducted with elaborate protocols and ceremonies by both sides before and after negotiations in August 1876. Indian and Crown protocols were observed, and bargains made were sealed with pipe ceremonies. The Sacred Pipe ceremonies and declarations respecting the "honour of the Crown" set the moral and spiritual context within which negotiations proceeded. Eloquent and symbolic speeches were made to show good faith and honourable intentions.

The major concern on the plains nations side was the loss of their food supply, the buffalo, and the fear of famine and disease. They were aware of the terms of earlier treaties with "The Great Mother, The Queen" and treaties in the United States. The ensuing negotiations, which expanded the terms of former treaties, prompted this later report by David Mills, the minister of the interior:

In view of the temper of the Indians of Saskatchewan, during the past year, and of the extravagant demands which they were induced to prefer on certain points, it needed all the temper, tact, judgment and discretion, of which the Commissioners were possessed, to bring negotiations to a satisfactory conclusion.<sup>68</sup>

To reassure the Indian nations, Morris promised: "Understand me, I do not want to interfere with your hunting and fishing. I want you to pursue it through the country as you have heretofore done".<sup>69</sup> He assured them that they would have more land than they needed. By the end of negotiations, the terms were similar to those of the other treaties, involving annuities, education, economic assistance and assistance with housing, but with added provisions for relief in the event of famine, help for the indigent, grain provisions for three years, and medical aid.<sup>70</sup>

In September 1877, Treaty 7 was made at Blackfoot Crossing between the Crown as represented by Commissioner David Laird and the Blood, Blackfoot, Peigan, Sarcee and Stoney nations of the Blackfoot Confederacy.<sup>71</sup> Colonel McLeod of the Northwest Mounted Police, who was well respected by the confederacy, was also in attendance.

The Blackfoot Confederacy was feared because of its effectiveness in the defence of Blackfoot territory from outside encroachment. The Blackfoot were experiencing hardship as a result of the disappearance of the buffalo from their hunting grounds. Furthermore, up to 800 of their people had died from a smallpox epidemic in 1870.<sup>72</sup> From the Crown's perspective, it was essential to make a treaty with the Blackfoot to protect the existing settlements around the forts, provide for peaceful settlement, and preserve the friendly disposition of the tribes, which might easily give place to unfriendly or hostile feelings should the treaty negotiations be delayed further. Commissioner Laird offered inducements to get them to sign a treaty:

The Great Mother heard that the buffalo were being killed very fast, and to prevent them from being destroyed her Councillors have made a law to protect them. ...This will save the buffalo, and provide you with food for many years yet, and it shews you that the Queen and her Councillors wish you well.

...Last year a treaty was made with the Crees along the Saskatchewan, and now the Queen has sent Col. McLeod and myself to ask you to make a treaty. But in a very few years the buffalo will probably be all destroyed, and for this reason the Queen wishes to help you to live in the future in some other way. She wishes you to allow her white children to come and live on your land and raise cattle, and should you agree to this she will assist you to raise cattle and grain... She will also pay you and your children money every year, which you can spend as you please. ...

The Queen wishes us to offer you the same as was accepted by the Crees. I do not mean exactly the same terms, but equivalent terms, that will cost the Queen the same amount of money. ...The Commissioners will give you your choice, whether cattle or farming implements. ...If you sign the treaty every man, woman and child will get twelve dollars each... A reserve of land will be set apart for yourselves and your cattle, upon which none others will be permitted to encroach; for every five persons one square mile will be allotted on this reserve...<sup>73</sup>

The good relations that existed between the North West Mounted Police and the Blackfoot were largely responsible for the congenial atmosphere that prevailed at Blackfoot Crossing. Negotiations consisted of the Crown offering annuities, goods and benefits, as they had in other treaties, in exchange for Blackfoot agreement to sign a treaty, which they did without extensive negotiations. They were promised that their reserved lands could not be

taken without their consent and that their liberty of hunting over the open prairie would not be interfered with so long as they did not molest the settlers. In the record of treaty discussions prepared by the Crown, there appeared to be little discussion of the impending construction of the railroad or the surrender of Blackfoot territory.<sup>74</sup>

## **4.5 Northern Treaties: 8, 9, 10 and 11**

Treaties 8 and 11 were driven by economic pressures — gold was discovered in the Klondike in the spring of 1897, and prospectors, gold diggers and settlers flooded into Indian lands. The exploitation of rich gold, oil, gas and other resources by companies and individuals created a ferocious dynamic. The serious damage inflicted on the Indian economy and the destruction of forests by fires infuriated the Indians, who reacted strongly against the invasion of their lands. Indeed, in June 1898, nations in the Fort St. John area refused to allow police and miners to enter their territories until a treaty was made.

The Crown declared that "no time should be lost by the Government in making a treaty with these Indians for their rights over this territory."<sup>75</sup> As a result, in 1899 treaty commissioners travelled with a sense of urgency to meet the Cree and Dene nations in possession of a northern territory comprising 324,900 square miles, an area from northern Saskatchewan, Alberta and British Columbia and south of the Hay River and Great Slave Lake in the North West Territories. In Treaty 8, the Crown continued its policy of offering benefits if the Indian nations would allow settlers into their territories.

The pre-drafted 'southern' treaty was offered for discussion. It included the usual items, as well as such things as livestock and farming equipment — items completely unsuitable to the north. The treaty also included the usual 'cede, surrender and yield up' clause, although this was not discussed by commissioners. Father Lacombe reported that "the Northern native population is not any too well disposed to view favourably any proposition involving the cession of their rights to their country".<sup>76</sup> Another report by a missionary said that "As far as I can gather they are determined to refuse either Treaty or "Scrips" and to oppose the settlement of their country by Europeans".<sup>77</sup>

Negotiations went on for many days at various locations and were hampered by commissioners' lack of understanding of the conditions put forward by the Cree and Dene nations. The latter refused to sign a treaty unless commissioners met their demand that "nothing would be allowed to interfere with their way of making a living; the old and destitute would always be taken care of; they were guaranteed protection in their way of living as hunting and trappers from white competition; they would not be prevented from hunting and fishing as they had always done, so as to enable them to earn their living and maintain their existence".<sup>78</sup> It was only after the commissioners solemnly pledged their word, in the name of Queen Victoria, that the Indians agreed to sign the treaty.<sup>79</sup> However, the full content of the discussion was not reflected in the written treaty.

Treaty 11 was to follow the same path, since the Privy Council had noted in 1891 that immense quantities of petroleum and other valuable minerals existed in the Mackenzie River country and that "a treaty or treaties should be made with the Indians who claim these regions as their hunting grounds".<sup>80</sup> The economic implications were staggering to politicians in Ottawa. After oil was discovered at Norman Wells, treaty commissioners were again dispatched with urgency when the Dene threatened to refuse entry to their lands.

Commissioners were received with suspicion and mistrust, since the Dene had learned that guarantees negotiated in Treaty 8 were not being respected. Throughout the negotiations, the Dene repeated their conditions for making a treaty: no reserves to restrict their movements; protection of their lands; education; medical care; protection of wildlife and of their hunting, fishing and trapping economies. In response, promises were made by Commissioner Conroy that "they would be guaranteed full freedom to hunt, trap, and fish in the Northwest Territories if they would sign the Treaty", since it was clear that they would not make any treaty without that guarantee.<sup>81</sup> Oral promises — made by Bishop Breynat as well as Commissioner Conroy, whose word alone was not enough — were made and remade at the various treaty-making sites:

I gave my word of honour that the promises made by the Royal Commissioner, "although they were not actually included in the Treaty" would be kept by the Crown. ...

They were promised that nothing would be done or allowed to interfere with



their way of living...

The old and the destitute would always be taken care of...

They were guaranteed that they would be protected, especially in their way of living as hunters and trappers, from white competition, they would not be prevented from hunting and fishing, as they had always done, so as to enable them to earn their own living and maintain their existence.<sup>82</sup>

Commissioner Conroy did not table the commitments and guarantees made to the Dene in the oral negotiations. All that was tabled was a written text almost identical to the pre-drafted treaty that had been proposed in the Treaty 8 negotiations.

