

A History of Treaty-Making in Canada



The impact of treaty making in Canada has been wide-ranging and long standing. The treaties the Crown has signed with Aboriginal peoples since the 18th century have permitted the evolution of Canada as we know it. In fact, much of Canada's land mass is covered by treaties. This treaty-making process, which has evolved over more than 300 years between Aboriginal and non-Aboriginal people in Canada, has its origins in the early diplomatic relationship developed between European settlers and Aboriginal people.. As the two parties made economic and military alliances, Canada began to take form. These diplomatic proceedings were the first steps in a long process that has led to today's comprehensive claims agreements between the Crown and Aboriginal groups.



Early colonial diplomacy

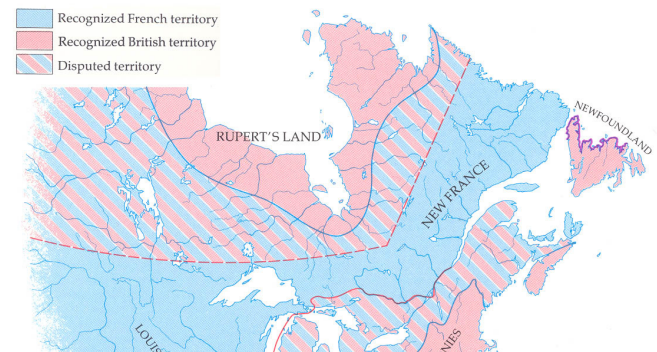
European colonists and Aboriginal people had long traditions of diplomacy and treaty relations developed over centuries prior to contact. Diplomacy between Europeans and Aboriginal peoples quickly developed into treaty-making that adopted aspects of each culture. Both groups adapted practices and protocols from each other in order to facilitate the process. This framework, evolved over the next 300 years as relations developed and enabled the disparate Aboriginal and European groups to work on goals of mutual interest.

Economically, the establishment of trade alliances made expensive European colonial projects commercially successful. With the assistance of Aboriginal hunters in the fur trade, exports of furs to Europe generated huge profits for relatively small expense. As colonies grew and European conflicts spread to North America, both French and British colonial and military leaders began to depend heavily upon their new Aboriginal allies for help in defending their colonies and attacking their enemies.

Treaty of Albany 1701

The Iroquois Confederacy had long been one of the dominant peoples in the Great Lakes region. Because of France's alliance with the Huron, Algonquins, Montagnais and Abenaki, and the inability of the Iroquois to access French trade, the Iroquois initiated trade and alliances with Dutch merchants, and later with the British along the Hudson River. Through agreements such as the Covenant Chain, the Iroquois and the British formed a military alliance that would last well into the 19th century. This alliance greatly assisted Great Britain's colonial wars against the French, and helped the Iroquois to control much of the fur trade. With new weapons, the Iroquois set out to disrupt Huron control of the fur trade. These raids persisted until 1701 when France, its Aboriginal allies and the Iroquois signed a treaty at Montréal known as the Great Peace. Through the agreement, the different Aboriginal groups in the Great Lakes ended attacks and share the lands, as if it were "a dish with two spoons". In a masterful stroke of colonial geopolitics, the Iroquois Confederacy not only assured itself a stable peace with the other Aboriginal people of the area, it also secured British protection for those same lands and interest. Just prior to the conference at Montreal in 1701, Iroquois leaders, who had gone to Albany, New York, agreed to sell all the lands of the Great Lakes to the British in exchange for their protection and continued right to hunt and fish throughout the territory. Through two diplomatic manoeuvres, the Confederacy had gained protection from French attack, promises of British defence and access to the rich fur lands of the Great Lakes.

