Submission of Athabasca Chipewyan First Nation to Cabinet Regarding the Prospect of an Alberta Independence Referendum

May 1, 2026



ACFN
K'ai Tailé Denesųłiné

Athabasca Chipewyan First Nation (ACFN)

Box 366 | Fort Chipewyan, AB | T0P 1B0

Phone: 780.697.3730 Fax: 780.697.3500 Email: info@acfn.com

ACFN
ATHABASCA CHIPEWYAN FIRST NATION

Premier Danielle Smith
Members of Cabinet and Executive Council
Lieutenant Governor of Alberta
Alberta Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6

May 1, 2026

Re. Referendum on the Question of Alberta Independence

I, Chief Allan Adam of Athabasca Chipewyan First Nation ("ACFN"), submit this brief to Cabinet and the Lieutenant Governor-in-Council of Alberta in order to inform your deliberations on whether to put the question of Alberta's independence from Canada on the referendum ballot.

For all the reasons below and contained within this brief, I urge you not to do so.

ACFN has an outstanding court challenge to the current separatist referendum petition. It is under reserve with Justice Leonard and we are expecting a decision any day. Unfortunately, recent public statements by the Premier suggest that Cabinet is still considering calling a referendum on Alberta's independence – regardless of what the Court may decide. This is despite the fact that the Court has already ruled that independence would contravene the Treaties and harm our Treaty relationship. Calling a referendum on independence – whether it is on the separatist question, a version of the Forever Canada question, or a new question – would be wrong in principle and wrong in law.

I write to you because calling a referendum on Alberta independence will put us all on a perilous path that can only divide Albertans further. It will also send an open invitation to outside forces to try to influence the outcome of the vote for their own purposes. I caution the Premier and each Member of Cabinet: when you sow the wind, you reap the whirlwind.

We are the original people of these lands

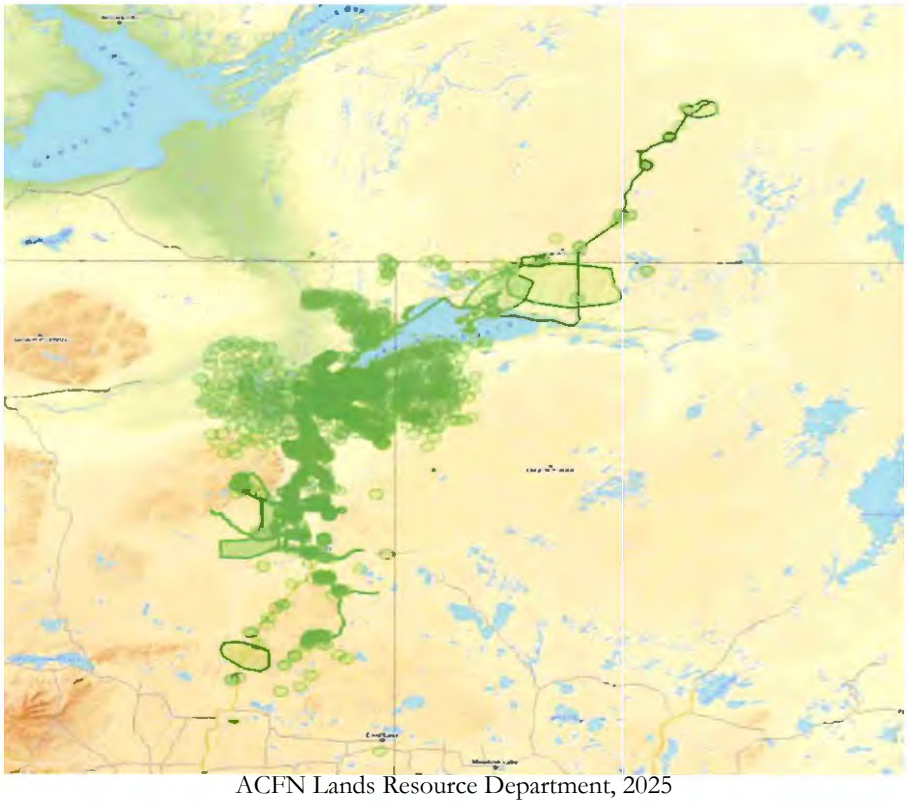
It is more than a little ironic that ACFN – and not the sitting Premier and Cabinet – is leading the efforts for Alberta to remain a part of Canada.

We are a Dënesuliné First Nation, the people historically known as *Etthen Eldeli Dené* – the Caribou-Eaters. We are part of the larger Dené Nation and have lived in these lands for at least seven thousand years. Our eight reserves are located within the Peace-Athabasca Delta, on Lake Athabasca and along the Athabasca River. They are all in Alberta.

But our way of life does not end at the Alberta border. Long before there was a Province of Alberta, long before there were any provincial or territorial borders, our ancestors moved freely throughout what is now Alberta, Saskatchewan, and the Northwest Territories. Our traditional territory – *Dënéndeh* – the Dené homeland – maps on to the migration patterns of caribou. I have included a map from the book *Footprints on the Land,* which illustrates the lands of the Dené at **Tab 1.** Our ancestors' mobile way of life was shaped by a landscape that does not fit well into modern, administrative boundaries.