Throughout the negotiation of the numbered treaties the commissioners did not clearly convey to First Nations the implications of the surrender and cession language in treaty documents. The discussion about land proceeded on the assumption, on the First Nations side, that they would retain what they considered to be sufficient land within their respective territories, while allowing the incoming population to share their lands. Many nations believed they were making treaties of peace and friendship, not treaties of land surrender. It is also probable that treaty commissioners, in their haste to conclude the treaties, did not explain the concept of land surrender. An anthropologist testifying before Justice Morrow in the *Paulette* case put the issue this way:

...How could anybody [explain] in the Athapaskan language through a Métis interpreter to monolingual Athapaskan hearers the concept of relinquishing ownership of land...[to] people who have never conceived of a bounded property which can be transferred from one group to another...<sup>83</sup>

## **5. Differing Assumptions and Understandings**

When Europeans landed on the shores of the Americas, they first sought shelter and sustenance, then pursued a lucrative trade with Aboriginal nations, and later made arrangements through treaties to live permanently in Aboriginal territories. These treaties varied in purpose and scope, depending on the circumstances and objectives of the parties making them. Early treaties were made for peace, trade, alliance, neutrality and military support. When settlement grew, treaties were made to establish relationships, as a

way of living together in peaceful co-existence, and to acquire Aboriginal lands and resources. Canada continues to enter into treaty agreements with Aboriginal nations to acquire title to Aboriginal lands and resources.

Over time, treaties became more complex and difficult to negotiate. In the early period of contact, when Europeans were a minority and understanding one another was essential to survival, treaty relationships were cultivated and maintained carefully. As time went on and Europeans became a majority, negotiations became complex, difficult and vague in some areas, as the Crown pursued its goal of securing Aboriginal lands to build its new country. The different cultural views, values and assumptions of both parties conflicted in substantial ways. These contradictions were often not evident, or remained unspoken, in the negotiation and conclusion of solemn treaty agreements. In many cases, it is questionable whether the Indian parties understood the legal and political implications of the land conveyance documents they were asked to sign. Many of these transactions are the subject of land claims today.

It is also doubtful in many cases that the First Nations participating in the numbered treaties knew that the written texts they signed differed from the oral agreements they concluded. In fact, it was not evident to them until some years after treaties were made that the Crown was not honouring its treaty commitments or was acting in a way that violated treaty agreements. Their reaction to the imposition of government laws and restrictions upon them was seen as a violation of the Queen's promise to protect their way of life and not subject them to the Queen's laws (the *Indian Act*) or the Queen's servants (the Indian agent). The possibility that the party recording the oral agreements and preparing the written text took advantage of the other party's lack of understanding of the legal implications of written texts, or that those implications were not communicated to the party that did not read or write, is disturbing. If First Nations depended on the oral version of their treaties, it follows that the oral agreements reached must be compared to the written version to verify the nature and scope of these agreements today. The fact that in most cases the Indian parties were unable to verify the implications of the written text against the oral agreement, because of language and cultural barriers, must be given consideration when interpreting their meaning.

As we have seen from these brief descriptions of the individual treaties, from the perspective of the First Nations there were several basic elements or principles involved in the treaty-making process. In making treaties both

parties recognized and affirmed one another's authority to enter into and make binding commitments in treaties. In addition, First Nations would not consider making a treaty unless their way of life was protected and preserved. This meant the continuing use of their lands and natural resources. In most, if not all the treaties, the Crown promised not to interfere with their way of life, including their hunting, fishing, trapping and gathering practices.

The Crown asked First Nations to share their lands with settlers, and First Nations did so on the condition that they would retain adequate land and resources to ensure the well-being of their nations. The Indian parties understood they would continue to maintain their traditional governments, their laws and their customs and to co-operate as necessary with the Crown. There was substantive agreement that the treaties established an economic partnership from which both parties would benefit. Compensation was offered in exchange for the agreement of First Nations to share. The principle of fair exchange and mutual benefit was an integral part of treaty making. First Nations were promised compensation in the form of annual payments or annuities, social and economic benefits, and the continued use of their lands and resources.

These principles, which were part and parcel of the treaty negotiations, were agreed upon throughout the oral negotiations for Treaties 1 through 11. They were not always discussed at length, and in many cases the written versions of the treaties are silent on them. In these circumstances, the parties based their negotiations and consent on their own understandings, assumptions and values, as well as on the oral discussions. First Nations were assured orally that their way of life would not change unless they wished it to. They understood that their governing structures and authorities would continue undisturbed by the treaty relationship. They also assumed, and were assured, that the Crown would respect and honour the treaty agreements in perpetuity and that they would not suffer — but only benefit — from making treaties with the Crown. They were not asked, and they did not agree, to adopt non-Aboriginal ways and laws for themselves. They believed and were assured that their freedom and independence would not be interfered with as a result of the treaty. They expected to meet periodically with their treaty partner to make the necessary adjustments and accommodations to maintain the treaty relationship.

Treaty negotiations were usually conducted over a three- to four-day period,

with tremendous barriers created by two different cultures with very different world views and experiences attempting to understand and come to terms with one another. Negotiation and dialogue did not, and could not, venture into the meaning of specific terminology, legal or otherwise, and remained at a broad general level, owing to time and language barriers. Issues such as co-existence, non-interference with the Indian way of life, non-interference with hunting and fishing and retention of adequate lands would therefore have been understood at the broadest level. These were matters that would, presumably, be sorted out as time went on.

Under these circumstances, conceptual and language barriers would have been difficult to overcome. In many cases this meant that the parties had to rely on the trustworthiness, good intentions, and good faith of the other treaty partner and the ability to understand one another better through time. At the time of treaty making, First Nations would not have been sufficiently cognizant of British laws and perspectives, since their previous interaction and exchanges had been primarily through trading relationships. When treaty commissioners proposed a formula (usually called a land quantum formula) to determine how much land would be reserved for Indian nations, for example, it is doubtful that they would have understood the amount of land entailed in one square mile.<sup>84</sup> Similarly, terms such as cede, surrender, extinguish, yield and forever give up all rights and titles appear in the written text of the treaties, but discussion of the meaning of these concepts is not found anywhere in the records of treaty negotiations.

Even as treaty commissioners were promising non-interference with the Indian way of life, treaty documents referred to the Indian nations as "subjects of the Crown". Since First Nations patterned their relationships along kinship lines, they would have understood the relationship they were entering as being more akin to 'brothers' or 'partners' of the Crown. The First Nations also assumed, since they were being asked for land, that they were the ones giving land to the Crown and that they were the owners of the land. Indeed, the notion that the Crown was in any position to 'give' their land to them — for the establishment of reserves, for example — would have been ludicrous, since in many cases it had been their land since time immemorial.

Written texts also placed limits on the agreements and promises being made, unbeknownst to the Indian parties. For example, written texts limiting hunting and fishing to Crown lands stand in contradiction to the oral promise not to interfere, in any way, with their use of wildlife and fisheries resources. These

inherent conflicts and contradictions do not appear to have been explained to the Indian parties.

However, it is also clear that both parties wanted to make treaties to secure their respective political and economic objectives. Both sides saw tangible rewards flowing from the treaties and each side worked to secure the terms and conditions they wanted in the treaty. Both parties pledged to honour and uphold their sacred and binding pacts. Each side brought something of value to bargain with — the First Nations brought capital in the form of their land and resources, and the Crown brought the promise of compensation and the promise not to interfere with their way of life and the use of their natural resources as they had in the past. Each believed they had secured their respective objectives — the Crown gained access to Indian lands and resources, and First Nations secured the guarantee of the survival and protection of their nationhood.

## **6. Non-Fulfilment of Treaties**

In the decades following the signing of the treaties, the Crown was able to realize the objectives it had set for itself in undertaking the treaty process. The treaty nations have not been so fortunate, in part for the reasons alluded to earlier but also because of Canadian governments' lack of commitment to the treaty relationship and to fulfilling their obligations. This has occurred for several reasons, and the reasons suggest some of the steps that should be taken to come to terms with these historical agreements and finally to implement them in their original spirit and intent.<sup>85</sup>

One of the fundamental flaws in the treaty-making process was that only the Crown's version of treaty negotiations and agreements was recorded in accounts of negotiations and in the written texts. Little or no attention was paid to how First Nations understood the treaties or consideration given to the fact that they might have had a completely different understanding of what had transpired.