EUROPEAN TERRITORIAL CLAIMS, 1713-1763



Peace and Friendship Treaties

Events in Europe often had major impact in the New World. The 1713 Treaty of Utrecht ceded the mainland of the Maritimes, or Acadia, to Great Britain, leaving Île Royal (Cape Breton Island) and Île St-Jean (Prince Edward Island) as the sole French possessions in the area. As Great Britain began to organize and exert its authority over its colony of Nova Scotia, it had to contend not only with the remaining French colonists, but also with France's Aboriginal allies in the region. Fearing Aboriginal people's alliance with the French, the colonial authority negotiated a series of treaties with the Mi'kmaq and Maliseet peoples. Through these treaties made between 1725 to 1779, peace and friendship would be assured between the colony and the Aboriginal population. The Mi'kmaq and Maliseet could benefit from better trade conditions, and the assurance that their religious practices would be undisturbed. On the whole, these treaties were simple agreements with promises of peaceful relations. There were no land cessions whatsoever in the agreements and with the exception of the 1752 and 1760-61 treaties where a specific trade clause was included, these treaties only served to re-establish normal relations between the parties after military conflicts.

Treaties at the End of 7 year War

For most of this period, France and Britain waged almost constant war against each other's colonies. Aboriginal allies proved to be essential components for both armies, and in some cases were indispensable. The British, desperate for military assistance during the final French-British conflict in North America, the Seven Year War, created the Indian Department in 1755 in an effort to strengthen alliances with the Iroquois Confederacy as well as attempt to calm fears of colonial fraud and abuses against First Nations people and their lands along the colonial frontier.

The end of the war in 1763 not only brought about major changes in the colonies, but also in the diplomatic relations between Aboriginal groups and the British. As the French lost their two most important settlements, Québec and Montréal, its long-standing Aboriginal alliance came to an end when their allies declared their neutrality in the European conflict at the 1760 Treaty of Swegatchy. Another treaty, the Murray Treaty named for General James Murray

commander of the British forces at Montreal, protected the Huron Wendate and their interests around the site of their village near Québec. Through a mixture of military and diplomatic missions, the Indian Department and its superintendent, Sir William Johnson, were able to establish peaceful, if somewhat uneasy, relations with the various First Nations peoples.



The Royal Proclamation of 1763

After the Seven Year War, Britain was now the primary European power throughout much North America and controlled all of the valuable commercial fur trade. While the British may have been the dominant European power in North America, they did not fully control the continent. The British realised that the success of Britain's American colonies depended upon stable and peaceful relations with First Nations people. In 1763, a Royal Proclamation was issued to announce how the colonies would be administered and established of a firm western boundary for the colonies. By establishing this boundary, all the lands to the west became the "Indian Territories" where there could be no settlement or trade without the permission of the Indian Department and strictly control by the British Military.

The Proclamation also established very strict protocols for all dealings with First Nations people. The Indian Department was to be the primary point of contact between First Nations people and the colonies. Furthermore, only the Crown could purchase land from First Nations people by officially sanctioned representatives meeting with the interested First Nations people in a public meeting. The Royal Proclamation became the first public recognition of First Nations rights to lands and title.

Treaties and a growing colony

In the late 18th century, the relationship between First Nations people and the Crown was still very much based upon commercial and military needs. As British administration was being organised throughout the Great Lakes basin, the Indian Department's primary goal was to maintain the peace between the vastly outnumbered British soldiers and traders scattered in a network of trading posts and the well armed and numerous First Nations groups inhabiting these lands. Under the direction of Sir William Johnson, the Indian Department acted as the intermediaries between the Military and First Nations leadership, securing lands for forts, assuring access to trade, furs and goods as well as issuing yearly presents and organising peace conferences. As Johnson stated in a letter to the British government, because of the powerful position of First Nations groups, only by protecting their interests could British commercial interests flourish in the interior.

The outbreak of the American War of Independence and the subsequent recognition of the United States of America in 1783 had severe impacts upon the relationship between the British Crown and its First Nations allies. The loss of the American colonies brought some 30,000 United Empire Loyalist refugees to the remaining British colonies in North America. A powerful block of people who had lost everything because of their support for the British cause, these loyalists called upon colonial administrators for new lands. Settlers were not the only refugees; First Nations people who had fought along side the British, especially the Six Nations of the Iroquois Confederacy, were also dispossessed by the war.