Central to our ancestors' way of life was moving throughout this territory to take advantage of different hunting and gathering opportunities in different seasons and to follow the migration patterns of the woodland and barrenland caribou. Today our hunters routinely cross provincial and territorial borders in canoes, quads, snowmobiles or pickup trucks with their rifles, shotguns and ammunition. Those provincial and territorial borders do not dictate how our members exercise their Treaty rights.

Below is a map prepared by our Lands and Resources Management department, which we tendered as evidence in the *Chief Electoral Officer of Alberta v Sylvestre* case ("Reference Case" or *"Sylvestre"*)[1]. It shows the web of trails and pathways our members use to access their territory, largely crossing through a remote corner of the province with no roads.



ACFN Lands Resource Department, 2025

As you can see, our territory and rights exercise are bisected by the Alberta-Saskatchewan border and by the border with the Northwest Territories.

[1] 2025 ABKB 712.

At **Tab 2**, the sworn affidavit of Lori Cyprien, our Director of Dené Lands and Resources Management, describes these modern-day practices in detail and the implications of an international border. This material was prepared for the Reference Case before Justice Feasby, who describes ACFN's evidence at paragraphs 216-222 of his decision.

We signed Treaty 8 to protect our way of life – before Alberta even existed

This mobile way of life is why the central promise in Treaty 8 is so vital to ACFN. The Treaty 8 commissioners promised our ancestors at Fort Chipewyan that they would be able to maintain this complete freedom of movement throughout our traditional lands. That assurance was an essential condition on which Treaty 8 was signed.

Sir Clifford Sifton, Superintendent General of Indian Affairs, confirmed this in the official Report of the Treaty Commissioners: "…[W]e had to solemnly assure them … that they would be as free to hunt and fish after the treaty as they would be if they never entered into it. We assured them that the treaty would not lead to any forced interference with their mode of life...." Our ancestors would not have signed the Treaty if the Treaty commissioners had not made this promise.

This central promise and understanding aligns with the spirit and intent with which the Dené entered into Treaty 8. At **Tab 3**, I have included my affidavit from the Reference Case, which describes the fundamental importance of these treaty promises.

At **Tab 4**, I have included a letter from respected Elder and Officer of the Order of Canada, François Paulette. Elder Paulette describes how "[l]ong before the arrival of Europeans, Dené peoples had a history of entering into treaties and peace agreements with neighbouring nations. These agreements are grounded in ceremony, spiritual law, mutual respect and sharing of the land in the interest of peaceful coexistence." He affirms the central promise of Treaty 8 as one that protects the Dené way of life – our *Dëné Ch'ane* – and that the treaty is a relationship with the Crown not defined by the administrative borders of the provinces or territories.

I have also included extracts from key historical sources describing the treaty negotiations and our understanding of them at **Tabs 5-6**, including *As Long As This Land Shall Last* and *The Spirit of the Alberta Indian Treaties*. At **Tab 7**, I have included extracts from the book *Footprints on the Land,* which shares a first-hand history of our people, including much that we know from our Elders. Chapter 2, "The Original Affluent Society", outlines the history of our territory without borders and the importance of the caribou to our historically abundant and nomadic way of life.

Our freedom of movement beyond Alberta's borders, into Saskatchewan and the Northwest Territories and throughout our lands, is increasingly vital to us. The southern portions of our traditional lands have already been significantly compromised by oilsands development, with drastic impacts to the surrounding watershed and wildlife. Mobility throughout our lands in Saskatchewan and the Northwest Territories is not a luxury – it is part of the remaining viable territory where our rights can be exercised in line with our way of life, promised to us by the Crown.

An international border would destroy our way of life

This is why the prospect of Alberta independence – and the international border that would come with it – fundamentally threatens ACFN's way of life and its existence as a distinct people living on our traditional territories.

As referenced above, we put forward ample evidence of this in the Reference Case, which is in the Affidavit of ACFN's Director of Dené Lands and Resources Management, Lori Cyprien, at **Tab 2**. As Lori Cyprien's Affidavit notes, our traditional land use practices and rights exercise depend on freedom of movement across Alberta's boundaries. ACFN members regularly cross provincial and territorial boundaries to exercise their rights and follow the Seasonal Round – bringing with them firearms, ammunition, vehicles, and the remains of animals.

The proposal to establish an international border through the heart of *Dënéndeh* poses significant logistical and legal impediments not only to exercising our rights freely, but to our existence as a people. ACFN members use traditional routes to travel from reserves in Alberta to various hunting and fishing grounds in the Northwest Territories and Saskatchewan. Our traditional routes are unmarked and would be unlikely to qualify as "ports of entry". Being forced to use highways and roads as border crossings in the winter months would turn 100-kilometer journeys into 700-kilometer ones; we would be limited in the equipment, bait and animals we could bring across; and any members with criminal records could not cross our territories freely, an impediment that risks disproportionately affecting Dené in Alberta, given the overrepresentation of Indigenous people in the criminal justice system.

Justice Feasby relies on this evidence at paragraph 219 of his decision and agrees at paragraph 231 that any constraint imposed by an international border on First Nations' mobility rights – controlled in the same manner as any typical independent sovereign country – would contravene the Numbered Treaties.