Another fundamental problem was the Crown's failure to establish the necessary laws to uphold the treaties it signed. Unlike the modern treaties of today, which have provisions for implementation, implementation of the historical treaties was virtually overlooked. Once treaties were negotiated, the texts were tabled in Ottawa and the commissioners who had negotiated them moved on to other activities. After 1867, the new dominion was occupied with

immigration, settlement and nation building, and its treaties with the Indian nations were largely buried and forgotten in succeeding decades. Since the Indian department was located initially in the department of the interior, immigration and settlement took precedence in the corridors of power.

Nor did the government's corporate memory with respect to the historical treaties survive within the Indian affairs administration. Accordingly, after treaties were made, unless they were described and explained explicitly and disseminated widely in government departments, the promises and understandings reached with First Nations would have been lost as officials changed jobs or moved on. This helps to explain the gradual distancing of officials from the treaties that they, as government officials, were charged with implementing.

The financial situation of the new country also played a large part in the non-fulfilment of treaties and often meant that treaty obligations were seen as a burden on the treasury, with costs to be pared down to the bare minimum. Although the sale of Indian lands and resources often paid for the delivery of services and benefits to Indian people in certain parts of the country, the Crown did not involve First Nations in decisions about how proceeds from their lands would be used. The eclipse of treaties and the absenting of Indian people from decision making was pervasive, reinforced by *Indian Act* provisions that restricted Indian people to reserves and forbade them to pursue legitimate complaints about the non-fulfilment of treaties.

Additionally, no effective office in government was ever given responsibility for fulfilling Crown treaty commitments. Implementation was left to a small group of civil servants without the knowledge, power or authority to act for the Crown in meeting treaty obligations or to hold off other government departments and the private sector if they had conflicting agendas.<sup>86</sup> For example, treaties promised that reserve lands would never be taken away without the consent of the Indian signatories, but statute law provided that reserve lands could be expropriated from 1850 on.<sup>87</sup> Thus federal statutes overrode treaty promises that Indian nations would never lose their lands.

Many of the rights and promises recognized and affirmed by the treaties could be upheld only by an act of the legislature. But treaties were not sanctioned by legislation; they were executive actions of the Crown. This meant that they were not given the status they needed to be implemented properly; as a result, they would be eroded and undermined by Canadian

laws. The treatment of fishing rights in treaties provides a good example. First Nations understood that treaty protection of their fishing rights was paramount. Yet, because of the public right of fishing in navigable waters, the Crown was not in a position to confirm such rights for its treaty partners without legislative enactments.<sup>88</sup>

In the absence of effective laws to implement treaties, the federal Indian administration fell back on the *Indian Act*. As time went on, basic treaty provisions such as annuities were provided for in the *Indian Act* to enable the federal government to deliver them.<sup>89</sup> Although it does not recognize, affirm or otherwise acknowledge treaties, the *Indian Act* continues to be the only federal statute administering to Indians generally, including those with historical treaty agreements. This is despite the fact that, as of 1982, the constitution recognizes and affirms the Aboriginal and treaty rights of the Aboriginal peoples of Canada.

These are all indications that respect for the treaties and the obligation to fulfil them have not been priorities for governments in Canada or, indeed, for Canadians generally.

## **7. Restoring the Spirit of the Treaties**

If seen with broad vision, the story of Crown treaty making with First Nations is one of the richest depositories of meaning and identity for Canadians. It is a story that begins long before the Royal Proclamation of 1763 and connects the earliest forays of European fishermen to the shores of Newfoundland with the establishment of Nunavut at the end of the twentieth century. Aboriginal nations' contributions to Canada in sharing their wealth with the newcomers should be acknowledged and enshrined forever in Canadian history. Those contributions are unique and incomparable in their historical depth and in their practical significance to Canada today.

Treaties recognized the separate existence of nations but also connected peoples by establishing links of partnership, common interests and shared ceremonies. The practice of dividing and connecting was extended to Europeans at an early stage, as reflected in the Two Row Wampum, a symbolic reminder of the separate but connected paths followed by the British and the Six Nations in the conduct of their relations.

The Aboriginal world view of a universal sacred order, made up of compacts and kinship relations among human beings, other living beings and the Creator, was initially reinforced by the Crown's willingness to enter into treaties under Indian protocols. But subsequent denials of the validity and importance of the treaties have denigrated Aboriginal peoples' stature as nations and their substantial contribution to Canada. Unfortunately, non-Aboriginal people valued treaties as long as they continued to be useful, which often meant until land changed hands, settlements grew, and resources were extracted and converted into money. For their part, First Nations expected that treaties would grow more valuable with time, as the parties came to know each other better, trusted one another, and made the most of their treaty relationships.

In the past, governments and courts in Canada have often considered these treaties instruments of surrender rather than compacts of co-existence and mutual benefit. This is the spirit of colonialism, the agenda of a society that believes it has no more need for friends because of its apparent wealth, power and superiority. The spirit of the treaties, by contrast, is the spirit of a time when the ancestors of today's Canadians needed friends and found them.

It is time to return to the spirit of the treaties and to set a new course to correct the legalistic and adversarial attitudes and actions that have contributed to the badly deteriorated treaty relationships that exist between Aboriginal nations and Canada today.

## **8. Extending Measures of Control and Assimilation**

The nation of Canada was born on 1 July 1867. Within a federal political structure, a modern transcontinental society was to be fashioned and, as empire became nation, a new beginning was to be made.

Work on the Confederation project had begun as early as 1858, and as the tempo quickened between 1864 and 1866 the 'Fathers' met in Charlottetown, Quebec and London. At those meetings, in the editorial pages of the colonial press and even on the hustings, the details of the federation and a pan-colonial consensus were hammered out. At no time, however, were First Nations included in the discussion, nor were they consulted about their concerns. Neither was their future position in the federation given any public acknowledgement or discussion. Nevertheless, the broad outlines of a new



constitutional relationship, at least with the First Nations, were determined unilaterally. The first prime minister, Sir John A. Macdonald, soon informed Parliament that it would be Canada's goal "to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the Dominion."<sup>90</sup>

Such a goal placed Canada in the vanguard of the empire-wide task of carrying the 'white man's burden', which was at one and the same time the duty of 'civilizing' Indigenous peoples, be they Maori, Aborigine or Zulu. This also became the justification for the extensive annexation of the homelands and resources of Indigenous peoples in Africa, Asia, Australia and North America. For Victorians this was a divinely ordained responsibility; for Canadians it was, at the level of rhetoric at least, a national duty. Looking forward from the western treaties, one of the principal government negotiators, Alexander Morris, prayed:

Let us have Christianity and civilization among the Indian tribes...let us have a wise and paternal government...doing its utmost to help and elevate the Indian population, who have been cast upon our care...and Canada will be enabled to feel, that in a truly patriotic spirit, our country has done its duty to the red men...<sup>91</sup>

Parliament was moved to action. Though rarely consulting Aboriginal communities, it translated that duty into federal legislation such as the *Indian Act* and periodic amendments to it. It crafted educational systems, social policies and economic development plans designed to extinguish Aboriginal rights and assimilate Aboriginal people.

The process began with the blueprint of Confederation, the *British North America Act* of 1867. It provided in section 91 that the "exclusive Legislative Authority of the Parliament of Canada extends to all matters within the class of subjects next herein-after enumerated" among which was section 24, "Indians, and Lands reserved for the Indians." Subsequently, the ethos of that legislative responsibility was revealed in the *Enfranchisement Act of 1869*. Rooted firmly in the imperial past, the act was conditioned by the Indian department's resolute insistence on enfranchisement. It brought forward the enfranchisement provisions of the act of 1857 and added, in the service of what was then adopted as the fundamental principle of federal policy, the goal of assimilation.

In the act, traditional governments were replaced by 'municipal government', giving minor and circumscribed powers to the band while extensive control of reserves was assigned to the federal government and its representative, the Indian affairs department.