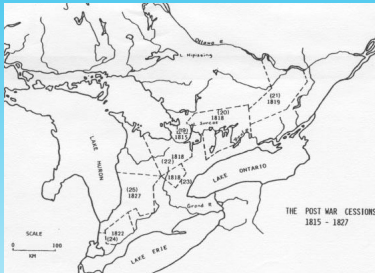


As a response, a series of land surrender treaties were negotiated by officials of the Indian Department with the different Ojibway or Abishnabe peoples inhabiting the lands along the St. Lawrence River and down around the Great Lakes. By mostly preceding the arrival of settlers in the area, these land treaties allowed for the remarkably peaceful establishment of an agricultural colony. At the same time, in an effort to compensate their First Nations allies for their losses incurred during the war with the Americans, two parcels of lands were set aside as reserves for the Six Nations, one at the Bay of Quinte, and the other along the Grand River.

For British military leaders and the Indian Department, it was considered vital that the strong military alliances between the British and First Nations people be maintained during last decades of the 18th Century. Fearing a future conflict with the new American State to the South, the large number First Nation warriors were considered an important part of the colony's defence. The Indian Department strived to bolster the damaged alliances by trying to secure fair deals on land treaties, protecting First Nations lands, as well as, issuing yearly presents and arms during gatherings and conferences with First Nation chiefs and leaders, even those in American territories. These alliances proved to be strong as war did eventually break out between Britain and its former colonies. During the War of 1812, First Nations people fought along side the British and Canadian colonists against American invasion in what is now southern Ontario.



Shifting Relationships



In less than 50 years after the first land surrenders brought settlers to Upper Canada, the non-Aboriginal population now outnumbered First Nations people in the Great Lakes basin. As more colonists arrived, the pace of land treaties increased

to allow land for their farms. In all, some 35 land surrenders treaties were concluded and covered all the lands of Upper Canada, from the productive farm lands in the south to the natural resource rich lands of Lake Superior and Georgian Bay. As more and more land was coveted, settlers began to pressure and push for those lands held by First Nations people. Some of these land treaties, however, proved to be somewhat problematic because of poor descriptions, missing signatures and confusion of boundary lines. After a century of complaints and a commission of inquiry, two new treaties, the Williams Treaties, were concluded in 1923 to settle any outstanding Aboriginal title in the lands in Central Ontario.

“Civilising the Indian”

Peaceful relations between the United States and Britain brought a fundamental change in the British perception of First Nations people. As military threats upon the colonies passed with the end of the War of 1812, so did the military role of First Nation allies. As that role waned, new ideas and approaches towards this relationship began to take hold. Fed by a belief in the superiority of British ideals and society, and a missionary fervour, initiatives were created to bring British “civilisation” to indigenous people throughout the British Empire. In the colonies of Upper and Lower Canada, the Indian Department became the vehicle for the expression of the new plan of “civilisation”. Based upon the belief that it was Britain’s duty to bring Christianity and agriculture to the First Nations people, Indian agents shifted their roles from solidifying military alliances towards encouraging First Nations people to abandon their traditional ways of life and to adopt a more agricultural and sedentary, more British, life style.

Robinson Treaties

Land surrender treaties continued to be concluded up to 1862. On the whole, these treaties were agreements for relatively small tracts of land with individual First Nation groups. In the 1850s, two treaties fell outside the norm and would become the template for future treaties in the West. As settlement lands were filled, attention turned for the first time to northern areas where minerals had been discovered along the shores of Lake Superior and Lake Huron. Two treaties, called the Robinson-Huron and Robinson-Superior treaties, were negotiated with the various Ojibway peoples inhabiting the area which ceded First Nations lands and rights to the Crown in exchange for reserves, annuities and a continued right to hunt and fish on unoccupied Crown lands. This formula of concluding agreements with numerous bands for large tracts of lands would become the model for the Post-Confederation Numbered Treaties.