This should be no surprise. The interference of borders with First Nations' exercise of their rights in this country is already a well-documented fact. I have attached at **Tabs 8-11** three government reports and a journal article on this issue:

- *Border crossing issues and the Jay Treaty*, report to the Standing Senate Committee on Aboriginal Peoples, 2016
- *Report on First Nation Border Crossing Issues,* report to the Minister of Indigenous and Northern Affairs, August 31, 2017
- *Indigenous Mobility and Canada's International Borders: Reflecting Back and Looking Forward*, report by IRCC and CBSA, 2024
- Norman Alexander Easton*, King George got Diarrhea: the Yukon-Alaska boundary survey, Bill Rupe, and the Scottie Creek Dineh*, Alaska Journal of Anthropology vol. 5, no. 1 (2007)

These reports document the significant challenges faced by First Nations people crossing international borders, including a lack of recognition of our inherent rights and the array of federal laws, regulations, and policies that abrogate our rights and threaten the survival of our culture. Even where international agreements – like the Jay Treaty – are in place to permit First Nations to move freely between countries to exercise their rights, significant challenges persist. As Justice Feasby found at paragraph 232 of his

decision, "rights under a treaty between independent countries are different from and less certain than constitutional rights."

At **Tab 12**, I have included a recent story of a resident of the Northwest Territories who faces being separated from his family and deported to Alaska. This story illustrates how the administrative state operates in Canada, and how arbitrary international borders through our traditional territories can literally tear our people apart.

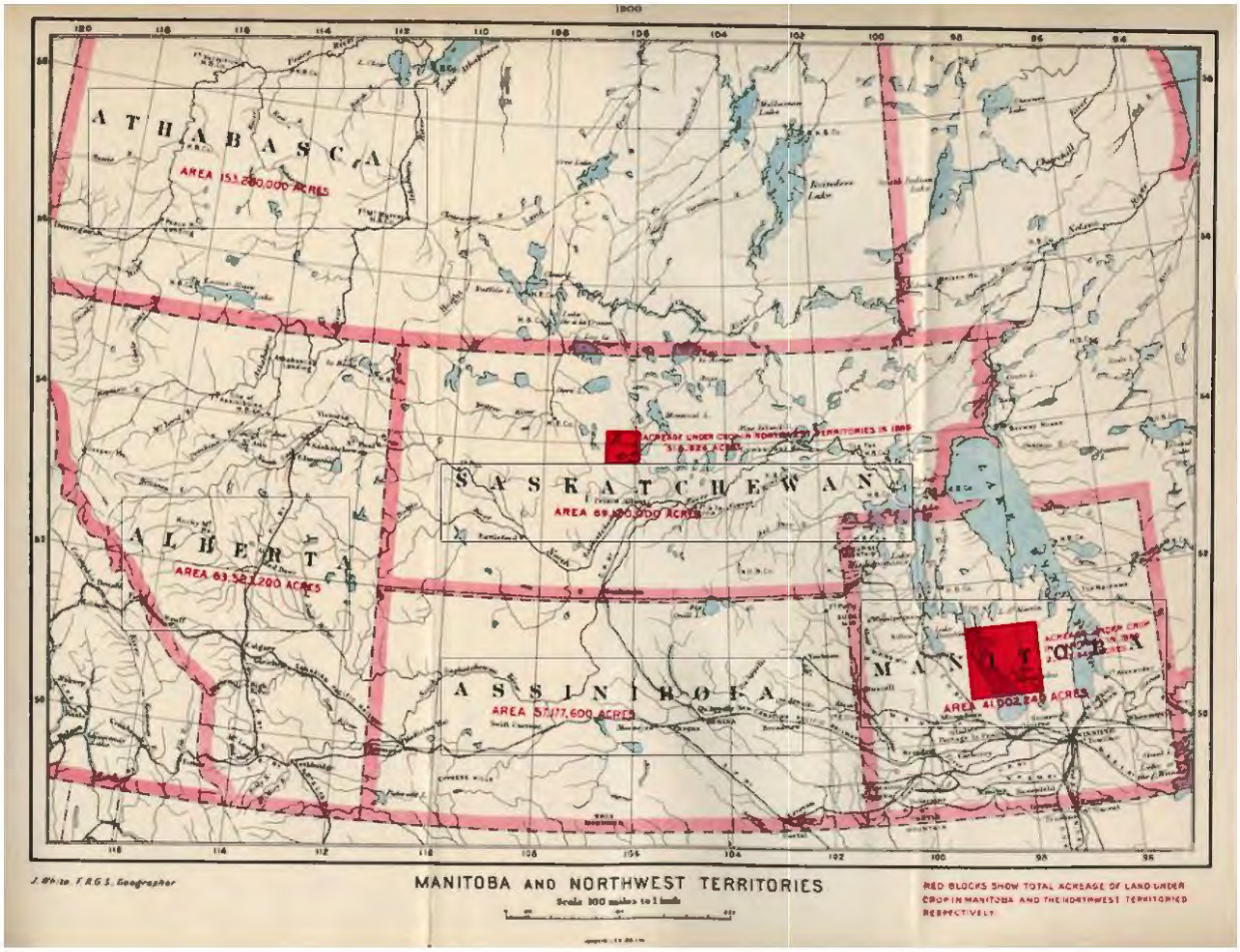
Indeed, the Government of Alberta continues to take positions in court that any cross-border mobility right of Indigenous peoples would be incompatible with Crown sovereignty. At **Tab 13**, I have included an extract from Alberta's submissions to the Supreme Court of Canada in the *R. v. Desautel* case, in which Alberta stated it's view that an international border and the territorial sovereignty it represents trumps Indigenous mobility rights. That is of grave concern for us now that Alberta independence is being discussed, as the new international border would cut right across our traditional territory. Those borders would run along administrative boundaries that are totally arbitrary and would not be drawn in any way that is respectful of our way of life, our ancestral territory within *Dënéndeh*, or even the boundaries of Treaty 8.