In subsequent legislation — the *Indian Acts* of 1876 and 1880 and the *Indian Advancement Act of 1884* — the federal government took for itself the power to mould, unilaterally, every aspect of life on reserves and to create whatever infrastructure it deemed necessary to achieve the desired end — assimilation through enfranchisement and, as a consequence, the eventual disappearance of Indians as distinct peoples. It could, for example, and did in the ensuing years, control elections and the conduct of band councils, the management of reserve resources and the expenditure of revenues, impose individual land holding through a 'ticket of location' system, and determine the education of Indian children.

This legislation early in the life of Confederation had an even more wide-ranging impact. At Confederation two paths were laid out: one for non-Aboriginal Canadians of full participation in the affairs of their communities, province and nation; and one for the people of the First Nations, separated from provincial and national life, and henceforth to exist in communities where their traditional governments were ignored, undermined and suppressed, and whose colonization was as profound as it would prove to be immutable over the ensuing decades.

For Aboriginal people, however, there was even further division — yet more separate paths. Federal legislative responsibility was restricted to Indians. The Métis people were disavowed, and Inuit were not recognized as a federal constitutional responsibility until 1939 and then were exempted explicitly from the *Indian Act* in 1951.<sup>92</sup> United perhaps in marginalization, Aboriginal communities nevertheless found themselves in separate administrative categories, forced to struggle alone and at times even against each other, to achieve any degree of de-colonization.

Furthermore, the *Indian Act* empowered the department to decide who was an Indian on the basis of definitions determined not in consultation with communities but unilaterally by Parliament, which created more division by distinguishing between 'status' and 'non-status' Indians.

## Excerpt from the Enfranchisement Act of 1869

CAP VI.

An Act for the gradual enfranchisement of Indians, the better management of Indian affairs, and to extend the provisions of Act 31st Victoria, Chapter 42

[assented to 22 June, 1869.]

12. The Chief or Chiefs of any Tribe in Council may frame, subject to confirmation by the Governor in Council, rules and regulations for the following subjects, viz:

1. The care of the public health.
2. The observance of order and decorum at assemblies of the people in General Council, or on other occasions.
3. The repression of intemperance and profligacy.
4. The prevention of trespass by cattle.
5. The maintenance of roads, bridges, ditches and fences.
6. The construction of and maintaining in repair of school houses, council houses and other Indian public buildings.
7. The establishment of pounds and the appointment of pound-keepers.

*Source:* Statutes of Canada 1869, chapter 6 (32-33 Victoria)

Not surprisingly, for it was nineteenth-century legislation, the *Indian Act* introduced unequal treatment for men and women. While 'status' Indian men could not lose their status except by enfranchisement, the act of 1869 added the proviso that "any Indian woman marrying any other than an Indian shall cease to be an Indian...nor shall the children issue of such a marriage be considered as Indians". Over the course of Canada's first century, therefore, an ever growing number of Indian women and their children were lost to their communities and saw their existence as Aboriginal persons simply denied by the federal government.

For the authors of this colonial system, the separate paths were to run to a single destination. Their national vision was the same for all Aboriginal people, whether men, women or children, 'status' or 'non-status', Indian, and

Métis or Inuit. As their homelands were engulfed by the ever expanding Canadian nation, all Aboriginal persons would be expected to abandon their cherished lifeways to become 'civilized' and thus to lose themselves and their culture among the mass of Canadians. This was an unchanging federal determination. The long-serving deputy superintendent general of Indian affairs, Duncan Campbell Scott, assured Parliament in 1920 that "Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question".<sup>93</sup>

### **Challenging the Change**

*The Six Nations have insisted consistently on their independent status, despite what Canada has claimed. This is the first such statement in the post-Confederation period. It also indicates the split in the community that would plague the Six Nations for generations, between those prepared to operate under the terms of the federal legislation and those wanting to maintain traditional relationships and structures. The nature of the text suggests it was prepared independently, without the aid of the local missionary or Indian department clerk, which was the usual procedure.*

Oshweken Council House of the Six Nations Indians

17 August 1876

To the Honourable Mr. D. Laird  
Superintendent of Indian Affairs

We the undersigned Chiefs & Members of the Six United Nation Indian Allies to the British Government residing on the Grand River, Township of Tuscarora, Onondaga and Oneida, in the counties of Brant and Haldimand Ont., to your Honourable our Brother by the treaty of Peace we thought it is fit and proper to bring a certain thing under your Notice which is a very great hindrance and grievance in our council for we believe in this part it is your duty to take it into consideration with your government to have this great hindrance and grievance to be removed in our council and it is this, one says we are subjects to the British Government and ought to be controled under those Laws which was past in the Dominion Parliament by your Government you personally,

and the others (That is us) says we are not subjects but we are Allies to the British Government; and to your Honourable our Brother we will now inform you and your Government, personally, that we will not deny to be Allies but we will be Allies to the British Government as our forefathers were; we will further inform your Honourable our Brother and to your Government that we do now seprate from them henceforth we will have nothing to do with them anymore as they like to be controled under your Laws we now let them go to become as your own people, but us we will follow our Ancient Laws and Rules, and we will not depart from it.

Ononadaga Chiefs [signed by 33 chiefs]

*Source:* NAC RG10, Red Series, volume 1995, file 6897, MR C11130, 17 August 1876 [original spelling and punctuation preserved].

All of this was justified, in the minds of successive generations of politicians and departmental officials like Scott, by a sincere, Christian certainty that the nation's duty to the original people of the land was "to prepare [them] for a higher civilization by encouraging [them] to assume the privileges and responsibilities of full citizenship".

In the case of First Nations, Parliament, though it rarely provided adequate financial support, was only too willing to lend the weight of increasingly coercive legislation to the task, tightening departmental control of Indian communities in the service of economic and social change. In 1884 and 1885, the potlatch and the sundance, two of the most visible and spiritually significant aspects of coastal and plains culture respectively, were outlawed, although in practice the prohibition was not stringently enforced. The potlatch was portrayed as "the most formidable of all obstacles in the way of the Indians becoming Christian or even civilized".<sup>94</sup>

Participation in the potlatch was made a criminal offence, and it was also illegal to appear in traditional costume or dance at festivals. In 1921 Duncan Campbell Scott issued revealing instructions to his agents:

It is observed with alarm that the holding of dances by the Indians on their reserves is on the increase, and that these practices tend to disorganize the efforts which the Department is putting forth to make them self-supporting.

...You should suppress any dances which cause waste of time, interfere with the occupations of the Indians, unsettle them for serious work, injure their health, or encourage them in sloth and idleness.<sup>95</sup>

The pass system allowed the department to regulate all economic activity among communities, including adjacent non-Aboriginal ones. No one who had not obtained an agent's leave would

be allowed, on an Indian reserve, to barter, directly or indirectly, with any Indian, or sell to him any goods or supplies, cattle or other animals, without the special licence in writing.<sup>96</sup>

The restrictive constitutional circle drawn around First Nations by the governance sections of the *Indian Act* was duplicated in the economic sector by this special licence and by other provisions of the act that isolated communities from normal sources of financing, making them wholly dependent on the funding whims of the government.

Furthermore, communities found themselves isolated from resources, making their economic circumstances even more tenuous. At Confederation, ownership and control of Crown land and resources was assigned to the provincial partners. In the northwest, land and resources were given initially to the dominion government to enable it to sponsor settlement. That was changed in 1930, however, with passage of the natural resources transfer agreements with the three prairie provinces. In these the federal government failed to take "any precaution, apparently, to safeguard the sacred trusts which had been guaranteed to the Indians by treaty."<sup>97</sup> Thereafter, Aboriginal access to off-reserve resources was controlled across the country by provinces — which, of course, had no responsibility for First Nations. Outside reserves, in trapping, hunting, fishing and in such traditional activities as wild rice harvesting, Aboriginal people faced licensing systems, provincial management programs, game wardens, and all too often fines and imprisonment, as well as the restrictions of international wildfowl conventions signed by the federal government.

## Excerpt from the Indian Act, 1876

CHAP. 18.

An Act to amend and consolidate the laws respecting Indians.

[Assented to 12th April 1876.]