Douglas Treaties, 1850-1854

On North America’s West Coast, quite a different relationship developed between European settlers and the region’s Aboriginal inhabitants. For years, settlement had been overshadowed by commercial plans of the Hudson’s Bay Company (HBC). Holding a trade monopoly for the entire British half of the Oregon territory, the HBC was content to keep its diplomatic dealings with the West Coast Aboriginal peoples strictly to commercial matters relating to the fur trade. Following the relocation of the HBC primary post to Vancouver Island and a new mandate to establish a colony, the HBC’s Chief Factor, and then colonial Governor after 1854, James Douglas signed 14 treaties with various Coast Salish communities on Vancouver Island between 1850 and 1854. These treaties surrendered land required for settlement around various HBC posts, exchanged for lump sum cash payments and goods, and the continued right to hunt and fish. Treaty making was curtailed in the 1860s due to British Columbia’s reluctance to recognize Aboriginal peoples’ land title, contrary to all other British colonial jurisdictions.



Confederation and the Indian Act

The creation of the Dominion of Canada in 1867 marked another watershed in the Crown's relationship with Aboriginal peoples. Section 91(24) of the British North America Act established that the federal government of Canada was responsible for "Indians and Lands reserved for Indians". For Aboriginal people, this was an important change from their relationship with colonial authorities. Through the federal Department of Indian Affairs, the Dominion of Canada could develop national policies that would affect all Aboriginal peoples and set more local policies in a national context. The consolidation of these various policies became one of the Department's first concerns. Between 1868 and 1876, these policies were incorporated into the Indian Act. This Act affected many aspects of Aboriginal peoples' lives, determining such things as membership and the internal governing of bands. Through a series of modifications and amendments, the Indian Act would come to control and influence nearly all aspects of daily life for Aboriginal peoples in Canada.

The Numbered Treaties

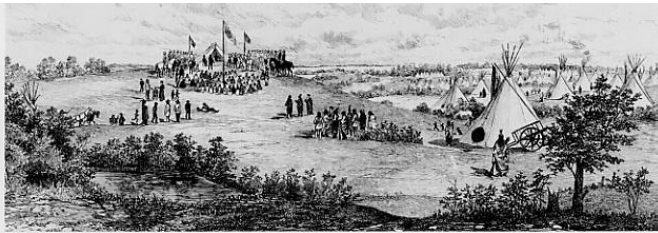
In 1869, after nearly 200 years of control, the HBC sold the Rupert's Land Charter to Canada. Through this transfer, Canada gained full control of all resources in the now renamed Northwest Territories. This control also permitted the opening of a very fertile region to settlement and agriculture. The transfer of Rupert's Land caused considerable animosity among the territories' Aboriginal and Métis population who saw this as the sale of their traditional lands without their consent or consultation. For the Métis population concentrated in the Red River Colony, this animosity towards Canada turned into an open revolt and the creation of a provisional government led by Louis Riel in 1869. This crisis was only resolved by the creation of the province of Manitoba in 1870.

Before co-ordinated settlement could be undertaken, the question of Aboriginal land title throughout the Northwest Territories had to be resolved. The Crown had several reasons for addressing this issue; most notably, to clear the way for settlement, but also to ensure Canadian sovereignty over an immense territory. Fear of American expansion across the 49th parallel was ever-present, especially in light of the rapid settlement south of the border. Witnessing the events in the American territories, the Canadian government also wanted to avoid the kind of costly Indian Wars that had occurred throughout the American West. By the 1870s, the Aboriginal peoples of the Prairies were in an increasingly difficult position. Hunting in both the Canadian Northwest and the American West had significantly reduced the number of Plains bison. Less than 15 years after the transfer of Rupert's Land to Canada, they were all but extinct in the Northwest Territories.



First Nation groups were not opposed to a treaty process, and in many cases, pressured Canada to undertake treaties in areas when it was not prepared to do so. Aboriginal signatories had their own reasons to enter into treaties with the Crown. On the whole, they were looking to the Crown to come to their assistance in a time of great change and upheaval in their lives. With epidemics and famine striking their people, Aboriginal leaders wanted the government to help care for their distressed people and assist them in adapting to their changing economic reality as the buffalo herds neared extinction and the HBC shifted its operations to the North.