We have been here since time immemorial – Alberta is a recent creation of statute

Our deep history in this place stands in stark contrast to the claims Alberta makes to it. Alberta did not exist when Treaty 8 was signed. At the time of Treaty 8, "Alberta" was just a district of the Northwest Territories. But even that district called "Alberta" did not extend into our territory in the Peace-Athabasca Delta and Lake Athabasca. "Alberta" only extended to south of Lesser Slave Lake. Our territory was entirely contained in another district of the Northwest Territories called – more appropriately – "Athabasca."

Attached at **Tab 14,** is a collection of maps taken from the Atlas of Canada[2] tracing the territorial evolution of the country from 1867 until the creation of Alberta, including maps of Treaty-making in Canada during that period.[3]

[2] https://atlas.gc.ca/ette/en/index.html
[3] https://www.rcaanc-cirnac.gc.ca/eng/1100100032297/1544716489360



flickr.com Manitoba Historical Maps Photostream/University of Manitoba: Elizabeth Dafoe Library: Map Collection

Professor Kent McNeil has described Alberta's creation in a report that I have attached at **Tab 15**. Alberta was created out of the Northwest Territories in 1905 by Parliament under the *Alberta Act*. Section 2 of that Act describes the boundaries of the province, which Professor McNeil notes are understood as "totally arbitrary" and that their creation reflected little understanding of the geography of the territories, or the existing boundaries of Treaties 4, 6 and 8.

Professor McNeil also describes how when Alberta was created, that it did not bring any lands or resources with it into Confederation. He quotes Sir Wilfred Laurier describing Alberta and Saskatchewan and comparing them to the original four provinces:

> They never had ownership of the lands. Those lands were bought by the Dominion government and they have remained ever since the property of the Dominion government and have been administered by the Dominion government. Therefore I say the two cases are not in any way parallel; they are indeed absolutely different. When the provinces which I have named came into confederation they retained the ownership of their lands; but when the two new provinces came into the Dominion, it cannot be said that they can retain the ownership of their lands, as they never had the ownership. (emphasis added)

Professor McNeil highlights how, with the transfer of public lands to Alberta in 1930 by the *Natural Resources Transfer Agreement*, there was an understanding that the province would remain in Canada and use its lands and resources to contribute to the Canadian economy. Paragraph 1 of the *Natural Resources Transfer Agreement* also provides that what Alberta received was "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same." The transfer would never have taken place had Alberta's separation been contemplated, especially given that the transfers of those land and resources were subject to Indigenous rights and interests.

In short, Alberta brought nothing with it when it joined Confederation. Any claim Alberta has to these lands would solely be from these acts of charity by the Government of Canada. Alberta should not be permitted to leave with the lands and resources that the Treaty brought into Confederation – lands that Indigenous people have taken care of for millennia. I have said this before – anyone who wishes to leave these lands is free to leave with all the lands they brought with them – that is to say, with nothing.

We have a right of self-determination – Alberta does not

We the Dené have been widely recognized as having the right of self-determination for decades. We have exercised this right since time immemorial, and in entering into treaty with the Crown. Despite decades of encroachment by industry and government, we have remained a strong and distinct people and we have never stopped asserting our right of self-determination. At **Tab 16**, I have included a copy of the " Dené Declaration" issued at Fort Simpson in 1975, which put the federal, provincial and territorial governments on notice that the Dené would assert our rights as a people and "ask that our rights as a people for self-determination within Canada be respected."

At **Tab 17**, there is a copy of *Dené Nation: An Analysis*, the 1994 report to the Royal Commission of Aboriginal Peoples. The third part of this report examines the Dené Nation's continued actions in asserting our self-determination. The report correctly observes that the "Dené, as Indigenous Peoples have always had the capacity to be self-determining: the challenge for them during the past 25 years has been to persuade non-Dené governments that they can be self-governing and self-determining within the state of Canada and by modern standards." It goes on to say that progress on that front had been made, and in the years since that report was issued a great deal more progress has been made both domestically and internationally.

Our right of self-determination is further affirmed through the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which Canada endorsed, and then legislatively affirmed its application into domestic law through the *United Nations Declaration on the Rights of Indigenous Peoples Act*. Indigenous peoples' right of self-determination is not an open question, it is established and inextricably bound in international and domestic law, the Treaties, and inherently in our own legal orders, customs, traditions, governance systems and ways of living.

At **Tab 18**, I have included a report from Professor Nigel Bankes on the right of self-determination and what constitutes a "people" at international law for the purposes of asserting a distinct right of self-determination. Professor Bankes' report explains that a people at international law is one "with its own social, cultural, and political attributes richly rooted in history". Peoples capable of asserting a right of self-determination have distinct and separate rights of self-determination from those held in common

with all the citizens that live within the nation state. The Dené, as a distinct and proud people, have this right of self-determination.