### TERMS

#### 3.3 The term "Indian" means

*First.* Any male person of Indian blood reputed to belong to a particular band;

*Secondly.* Any child of such person;

*Thirdly.* Any woman who is or was lawfully married to such person:

(a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent-General:

(b) Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, missionary, teacher or interpreter, while discharging his or her duty as such:

(c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time

at ten years' purchase with the consent of the band:

(d) Provided that any Indian woman marrying an Indian of any other band, or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged, and become a member of the band or irregular band of which her husband is a member:

(e) Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty.

The *Indian Act* further facilitated the imposition of the government's assimilative will by insisting on conformity with Canadian social mores and providing penalties for non-compliance. Non-Aboriginal concepts of marriage and parenting were to prevail. The department could, for example, stop the payment of the annuity and interest money of, as well as deprive of any participation in the real property of the band, any Indian who is proved, to the satisfaction of the Superintendent General, guilty of deserting his family, or of conduct justifying his wife or family in separating from him...[and] may also stop the payment of the annuity...of any Indian parent of an illegitimate child...<sup>98</sup>

Those who failed to comply with any of the myriad social and economic regulations faced fines or imprisonment in a legal system whose integrity was undermined when Indian agents were made justices of the peace. The department then had the power to make and to enforce regulations, which had the force of law, with regard to the full spectrum of public and private life in communities. Aboriginal traditions — ritual life, social organization and the economic practices of communities — were not only obstacles to conversion and civilization, but could be declared by Parliament or by departmental regulation to be criminal behaviour. Agents, appointed as magistrates, were to regulate the behaviour of their Aboriginal wards according to the *Act Respecting Offences against Public Morals and Public Convenience*, bringing into play the alien Victorian morality encoded in it (see Chapter 9).



## The Hypocrisy of the Potlatch Law

*Excerpt from correspondence from Chief Maquinna in defence of the potlatch, published in The Daily Colonist, Victoria, B.C., 1 April 1896, under the heading "The Nootka Chief Speaks":*

...a whiteman told me one day that the white people have also sometimes masquerade balls and white women have feathers on their bonnets and the white chiefs give prizes for those who imitate best, birds or animals. And this is all good when white men do it but very bad when Indians do the same thing. The white chiefs should leave us alone...they have their games and we have ours. ...The potlatch is not a pagan rite; the first Christians used to have their goods in common as a consequence must have given 'potlatches' and now I am astounded that Christians persecute us and put us in jail for doing as the first Christians. Maquinna X (his mark)

Chief of Nootka

By far the most ambitious and tragic initiative, however, was the joint government and church residential school program. Introduced originally for Indian children, the system would eventually draw children from almost every Aboriginal community — Indian, Métis and Inuit — across the country. Beginning in 1849, the program developed to include boarding schools, built close to the reserves for children between the ages of 8 and 14, and industrial schools, placed near non-Aboriginal urban centres to train older children in a range of trades. The schools — 80 of them at the high point — were the centrepiece of the assimilation strategy. As pupils in boarding institutions whose affairs were conducted wholly in English (or French, in some of the schools in Quebec), the children were separated "from the deleterious home influences to which [they] would be otherwise subjected" and brought into contact with "all that tends to effect a change in [their] views and habits of life".<sup>99</sup> Canada, through the agency of the department and the churches, presumed to take over the parenting of Aboriginal children so that they "could take their place anywhere among the people of Canada".<sup>100</sup> It did not discharge its self-appointed task in a manner Canadians can be proud of.

From the outset, there were serious problems with residential schools. There was never enough funding, and thus the buildings, often badly designed and

constructed, deteriorated quickly. Bad management, unsanitary conditions and abuse of the children were more than occasional exceptions to the rule. Parents, and indeed many local agents, were reluctant to send children to the schools, particularly the industrial schools, which were far away and seemed to benefit neither the child nor the community. The department, unable to get adequate funding from Parliament or contributions from the churches, abandoned the ambitious industrial school model by 1920. Thereafter, the emphasis was placed on the boarding schools which, while less expensive, were judged by accepted standards of child care and education to be a dismal failure, leaving deep scars across communities and the conscience of a nation.

The removal of children from their homes and the denial of their identity through attacks on their language and spiritual beliefs were cruel. But these practices were compounded by the too frequent lack of basic care — the failure to provide adequate food, clothing, medical services and a healthful environment, and the failure to ensure that the children were safe from teachers and staff who abused them physically, sexually and emotionally. In educational terms, too, the schools — day and residential — failed dramatically, with participation rates and grade achievement levels lagging far behind those for non-Aboriginal students (see Chapter 10).

When a joint committee of the Senate and the House of Commons on the *Indian Act* met in Ottawa in 1946, the members, looking out across Aboriginal Canada, could not see the progressive results of the assimilation strategy that had been forecast so consistently by the department since Confederation. Voluntary enfranchisements were rare. But more tragically the pre-conditions for enfranchisement — social and economic change and positive community development to enable Aboriginal people to enjoy the standard of living of other Canadians — were not readily apparent. Rather, in every category — health, employment, education and housing — the conditions endured by Aboriginal people made them what they were in constitutional affairs: second class citizens. Across the country, communities were trapped in a colonial system that denied them any degree of self-determination, consigned them to poverty, corroded families and individuals, and made them too often the objects of social welfare agencies and penal institutions.

When Duncan Campbell Scott retired from the department in 1933, he had clearly left unresolved the "Indian problem". There it still was in 1946. But in

evidence as well was the continuing determination of Aboriginal peoples not to let the government "break them to pieces", to defend their culture and to seek the good life on their own terms. At banned potlatches and hidden thirst dances, at Dene gatherings, in Iroquois longhouses and on across the North and the Maritimes, the peoples had continued to gather to express and celebrate their cultures.

This determination had taken new forms as well. Modern political organizations with talented leaders were developed. Such leaders were determined to become a central part of the solution — not to the "Indian problem", but to the problem of colonialism by struggling for self-determination within Confederation on the basis of recognition of the worth of Aboriginal peoples' contribution and of the contribution of their culture to the nation. As early as 1918, F.O. Loft declared, when organizing the League of Indians, the first attempt at a national organization:

In politics, in the past they [Indian people in Canada] have been in the background....

As peaceable and law-abiding citizens in the past, and even in the late war, we have performed dutiful service to our King, Country and Empire, and we have the right to claim and demand more justice and fair play as recompense, for we, too, have fought for the sacred rights of justice, freedom and liberty so dear to mankind, no matter what their colour or creed.

The first aim of the League then is to claim and protect the rights of all Indians in Canada by legitimate and just means; second, absolute control in retaining possession or disposition of our lands; that all questions and matters relative to individual and national wellbeing of Indians shall rest with the people and the dealings with the Government shall be by and through their respective band Councils.<sup>101</sup>

## **9. Conclusion**

In this third stage, which we have called displacement and assimilation, we have noted how non-Aboriginal western society has become predominant in population and in power terms. Thus it has had the capacity to impose its will on Aboriginal societies — and it has also been motivated to do so.

The motivation was in part economic, as the commercial economy based on the fur trade and other natural resources was pushed from centre stage and replaced by the drive for expansionary settlement of the continent and for agricultural and, later, industrial production. In this context, from a western perspective, Aboriginal peoples were seen to stand in the way, for they inhabited and claimed title to vast stretches of land.

The transition in the relationship was also pushed by the western belief in 'progress' and in the evolutionary development of human beings from lesser to greater states of civilization. Long-standing western beliefs in racial and cultural superiority were given a scientific veneer during this stage, as theories such as those linking intelligence to the size of the brain came into play and theories of evolution were used to justify racist assumptions. This was accompanied by a belief in the destiny of European cultures to expand across North America and eventually to take over the whole land base.

In this perspective, western society was seen to be at the forefront of evolutionary development, with Aboriginal peoples lagging far behind. As a result, Aboriginal peoples needed to be protected in part, but also guided — even required — to catch up, in a process of accelerated evolution. Relegated in this way to a secondary position, they were not regarded as appropriate participants in discussions of a changed relationship (such as Confederation and the subsequent admission of new provinces to the federation). Rather, decisions were made unilaterally, and a centralized administrative system was established to bring about directed change.