With these reasons in mind, Canada negotiated treaties with the Aboriginal peoples of the Prairies. Based upon the 1850 Robinson Treaties, treaties surrendered large tracts of land by large numbers of bands assembled together for the negotiations. These treaties were more than simple land surrenders as they included one-time lump sum payments, annuities, specific amounts of reserve lands, continued rights to hunt and fish on unoccupied Crown lands, schools, agricultural implements and cattle, ammunition, as well as medals, flags and suites of clothing. Between 1871 and 1921, the Crown signed 11 treaties, known as the Numbered Treaties, divided into two groups: those for settlement in the South; and those for access to natural resources in the North.



Treaties 1 to 7, concluded between 1871 and 1877 led the way to opening the lands of the Northwest Territories up to agricultural settlement, the construction of the railway linking British Columbia to Ontario, and solidifying Canada's claim on the lands north of the border with the United States. After a 22 year gap, treaty making resumed between 1899 and 1921 to secure and facilitate access to the vast and rich natural resources of Northern Canada. Through

them, the Crown secured the title for nearly half of the Canadian land mass, secured its jurisdiction north of the border, opened the West for settlement, and connected British Columbia to the rest of the country.



The Indian Act

While treaties were being negotiated in the West, legislation was introduced in 1876 which would have deep and long lasting impacts upon First Nations across Canada. The Indian Act of 1876 was a consolidation of regulations that impacted First Nations people living throughout the country. It gave greater authority to the Department of Indian Affairs by permitting it to intervene in a wide variety of issues and to make sweeping policy decisions across the board such as determining who was an Indian, managing Indian lands, resources and moneys, controlling the access to intoxicants and promoting "civilisation". The principle behind the Act was that it was the Crown's responsibility to care for and protect interests of First Nations people by acting as their "guardians" until such time as they could reach a level of sophistication that allowed them to fully integrate into Canadian society. The Indian Act was frequently amended in the 70 years after it was passed into law in 1876. The amendments were largely concerned with assimilation and civilisation of First Nations people. Amendments to the Indian Act became increasingly restrictive and imposed ever greater controls upon the lives of First Nations peoples.

Rolling back Paternalism

In light of Aboriginal Canadians participations in the First, Second and Korean wars, in 1946, a special joint parliamentary committee of the Senate and the House of Commons was formed to broadly review Canada's policies and the management of Indian affairs. Over the course of three years, the committee received briefs and representations from First Nations, missionaries, school teachers and federal government administrators. The committee hearings were one of the first occasions where First Nation leaders and elders were able to address parliamentarians directly instead of through the intermediary of the Department of Indian Affairs. On the whole, First Nations members rejected the idea of cultural assimilation into non-Aboriginal society. Many groups asked that these "wide and discretionary" powers by the government over their affairs be vested in the chiefs and councillors on reserves so they, in turn, could determine questions of band membership and manage their own funds and reserve lands. While not recommending the full dismantling of the Indian Act and its assimilation policies, the joint committee did recommend that unilateral and mandatory elements of the Act be revised and scaled back. Furthermore, the committee recommended that a claims commission be established to hear problems arising from the fulfillment of the treaties. Some of these recommendations were incorporated into a series of amendments to the Indian Act passed in 1951.

Addressing First Nation Claims

By the early 1970, new policies were being developed to better address First Nations claims and rights. In 1973, the Comprehensive and Specific Claims Policies were introduced to address these specific issues. After three landmark court decisions brought about an important shift in the recognition of Aboriginal rights in Canada, the 1972 Superior Court of Quebec decision on the Cree of Northern Québec, the 1973 Supreme Court of Canada ruling in Calder, and the 1973 Paulette decision in the North West Territories, the Department of Indian and Northern Affairs announced a process to settle land claims through negotiation where Aboriginal rights and title would



be transferred to the Crown through a settlement agreement which guaranteed defined rights and benefits for the signatories. The first agreement under this new policy was concluded in 1975 with the Cree of Northern Québec. Since 1975, the Comprehensive Claims policy has been modified in response to Aboriginal concerns, most notably in 1986 when new options relating to the transfer of rights and title, as well as a broader scope of rights and other issues, were included, and in 1991 when the cap on the number of ongoing negotiations was lifted. The negotiation of comprehensive claims is a long and complex process, requiring many years to complete. Since 1975, there have been 22 comprehensive claims agreements, commonly known as "modern treaties", concluded across northern Québec, the Northwest Territories, the Yukon and British Columbia.