Residents of Alberta – on the other hand – have no claim to being a "people" at international law, and certainly not one with any claim to our territory. Residents of Alberta also have no collective claim to "external" self-determination, since there is no "Albertan" collective that can claim any history of colonial subjugation that the right of self-determination is intended to address. Quite the contrary, according to Professor Bankes:

> The population of Alberta exhibits tremendous ethnic, cultural and racial diversity that does not correlate with identification of a people that shares a cultural, political and linguistic experience rooted in history… [R]esidents of Alberta do not qualify as a people or rights holder capable of asserting a right of self-determination distinct and separate from the right of self-determination held in common with all citizens of the nation state of Canada.

As Professor McNeil describes, Alberta was a district of the Northwest Territories that was given the benefit of becoming a new province in 1905 and then was given – without any compensation or consideration of any kind – a free gift of land and resources from the federal government in 1930.

Albertans have occupied the highest offices in the country, as well as leading positions in business, finance and law. To call Albertans an oppressed people and to assert that Albertans share the struggles of colonized people is as offensive as it is absurd.

Alberta's separation from Canada would violate our rights

We understand Treaty 8 as a sacred covenant of peace and friendship. In treating with the Crown, we agreed to share the land in exchange for protection from encroachment by white settlers. We have always sought to co-exist in peaceful relationships based on recognition of our right of self-determination.

As Elder Paulette explains in his letter, at **Tab 4**:

> Dené law is based on balance, non-interference, kinship, and shared responsibility. This includes respect for other nations and for newcomers who live among us. The treaty relationship reflects these principles: separate ways of life co-existing without interference, governed by mutual respect.

Justice Feasby ruled in his decision in *Sylvestre* that Alberta's secession from Canada would contravene the constitutionally protected Treaty rights of ACFN and other First Nations by interfering with their mobile way of life. At paragraph 231 of his decision, Justice Feasby confirmed that the Treaty recognized the right of our people to move around our territory to exercise our way of life, and that any constraints on our mobility and way of life imposed by an international border would contravene the Treaties.

Professor Bankes' report at **Tab 18** highlights an advisory opinion of the International Court of Justice which suggests that that States must take particular care not to impede or impair the right of self-

determination by allowing the partition or detachment of part of a territory over which a people may claim the right of self-determination, and that peoples are entitled to exercise their right of self-determination in relation to their territory as a whole. Our right of self-determination is tied to respect for the integrity of our entire territory and our ability to maintain our way of life and exercise our rights throughout our lands as a people. International law and Treaty 8 reaffirm everything we know about our right of self-determination and protecting our *Dëné Ch'ane*.

It is inconsistent with the honour of the Crown, Dené law and international law for the Government of Alberta to throw open the door to these violations to the general public in a popular referendum. The Government of Alberta, Premier and Cabinet are under an honourable obligation to protect and implement the treaties, which the Supreme Court of Canada has confirmed over and over again.

International law requires this too – a treaty party cannot in good faith facilitate breaches of the treaty and harm a treaty partner. It has a duty of good faith and due diligence to uphold the treaty. Professor Bankes has made this clear in his report. This is because a treaty is not just a document – it is a sacred relationship.

Our law and protocol demand that if you are considering changes like this, that you come to our leadership first, before opening the question to the public. As Elder Paulette has made clear in his letter at **Tab 4**, changes to the Treaty relationship without solemn dialogue in the spirit of reconciliation would be a profound breach of Dené law.

This referendum will destroy our relationship

Justice Feasby was clear that it was First Nations' consent to non-Indigenous settlement through the Treaties that led to the creation of Alberta. It is our ongoing commitment to honour the Numbered Treaties that legitimize Alberta today. First Nations are founding partners in the creation of Alberta. We cannot simply be ignored or bypassed by a majority vote among newcomers in favour of secession.

Unilaterally initiating a process that would change the Treaty – without involving us – is a profound breach of the Treaty and of our rights and relationship under it. Elder Paulette tells us that changing the Treaty is beyond our authority today, as it was entered into for future generations, for as long as the sun shines, the river flows, and the grass grows. For the Government of Alberta to engage in a question that threatens the sacredness of our Treaty before speaking with our people is an assault on our rights, and our relationships as Treaty partners with the Crown.

As Elder Paulette notes:

> Our ancestors could never have anticipated that Alberta would throw open the question of fundamental changes to the treaty and treaty relationship to the general settler public before coming to speak with us Dené. To do so would be a profound breach of Dené protocol – throwing central questions about our relationship to the public at large before discussing them with us and our leadership first.

This central principle is a clear bright line that may be drawn from Dené law, through the doctrine of the honour of the Crown, to the international law of treaties. Unilateral action to change the treaty and

alter our relationship and the rights inherent in our Treaty with the Crown is simply wrong. It violates all of these foundational principles of domestic, international and Dené law.

Given your government's official position *against* Alberta secession, it would be unconscionable for you, as the Premier and Cabinet, to nevertheless choose to initiate a process that could alter or end the Treaties – over the objection of *all* the representatives of the Treaty parties and without the participation of First Nations.

Finally, I want to turn to the darker forces that have already been unleashed by the secessionists.

As you all now know, it was the assumption of racial and cultural superiority of white people over Indigenous people that led governments in the past to impose foreign ways of life on our peoples.

Indeed, there is evidence already of those old ghosts, and the hatreds and racial prejudices that they feed, being stoked by this referendum – and it has not even started. You do not need to sit long in any of the Townhall meetings held by the secessionists to hear harmful and divisive racist stereotypes being stoked. I have attached at **Tab 21,** an affidavit which includes at Exhibit H, a speech by Mitch Sylvestre himself about "white replacement" theory. I have experienced this myself and so have my councillors and community members. First Nations people all across Alberta are experiencing it. I have attached a few of the more egregious examples here at **Tab 19**. The combination of ethnic nationalist sentiment, bigotry and violence that is evident from these posts is a profound concern for our people.