These ideas of how the relationship should be changed were profoundly at odds with Aboriginal conceptions of how relations in human societies and with the natural world should be conducted. In this period, Aboriginal peoples sought to continue the terms of the original relationship — a relationship of equality among nations, where each retained its autonomy and distinctiveness, where each had a separate as well as a shared land base, and where the natural world was respected.<sup>102</sup>

Resistance was particularly strong with respect to efforts to assimilate Aboriginal people or to merge Aboriginal and western societies into one — based, of course, on the western model. If successful, this attempt to eliminate the distinctive features of Aboriginal societies would, from an Aboriginal perspective, have destroyed the balance of life, which requires that each of the societies originally created be maintained in order to sustain the

overall functioning of the universe.

This is not to say that, from an Aboriginal perspective, the relationship needed to remain unchanged. Adjustments could be made in the shared land and resource base, for example, as western settlers increased in number. If changes were required, from an Aboriginal perspective they should be made through a process of continuing dialogue and mutual agreement, a process of creating a harmonious environment in which a middle ground could be achieved. This was more likely to happen if concepts such as sharing (lands, resources, or powers) were adopted, instead of concepts such as win-lose or extinguishment.

In contrast to western society's linear conception of progress and evolution, Aboriginal conceptions continued to be based on the concept of the circle. For example, western conceptions spoke of the evolution of different forms of production from simple to more complex, with the latter replacing the former over time (and never to return to them again). By contrast, Aboriginal perspectives continued to emphasize diversity and local autonomy. In this view, different groups have adopted ways of life best suited to their local needs and circumstances; each is equally valid and should not be expected to change unless the group believes that a different model would meet their needs better.

In discussing the previous stage, early contact and co-operation, we suggested that even if Aboriginal and non-Aboriginal societies did not have a shared perspective on the relationship, it was still possible for the fundamental elements of the Aboriginal perspective to be realized in practice. In the period of displacement, there was no ambiguity. The two perspectives were clearly different, and the non-Aboriginal society had the capacity to impose its will. In Mark Dockstator's view, the result was a dysfunctional relationship:

From one perspective, Aboriginal society was subjected to the external forces of Western society which were designed to displace Aboriginal society...

At the same time and in contrast to this external pressure, Aboriginal society was attempting to maintain the nation-to-nation relationship...

The dysfunctional nature of the societal relationship caused by the action of two opposite forces on Aboriginal society was further exacerbated by the

imposition of a Western-based administrative system. One of the purposes of the system is to place boundaries, or parameters of acceptable behaviour and actions, around Aboriginal society. By restricting and thereby controlling the lifestyle of Aboriginal people, the administrative system acted to isolate Aboriginal society from both mainstream society and the larger physical environment. Consequently, the social ills resulting from the imbalance of Aboriginal society were "turned inward"; the natural release mechanisms employed by Aboriginal society to vent "negative forces" were foreclosed by the operation of the Western administrative system.<sup>103</sup>

As we have seen from the accounts of key events and issues during this stage, the period of displacement did great damage to Aboriginal societies. They were not defeated, however. Resistance at times took the form of passive non-cooperation (for example, with respect to the enfranchisement initiative), at times defiant continuation of proscribed activities (with respect to the potlatch and the sundance, for instance), and in more recent decades it has taken the form of vocal and organized opposition.

From the perspective of non-Aboriginal society, especially those charged with the conduct of the relationship, it became evident over time that the isolation/assimilation strategy was not working. As early as the first decade of the 1900s, some missionaries and civil servants recognized the lack of success of the industrial and residential schools. By the end of the second decade, efforts were being made to modify the strategy, although initially the direction of change was to tighten the screws of the system rather than to consider alternatives. Thus, the *Indian Act* of 1927 contained stronger measures to intervene in and control the affairs of Aboriginal societies, including further efforts to develop an agricultural economy in the expectation that social and cultural change would follow in its wake. That act was also notable for its response to Aboriginal political organizations pursuing land issues, especially in British Columbia. An amendment was added making "raising a fund or providing money for the prosecution of any claim" a crime unless permission was obtained.<sup>104</sup>

After the Second World War, the search for new approaches to policy continued, especially through the hearings of a joint committee of the Senate and the House of Commons sitting between 1946 and 1948. This provided an occasion for Aboriginal interveners and others to state in strong terms the problems with the existing relationship, but the committee's report was a major disappointment. The recommendations suggested the removal of many

of the more coercive elements of the *Indian Act* (and this was accomplished with the amendments of 1951), but the changes fell far short of challenging the prevailing assimilationist framework.

Twenty years later, there was another opportunity to hear Aboriginal voices, as the federal government worked toward a new policy, but again there was major disappointment with the result. The "Statement of the Government of Canada on Indian Policy, 1969" ignored the consultations that accompanied the policy review and proceeded to recommend measures designed to achieve integration and equality: Indian people were to be allowed to retain their cultures, much as other Canadians do in a multicultural society, but they were to give up the other features that make them distinct — elements such as treaties, Aboriginal rights, exclusive federal responsibility, and the department of Indian affairs. The overwhelmingly hostile response to this policy initiative on the part of Aboriginal people, and subsequent court decisions that recognize the validity of Aboriginal and treaty rights, marked an important turning point in the relationship.

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## Notes:

**1** J.R. Miller, *Skyscrapers Hide the Heavens: A History of Indian-White Relations in Canada*, revised edition (Toronto: University of Toronto Press, 1989), p. 92.

**2** Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890* (Vancouver: University of British Columbia Press, 1977), chapters 1 and 2.

**3** D.K. Fieldhouse, *The Colonial Empires: A Comparative Survey from the Eighteenth Century* (London: Weidenfeld and Nicolson, 1965).

**4** However, more centralized structures emerged in the southeastern United States and, of course, among societies such as the Aztec and the Inca. See Alvin M. Josephy, Jr., *500 Nations* (New York: Alfred A. Knopf, 1994); Ronald Wright, *Stolen Continents: The New World Through Indian Eyes Since 1492* (Toronto: Viking Penguin, 1992); and Betty Ballantine and Ian Ballantine, ed., *The Native*

*Americans: An Illustrated History* (Atlanta: Turner Publishing, Inc., 1993).

**5** This account is enlarged upon in Chapter 9, where we discuss the *Indian Act*.

**6** Some people of mixed Aboriginal/non-Aboriginal ancestry and culture refer to themselves or are labelled by others as Métis, regardless of their geographic location or region of origin. The Commission also uses this designation, but recognizes that the term Métis Nation refers to Métis people who identify as a nation with historical roots in the west. For further discussion, see Volume 4, Chapter 5.

**7** John Leslie documents six formal commissions of inquiry launched by British officials in the period between 1828 and 1859. He argues that the search for ways to reduce the cost of Indian administration in Canada was an important motivation in establishing the commissions. “The legacy of these reports for Canadian Indian policy has been so enduring that, only recently, has the Federal government attempted to break from the long-standing view of Native peoples and society established before Confederation.” John F. Leslie, *Commissions of Inquiry into Indian Affairs in the Canadas, 1828-1858: Evolving a corporate memory for the Indian department* (Ottawa: Indian Affairs and Northern Development, February 1985), p. ii.

**8** Laprairie (1649), Becancourt (1680), Oka (1714) and St. Regis (1759). For a discussion of the establishment of these reserves, see G.F.G. Stanley, “The First Indian ‘Reserves’ in Canada”, *Revue d'histoire de l'Amérique française* 4/2 (September 1950), pp. 178-185.

**9** The British may have drawn on the examples provided by New France, but there were many other examples of religious and protected settlements in colonial British North America.

**10** The origin of reserves in Ontario and other parts of Canada is described in Richard H. Bartlett, *Indian Reserves and Aboriginal Lands in Canada: A Homeland* (Saskatoon: University of Saskatchewan Native Law Centre, 1990), pp. 10-14.

**11** See Leslie, *Commissions of Inquiry* (cited in note 7).



**12** For a brief discussion of the situation in the Maritimes, see Bartlett, *Indian Reserves and Aboriginal Lands* (cited in note 10), pp. 14-15. Concerning the history of the Maritime provinces, see also Leslie F.S. Upton, *Micmacs and Colonists: Indian-White Relations in the Maritimes, 1713-1867* (Vancouver: University of British Columbia Press, 1979).