As part of the wider review of how Canada deals with First Nations claims, a companion policy was created in 1973 to address claims of a more specific nature. While the Comprehensive Claims Policy would deal with issues stemming from claims to Aboriginal title, the Specific Claims Policy addressed the claims relating to the non-fulfilment of “lawful obligations” flowing from the Indian Act or treaties. Several attempts were made to improve the policy in the mid-1980s and again in the early 1990s when the Indian Specific Claims Commission was created as a body to review Indian Affairs decisions regarding claims and make recommendations. While these changes to the policy did allow for more claims to be address, the complexity, volume and diversity of the claims were increasingly difficult to manage and long delays were common.



In 2006, the Senate’s Standing Committee on Aboriginal Peoples recommended establishing a new process and dedicated funding to address these claims. Subsequently, the Department of Indian and Northern Affairs undertook a unique approach where First Nations organisation, such as the Assembly of First Nations, became directly involved in the formulation of the new Specific Claims Policy. Coming into effect on October 16th 2008, the Specific Claims Tribunal Act creates an independent adjudicative body know as the Specific Claims Tribunal with the authority to make binding decisions in respect to the validity of claims and compensation.

“Existing Aboriginal and Treaty Rights”

As concerns over the growing emergence of a separatist movement in Québec throughout the 1970s, the Trudeau government undertook a series of constitutional discussions with provincial premiers to reform and repatriate the Canadian constitution between 1977 and 1981. As the discussions waxed and waned between the federal and provincial leaders, First Nations, Inuit and Métis political organisations tried unsuccessfully to get a seat at the constitutional negotiations table. When a 1981 constitutional proposal was announced including a Charter of Rights and Freedoms, Aboriginal and treaty rights were excluded from the list. After several months of hard lobbying and pressure, however, First Nations, Inuit and Métis organisations successfully managed to have two clauses included in the Charter of Rights and Freedoms which recognised “existing



Aboriginal and treaty rights” as well as a definition of Aboriginal people which included all three groups. As “existing Aboriginal and treaty rights” were undefined in Section 35 of the Charter, a series of conference were held between 1983 and 1987 in an attempt to define and clarify those rights. Disagreements between the provinces, Canada and Aboriginal groups, however, resulted in no consensus or definition of those rights.

With the lack of consensus on a clear definition of what were “existing Aboriginal and treaty rights”, the responsibility fell to the courts. Because of the inclusion of Section 35 in the Charter of Rights and Freedoms, when rights were in question, it was necessary to demonstrate their existence in a court of law. Consequently, First Nations, Inuit and Métis people and individuals have turned to the courts to help define not only the scope and extent of their rights, but also identify and recognise rights and treaties. Several court cases have helped define these existing Aboriginal and treaty rights, as well as direct government policies and programs so as to respect and prevent the infringement of those rights.



Inherent Right to Self-Government

As a response to increasing calls to greater First Nation autonomy and a growing recognition of an Aboriginal right to self-government, the Government of Canada launched in 1995 a new process, the Inherent Right to Self-Government Policy, to negotiate practical arrangements with First Nations to make a return to self-government a reality. Through Self-Government agreements, new partnership between Aboriginal people and the federal government are created implementing that right. The policy also recognized that no single form of government would work for all Aboriginal communities. Self-government arrangements would therefore take many forms based upon the particular historical, cultural, political and economic circumstances of First Nations. Since the introduction of the policy, there have been 17 Self-Government agreements, many of which are part of larger Comprehensive Claims agreements.

Continuing Role of Treaties

To examine the evolution of the treaty process in Canada is also to examine the historical evolution and shaping of Canada. The continuing discussion and debate on the treaty relationship and the modern negotiations of that relationship through the comprehensive claims process continues to exert a formative influence on Canada and its future direction. As new treaties are concluded, new relationships are added to the overarching Treaty Relationship between Canada and First Nations. This relationship defines not only mutual rights and obligations, but also assists both Canada and First Nations to work in a more cooperative and productive manner to improve the lives of First Nation people and all Canadians.



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