The individual responsible for saying, on April 10, 2026 the date ACFN was awarded a stay of the petition process by the Court of King's Bench "Game on your bastards. This is my life's work, I'll teach an army your stupid games", has started a group calling themselves the "Centurion Project". Named for a class of Roman military officers with biblical connections, the group has since illegally accessed an extremely sensitive electors list and created a searchable database for additional unauthorized users to view that information. Attached at **Tab 23** is a CBC news story documenting a court injunction granted in favour of the Chief Electoral Officer seeking to have that database removed.

This should be no surprise. The same thing happened in Quebec during its referendum in 1995. Attached at **Tab 20** is a 2005 article by Professor Julian Castro-Rea that describes the "Clash of Nationalisms" arising from the Quebec experience, and the harmful stereotypes that have plagued the relationship in the decade that followed.

Calling a referendum on Alberta independence at this moment is reckless. As you can plainly read in the affidavit at **Tab 21**, advocates for independence are actively soliciting interference and recognition from hostile foreign powers which, in the event of a successful referendum, would create a profound constitutional crisis. Foreign actors are already interfering in the political dialogue in Alberta, spreading disinformation and undermining our democracy. I have attached a recent report from the Canadian Digital Media Research Network documenting this interference at **Tab 22**.

Given the anti-Indigenous racism, active foreign interference, disinformation campaigns, and breaches of election law that are already evident throughout the separatist's petition campaign, calling a

referendum on Alberta independence would recklessly endanger our people, our Treaty rights and our treaty relationship, not to mention Confederation itself.

Conclusion

Alberta has an opportunity to engage in meaningful reconciliation with ACFN and the other Treaty Nations. There is an opportunity to establish a new relationship and move forward in a good way. This is the real pathway to prosperity for this province.

But calling a referendum will not achieve any of that. You do not even have a mandate from Albertans to take such a step. Your party did not run on a platform of independence in the last election, nor did it seek a mandate to bring an independence referendum.

It is time for your government to step back from the perilous path that the separatists are rushing to take us down. I call on you to do so now.

Respectfully,



Chief Allan Adam

Box 366, Fort Chipewyan, AB, Canada, T0P 1B0 | Tell: 780.697.3730 | Fax: 780.697.3500
info@acfn.com | www.acfn.com

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2	Affidavit of Lori Cyprien, sworn 15 October 2025, filed in *Chief Electoral Officer of Alberta v Sylvestre,* 2025 ABKB 712.
3	Affidavit of Chief Allan Adam, sworn 15 October 2025, filed in *Chief Electoral Officer of Alberta v Sylvestre,* 2025 ABKB 712.
4	Letter of Francois Paulette (1 May 2026).
5	Rene Fumoleau, *As Long as this Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939,* (Toronto: McClelland and Steward Ltd., 1975) 30-31, 40-47, 50-77, 127-131, 232-236, 272-276.
6	Richard Daniel, “The Spirit and Terms of Treaty Eight*”* in Richard Price *The Spirit of the Alberta Indian Treaties* (Montreal: Institute for Research on Public Policy, 1979) iii, 66-85, 92-100, 144-170.
7	“Chapter Two: The “Original Affluent Society” in *Footprints on the Land: Tracing the Path of the Athabasca Chipewyan First Nation* (Athabasca Chipewyan First Nation, 2003) 29-35.
8	Canada, Parliament, Standing Senate Committee on Aboriginal Peoples, *Border crossing issues and the Jay Treaty*, 42nd Parl, 1st Session, (June 2016) (Chair: Lillian Eva Dyck).
9	Canada, Ministry of Indigenous and Northern Affairs, Fred Caron, Minister’s Special Representative, *Report on First Nation Border Crossing Issues* (Ministry of Indigenous and Northern Affairs, 31 August 2017), online: https://www.rcaanc-cirnac.gc.ca/eng/1506622719017/1609249944512.
10	Canada, Immigration, Refugees, and Citizenship Canada (IRCC) and Canada Border Services Agency (CBSA), *Indigenous Mobility and Canada’s International Borders: Reflecting Back and Looking Forward*, (IRCC, 2024).
11	Norman Alexander Easton, “King George got Diarrhea: the Yukon-Alaska boundary survey, Bill Rupe, and the Scottie Creek Dineh”, (2007) 5:1 Alaska Journal of Anthropology 95.

12 Sarah Rogers, “Love at the Border” (21 August 2025) 133/134: *Inuktitut Magazine*, online: https://itk.ca/love-at-the-border/.

13 Factum of the Intervener, Attorney General of Alberta, submitted 9 April 2020, in *R. v. Desautel* 2021 SCC 17, p. 1, 4-6.

14 Canada, Natural Resources Canada, “The Atlas of Canada – Territorial Evolution from 1967 to 2017”, online: https://atlas.gc.ca/ette/en/index.html.

15 Kent McNeil, “Alberta’s Creation: A Historical and Legal Analysis” (27 April 2026).

16 General Assembly, Indian Brotherhood of NWT (i.e. Dene Nation), *The Dene Declaration* (Fort Simpson: 19 July 1975).

17 Antoine Mountain and Susan Quirk, Report to the Royal Commission on Aboriginal Peoples, *Dene Nation: An Analysis*, (Ottawa: Royal Commission on Aboriginal Peoples,1994), online: https://publications.gc.ca/site/eng/9.829970/publication.html.