**13** The Conne River Band was created by federal order in council (P.C. 1984-2273), 28 June 1984.

**14** At that time, Vancouver Island and British Columbia were separate Crown colonies.

**15** Frank Cassidy and Norman Dale, *After Native Claims? The Implications of Comprehensive Claims Settlements for Natural Resources in British Columbia* (Halifax and Lantzville, B.C.: Institute for Research on Public Policy and Oolichan Books, 1988), p. 6.

**16** National Archives of Canada, Record Group 10 [NAC RG10], volume 252, part 2.

**17** In any event, the development of distinct Métis communities was not primarily a question of intermarriage, but one of growing cultural uniqueness and group self-consciousness.

**18** The application of the Royal Proclamation to much of the territory where Métis people lived was questionable, in any event, since it apparently exempted both existing colonies and the vast territory of the Hudson's Bay Company, Rupert's Land, from the land reserved for Indian use. A later order in council, passed in 1870 and applicable explicitly to Rupert's Land, used the terms "Indian tribes" and "Aborigines". For a more extensive discussion of the 1870 order, see Volume 4, Chapter 5.

**19** Report of the Chief Superintendent of Indian Affairs, 1845, quoted in Martin F. Dunn, "All My Relations: The Other Métis", discussion paper prepared for the Royal Commission on Aboriginal Peoples [RCAP] (April 1994). For information about papers prepared for RCAP, see *A Note About Sources* at the beginning of this volume.

**20** Jacqueline Peterson, "Many roads to Red River: Métis genesis in the

Great Lakes region, 1680-1815”, in *The New Peoples: Being and Becoming Métis in North America*, ed. Jacqueline Peterson and Jennifer S.H. Brown (Winnipeg: University of Manitoba Press, 1985), p. 44.

**21** The term ‘half-breed’, offensive today, was the usual English equivalent of the term Métis at that time and is used here in the absence of any other appropriate expression to distinguish the English-speaking group from their French-speaking counterparts.

**22** Peterson, “Many roads to Red River” (cited in note 20), p. 64.

**23** A.M. Burgess to T.M. Daly, Minister of the Interior, 27 March 1895, attached to Order in Council P.C. 3723, 28 December 1895.

**24** The relationship between earlier peace and friendship treaties and these later land purchase or land surrender agreements is not clear. The land surrenders between 1763 and 1850 appear to be land transactions rather than treaties based on mutual obligations and exchange, as was the case with the earlier treaties and the numbered treaties to follow.

**25** NAC RG10, volume 5, number 2082-2084, 3 April 1829, “A Statement of the Mississaugue Indians settled at Credit River,

Agreed on in their Council”. (The Mississauga are Ojibwa and inhabited most of south-central Ontario at the time of British settlement in the late eighteenth century.)

**26** *Wesleyan Methodist Report, 1857* (Toronto: Wesleyan Methodist Church of Canada Annual Reports, 1828-1885), p. xxiii.

**27** The reliability, accuracy and completeness of treaties and land surrenders during this early period are identified and analyzed by Patricia Kennedy in “Treaty Texts: When Can We Trust the Written Word?”, *Social Sciences and Humanities Aboriginal Research Exchange* 3/1 (Spring/Summer 1995).

**28** Thalassa Research, “Nation to Nation: Indian Nation/Crown Relations in Canada”, research study prepared for RCAP (1994). (For information about research studies prepared for RCAP, see *A Note About Sources* at the beginning of this volume.) This study provides examples of frauds and

abuses in the sale of Indian lands. The report demonstrates that much if not most of the revenues from 'surrenders' were used for purposes other than the benefit of the Indian nations that had surrendered the land. Further, the policy of the colonial administration was to make the Indian department financially self-sufficient through the sale of Indian lands. In short, the Indians paid for their own benefits but had no control over the expenditures. See Leslie, *Commissions of Inquiry* (cited in note 7), pp. 145, 146.

**29** Ian Johnson, "British-Tribal Relations in the Colonial Period", unpublished manuscript (Union of Ontario Indians, 1986).

**30** Olive Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992), p. 238.

**31** NAC RG 10, volume 262, part 1, no. 1436.

**32** It was the practice of governments before and after Confederation to appoint senior public officials as commissioners to conduct treaty negotiations on their behalf. William McDougall, for example, was superintendent general of Indian affairs. For simplicity, we use the term commissioner in this discussion of treaty making.

**33** Report from William McDougall to His Excellency the Governor General in Council, 3 November 1862, in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co., 1880; facsimile edition, Coles Publishing Company, 1979), p. 23.

**34** W.R. Wightman, *Forever on the Fringe: Six Studies in the Development of Manitoulin Island* (Toronto: University of Toronto Press, 1982), pp. 40-46.

**35** James Morrison, "The Robinson Treaties of 1850: A Case Study", research study prepared for RCAP (1993).

**36** Morrison, "The Robinson Treaties".

**37** Morris, *Treaties of Canada* (cited in note 33), p. 303.

**38** Morrison, "The Robinson Treaties" (cited in note 35). This study provides an in-depth account of treaty negotiations from both the Crown and the Indian

perspective.

**39** Morrison, "The Robinson Treaties".

**40** Lewis H. Thomas, *The Struggle for Responsible Government in the North-West Territories, 1870-97*, second edition (Toronto: University of Toronto Press, 1978).

**41** Historians who have studied the numbered treaties have often done so in the form of an examination of a particular treaty in a particular region, bringing to bear pieces of documentary evidence and oral history. This approach brings out the differences from one treaty area to another in what was discussed, understood and concluded. There is a continuing debate on such important issues as the treatment of land and political sovereignty in treaty negotiations. See, for example, Jean Friesen, "Magnificent Gifts: The Treaties of Canada with the Indians of the Northwest 1869-76", in *Transactions of the Royal Society of Canada*, series V, volume 1 (1986), pp. 41-51; René Fumoleau, *As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11 1870-1939* (Toronto: McClelland and Stewart Limited, 1975); Richard Price, ed., *The Spirit of the Alberta Indian Treaties* (Montreal: Institute for Research on Public Policy, 1979).

**42** Doctors and other forms of medical care were discussed in other treaties as well; see Kenneth S. Coates and William R. Morrison, *Treaty Ten, 1906* (Treaties and Historical Research Centre, Indian and Northern Affairs, 1986), pp. 66-67.

**43** Morris, *The Treaties of Canada* (cited in note 33), pp. 13-15. For a discussion of the Selkirk Treaty, see Jim Gallo, "The Yellow Quill Band and The Land Question: The 1906 Expropriation and the 1908 Land Surrender of part of Swan Lake Reserve I.R. No. 7" (Treaties and Aboriginal Rights Research, May 1977, revised March 1978).

**44** The discussions among the Indian nations revolved around who had the authority to make the Selkirk Treaty on behalf of the Indian nations, since the Red River territory had been occupied by the Cree, the Assiniboine, the Sioux and, more recently, the Ojibwa.

**45** John L. Tobias, "Canada's Subjugation of the Plains Cree, 1879-1885",

*Canadian Historical Review* LXIV/4 (December 1983), p. 520.

**46** Morris, *Treaties of Canada* (cited in note 33), p. 26. The Indians at Portage, in turning back settlers as soon as they passed the Selkirk Treaty boundary, gave notice that they were protecting their lands, which included everything outside the Selkirk Treaty boundaries.

**47** Morris, *Treaties of Canada*, p. 37.

**48** Morris, *Treaties of Canada*, pp. 28, 29.

**49** An account of the discussions on these matters is found in D.J. Hall, “‘A Serene Atmosphere’? Treaty 1 Revisited”, *Canadian Journal of Native Studies* 4/2 (1984), pp. 321-358.

**50** The negotiations concerning land were difficult because Lieutenant Governor Archibald wanted to maximize the number of immigrants who could be settled on the land, which meant whittling down the size of the Indian land base, but the Indians would not agree to this proposition.

**51** Morris, *Treaties of Canada* (cited in note 33), p. 126.

**52** Department of Public Works, Record Group 11 [DPw RG11], volume 265, S.J. Dawson, report to the government, 1864.

**53** DPw RG11, report to the government, 1861.

**54** Henry Youle Hind, *Narrative of the Canadian Red River Exploring Expedition of 1857 and of the Assiniboine and Saskatchewan---*, two volumes (London: Longman, Green, Longman, and Roberts, 1869; reprinted New York: Greenwood Press, 1969), p. 99.