18 Nigel Bankes, “International Law and Secession” (27 April 2026).

19 Anonymous Facebook post with comments, two twitter posts from David Parker (April 10), Facebook post by Alberta Separation with comments, additional Facebook comments.

20 Julian Castro-Rea, “La Nation, C’est Moi: The Encounter of Quebec and Aboriginal Nationalisms” (2005) 13:3 & 14:1 Constitutional Forum 65.

21 Affidavit of Lily Polenchuk, sworn 30 January 2026, filed in *Athabasca Chipewyan First Nation v Chief Electoral Officer et al.* (under reserve).

22 Canadian Digital Media Research Network Incident Report, “Slopaganda: the Inauthentic YouTube Network Selling Secession to Albertans” (21 April 2026), online: https://www.cdmrn.ca/slopaganda-the-inauthentic-youtube-network-selling-secession-to-albertans.

23 CBC, “Alberta separatist group ordered to pull down list with millions of voters’ personal information” (1 May 2026), online: https://www.cbc.ca/news/canada/edmonton/livestory/elections-alberta-electors-list-9.7182971.

24 List of Recipients of List of Electors.

CHAPTER ONE

In the Footsteps of the Glaciers

Lands of the Northern Athapaskan-Speaking People (Dene) The Northern Athapaskan-speaking people can be collectively referred to as Dene, or "the people." The Mackenzie Dene include the Kutchin, Hare, Mountain, Bear Lake, Dogrib, Yellowknife, Slave and Chipewyan peoples.



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COURT FILE NUMBER	2503 15116
COURT	ALBERTA COURT OF KING'S BENCH
JUDICIAL CENTRE	EDMONTON
APPLICANT	CHIEF ELECTORAL OFFICER
RESPONDENTS	MITCH SYLVESTRE and MINISTER OF JUSTICE OF ALBERTA
AMICI CURIAE	MATTHEW WOODLEY and ERIC ADAMS
DOCUMENT	**Affidavit of Lori Cyprien**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Olthuis Kleer Townshend LLP 4902 49th Street, 3rd Floor, PO Box 1470 Yellowknife, NT X1A 2P1 Phone: 867-675-1131 Fax: 867-675-1269 Kevin Hille khille@oktlaw.com Counsel for the Proposed Intervener, Athabasca Chipewyan First Nation



AFFIDAVIT OF LORI CYPRIEN

1. I, Lori Cyprien of Fort McMurray, Alberta, SWEAR AND SAY THAT: I am a member of Athabasca Chipewyan First Nation ("**ACFN**") and I am the Executive Director of ACFN's Dené Lands and Resource Management ("**DLRM**") office. I have personal knowledge of the facts set out in this affidavit, except where I have stated they are based on information and belief. In that case, I believe them to be true.

2. I swear this affidavit in support of ACFN's intervention in the above noted proceeding, bearing Court File Number 2503 15116. The proceeding concerns the constitutionality of the proposed citizen initiative petition of Mitch Sylvestre for Alberta to separate from Canada, submitted to

the Chief Electoral Officer of Alberta (the "**Proposal**"). ACFN's position is that its members' section 35 rights will be contravened by the Proposal. In particular, ACFN is concerned that an international border transecting its traditional territory will restrict its members access to their hunting and fishing grounds in the Northwest Territories and Saskatchewan. My evidence is intended to describe in greater detail the nature of this rights exercise and how it could be impacted by international border controls.

My Background

3. I am a member of ACFN. I was born in Fort Chipewyan and learned the traditional ways of our people from my parents and family. My father was once Chief of ACFN and before that he was a trapper and responsible for our ancestral trapline near Point Brule reserve.
4. I grew up with a passion for our land and a desire to protect it from the steady and relentless encroachment of development and industry that too often destroyed large tracts of land without any concern or appreciation for its ecological impact or importance to our people. My father told me that in order to protect our lands from this development I would have to learn their language, so I went away to study science in Fort McMurray. I have since earned three degrees in the environmental field. A diploma in Biological Sciences from Northern Alberta Institute of Technology, a degree in Natural Resource Science from Thompson Rivers University and finally a MSc in Environment and Management from Royal Roads University.
5. I returned to work for the DLRM seven years ago as part of the Lands and Rights group. I spent seven years as manager and then Director of that group before being promoted to Executive Director of the DLRM in August, 2025. I continue to spend as much time as possible on the land. Point Brule reserve is accessible by ATV or boat and we have an historic cabin nearby where I bring my son in the summers. Now that my father is older my brother is the senior trapper responsible for our family trapline, and he is fortunate to be able to spend much

of his time on the land. Together we are passing down our knowledge to the next generation, teaching them to respectfully harvest from the land, which include berries, medicine, fish and wild game. We learn to process and smoke meat and care for our heritage.

Background regarding Dené Lands and Resources Management

6. The DLRM was originally established to create capacity for the community to work with industry and government to assess the environmental impacts of industrial development and government policy on ACFN territory. It has since grown into an important organization that is responsible for the oversight and management of activities on ACFN's traditional and reserve lands, ecological monitoring, and the preservation of our traditional knowledge. This includes engaging in consultation with government and industry on projects within ACFN's traditional territories. To do this, the DLRM requires a detailed understanding of both the traditional use of our lands and resources, and the provincial and federal regulatory frameworks that apply to and impact industry development and the traditional use of our lands and resources.