**55** DPw RG11, volume 265, report to the government, 1869.

**56** Morris, *Treaties of Canada* (cited in note 33), pp. 59-62. The words “give them up again” refer to the failure to compensate them adequately for the Dawson route.

**57** Morris, *Treaties of Canada*, p. 72.

**58** This was not always the case, as evidenced by the Lubicon Cree and others who were missed by treaty commissioners in their forays to get adhesions.

**59** Commissioner Alexander Morris negotiated Treaties 4, 5 and 6 with the Cree, Saulteaux, Assiniboine and Dene nations across Manitoba, Saskatchewan and Alberta. Commissioner David Laird negotiated Treaty 7 with the Blackfoot, Sarcee, Blood and Stoney nations.

**60** Morris, *Treaties of Canada* (cited in note 33), p. 10.

**61** The Cree, Ojibwa and Assiniboine were allies, and the Blackfoot Confederacy consisted of four nations — Blackfoot, Blood, Sarcee, and Peigan. The territorial domain of the Blackfoot and Assiniboine extended into the United States. John Taylor notes that “Until settlement altered the population ratio the Indian warrior was a military factor to be taken seriously. Settlement and development could only be carried out if steps were taken to obtain native acquiescence.” See John L. Taylor, “Development of Canadian Policy for the North-West, 1869-79”, PHD dissertation, Queen’s University, Kingston, 1975, pp. 267-268.

**62** It is clear that the buffalo were still available to hunt in 1877, since treaty commissioners travelling from Battleford to Fort McLeod during the summer of 1877 reported seeing many small herds of buffalo on the plains. See Morris, *Treaties of Canada* (cited in note 33), p. 252.

**63** Piapot and the Assiniboine Chiefs were not present for negotiations in 1874. A year later commissioners were told by those absent in 1874 that they believed that a treaty had not been made: “An idea seemed prevalent among the Indians who were absent last year that no treaty had been concluded then; that all which had been done at that time was merely preliminary to the making of the treaty in reality, which they thought was to be performed this year.” Morris, *Treaties of Canada*, report from W.J. Christie, Indian commissioner, and M.G. Dickieson on the Qu’Appelle Treaty, p. 86.

**64** Morris, *Treaties of Canada*, pp. 141-142. Morris refers to the fact that the Saulteaux (Ojibwa) were in contact with their Ojibwa brothers in Treaties 1, 2 and 3.

**65** Morris, *Treaties of Canada*, pp. 143-144.

**66** Morris, *Treaties of Canada*, pp. 170-171. The Cree wanted a strong law to prevent the use of strychnine, which had almost exterminated the animals and whose use had created tensions between non-Aboriginal people and the Indigenous peoples of the plains. For years they had also been sending messages to the Crown asking for laws to halt the slaughter of the buffalo.

**67** Morris, *Treaties of Canada*, p. 173, report from Reverend McDougall.

**68** Quoted in Morris, *Treaties of Canada*, p. 176.

**69** Morris, *Treaties of Canada*, p. 204.

**70** "A medicine chest will be kept at the house of each Indian agent, in case of sickness amongst you." Quoted in Morris, *Treaties of Canada*, p. 218.

**71** According to the reports tabled on the making of Treaty 7, there were open hostilities between the Blackfoot, south of the border, and U.S. troops. A treaty had been made between the government of the United States and the Blackfoot in 1855.

**72** Morris, *Treaties of Canada*, p. 248.

**73** Morris, *Treaties of Canada*, Blackfoot Treaty, pp. 267-269.

**74** Morris, *Treaties of Canada*, pp. 245-275.

**75** NAC RG10, volume 3848, file 75236-1, James Walker to Clifford Sifton, 30 November 1897.

**76** NAC RG10, volume 3848, file 75236-1, Forget to Secretary of Indian Affairs, 25 April 1898.

**77** NAC, Church Missionary Society MG17 B2, microfilm A-120, document 68, G. Holmes to Committee, 3 April 1899.

**78** Affidavit of J.A.R. Balsillic, quoted in Appendix II of Fumoleau, *As Long As*

*This Land Shall Last* (cited in note 41), p.

**79** Meeting at Lesser Slave Lake, quoted in Fumoleau, *As Long As This Land Shall Last*, pp. 74-75.

**80** Fumoleau, *As Long As This Land Shall Last*, p. 41.

**81** Fumoleau, *As Long As This Land Shall Last*, p. 216.

**82** Fumoleau, *As Long As This Land Shall Last*, p. 216.

**83** *Re Paulette*, [1973] 6 W.W.R. 97 and 115, quoted in Dennis F.K. Madill, *Treaty Research Report, Treaty Eight* (Ottawa: Treaties and Historical Research Centre, Indian and Northern Affairs, 1986).

**84** Whether the woodland and plains nations, which were not familiar with farming, would have understood such a formula is questionable. Acreages might have been familiar to those who farmed or had small gardens but to woodland and plains peoples who did not farm, and who described their lands by their geographic boundaries or the time it took to travel in one day, the land quantum formula found in treaties was likely incomprehensible. There appears to have been little discussion of what this formula entailed in most of the treaty negotiations.

**85** The Commission's conclusions regarding the steps that must be taken with respect to the treaties are elaborated in Volume 2, Chapter 2.

**86** Historically, the interpretation of Indian rights often resided with a small group of government officials who have tended not to adopt an expansive interpretation of Indian treaties. This has often meant that public policy on key issues has been based on a narrow interpretation of jurisprudence.

**87** Clauses in the treaties provided that Indian lands could be expropriated for public works, but these clauses were not explained to First Nations representatives when the treaties were signed.

**88** The limitations on the Crown's powers to affirm exclusive rights embodied in treaties is discussed in Roland Wright, "The Public Right of Fishing, Government Fishing Policy, and Indian Fishing Rights in Upper Canada",



*Ontario History* 86/4 (December 1994), pp. 337-362.

**89** Section 88, added to the *Indian Act* in 1951, provided that federal and provincial laws would apply subject to treaty provisions. The impact of this section is discussed in Chapter 9.

**90** Malcolm Montgomery, "The Six Nations Indians and the Macdonald Franchise", *Ontario History* 57 (1965), p. 13.

**91** Morris, *Treaties of Canada* (cited in note 33), pp. 296-297.

**92** In practice, however, Inuit were subject to some federal policies even before 1939.

**93** J. Leslie and R. Maguire, ed., *The Historical Development of the Indian Act*, second edition (Ottawa: Treaties and Historical Research Centre, Indian Affairs and Northern Development, 1978), p. 115.

**94** William Duncan to David Laird, May 1875, quoted in Fisher, *Contact and Conflict* (cited in note 2), p. 207.

**95** Stan Cuthand, "The Native Peoples of the Prairie Provinces in the 1920s and 1930s", in *One Century Later: Western Canadian Reserve Indians Since Treaty 7*, ed., Ian A.L. Getty and Donald B. Smith (Vancouver: University of British Columbia Press, 1978), p. 39.

**96** Statutes of Canada 1890, chapter 29, section 134.2 (53 Victoria).

**97** Special Joint Committee of the Senate and the House of Commons appointed to continue and complete the examination and consideration of the Indian Act, *Minutes of Proceedings and Evidence*, No. 30, 5 June 1947, p. 1593.

**98** Statutes of Canada 1898, chapter 34, section 7 (61 Victoria).

**99** Canada, Sessional Papers, volume 10, number 12 (1890), p. xi.

**100** Special Joint Committee (cited in note 97), p. 1647.

**101** Cuthand, "The Native People of the Prairie Provinces" (cited in note 95),

p. 31.

**102** Mark S. Dockstator, "Towards an Understanding of Aboriginal Self-Government: A Proposed Theoretical Model and Illustrative Factual Analysis", doctor of jurisprudence dissertation, Osgoode Hall Law School, York University, 1993, chapters 5 and 6.

**103** Dockstator, "Towards an Understanding of Aboriginal Self-Government", pp. 102, 104, 105.

**104** Revised Statutes of Canada 1927, chapter 98, section 141.