7. The Lands and Rights program that I oversaw for seven years is responsible for understanding and protecting our traditional lands and practices. It is comprised largely of our Community-Based Monitoring team which has been responsible for the ongoing study of our lands and resources for over a decade, including things like vegetation and invertebrate studies and the collection of ecological data on things like water and air quality. Our Guardians program is also responsible for patrolling our lands and reporting back to leadership to help us better understand and support the cultural way of life of our members. We have also been developing our own policies on things like caribou, buffalo and water which are meant to accurately reflect the relationship of our people to our lands and resources.

8. Our Regulatory and Industry Relations team is responsible for reviewing development project applications and existing project processes to identify developmental impacts related to ACFN. They deal with the regular intake and processing of notices from industry regarding small scale development projects, as well as larger projects with more grave impacts on our territory. These projects include oil sands development, but also other resource extraction projects like open pit mining, and uranium mining.
9. The Regulatory and Industry Relations team is also responsible for funding and conducting Traditional Land Use Studies ("**TLUS**"). TLUS are a form of social science investigation that brings together community knowledge and traditional ecological knowledge with ethnographic, archival, and sometimes archaeological information to provide clarity on places and values that are important to ACFN's culture, economy, and heritage. Reports are based on interviews with ACFN Elders and knowledge holders and on a review of existing land-use information with the objective of understanding the effects of a given project or proposal on ACFN's traditional use values and interests.
10. Data collected through TLUS and by the Land and Rights program more generally concerning the traditional use of our lands and resources are stored within ACFN's confidential research database, the Community Knowledge Keeper ("**CKK**"). CKK is a mapping, data management, and integrated consultation tracking and response system used by First Nation and Métis communities in Canada to manage the diverse records created through research and consultation processes.
11. The data within the CKK demonstrates extensive traditional land use extending across provincial and territorial boundaries and reflects the continuation of the Denesųłiné way of life practiced by ACFN's ancestors. As signatories to Treaty No. 8, ACFN members exercise their

Aboriginal and Treaty Rights throughout our ancestral homelands as well as the broader Treaty territory.

12. In the following paragraphs I draw on my knowledge and experience as Executive Director of the DLRM and as an ACFN member to outline how the exercise of rights by our members will be affected by the Proposal for Alberta to separate from Canada. In particular, I will describe the significant extent to which our traditional land use crosses provincial and territorial borders, how ACFN members continue to move throughout this territory to exercise our rights and practice our way of life, and a few ways in which the Proposal would interfere with ACFN's cross-boundary traditional land use.

(a) ACFN's Traditional Land Use Crosses Provincial and Territorial Borders

13. Although ACFN's reserves are located within Alberta, the full scope of our ancestral territories span a vast area encompassing northeast Alberta into the Northwest Territories and across northwest Saskatchewan. A map of ACFN's traditional territory can be found attached as **Exhibit A.** This map was prepared for the purposes of consultation with federal and provincial governments and depicts ACFN's "Consultation Area". While it does not capture the complexity of ACFN's relationship to our traditional lands or our exercise of treaty and aboriginal rights, it is a fair depiction of the territory ACFN's people have lived in, cared for, and harvested within since time immemorial.

14. The CKK contains thousands of datapoints on the reported hunting, fishing, and harvesting activities of community members within ACFN's traditional territories. Mapping of this data can be seen at **Exhibit B** (hunting), **Exhibit C** (fishing), **Exhibit D** (trapping), and **Exhibit E** (all subsistence activities). These maps illustrate several important examples of the traditional land use of ACFN community members. This spatial data demonstrates the continued exercise

of our rights across provincial boundaries, particularly surrounding Lake Athabasca in the Northwest corner of Saskatchewan and into the Southeast corner of the Northwest Territories.

15. Hunting activities recorded in the CKK show ACFN members hunting caribou and muskox in the Northwest Territories. They also show numerous ACFN members hunting in Saskatchewan for big game such as caribou, moose, bear, and deer; smaller fur bearing animals including, wolf, fox, lynx, fisher, mink, marten, weasel, squirrel, beaver, muskrat, coyote, and rabbit; and birds including duck, and goose. The CKK also shows various ACFN members fishing for trout, jackfish, pickerel, whitefish, pike, and white sucker in Saskatchewan, including in waterways, such as Lake Athabasca, which straddle the Alberta-Saskatchewan border. ACFN families also maintain traplines in Saskatchewan and the Northwest Territories, with some bisecting the border with Alberta.

16. I know, and the data shows, that our community members rely on Treaty 8 territory in Saskatchewan for subsistence activities, including hunting, trapping, berry gathering, and fishing, among many other activities. In fact Edward Flett, an ACFN member living in Alberta, is currently president of the N22 trapping zone in Saskatchewan. Access to species like denίe (moose) in relatively undisturbed portions of Saskatchewan is especially important to ACFN members today given the amount of oil sands development and disturbance in ACFN's ancestral homelands in Alberta.

17. To exercise rights, ACFN members travel mostly by snowmobile and boat, over waterways between Alberta, Saskatchewan, and the Northwest Territories. These routes extend across Lake Athabasca, to key areas for ACFN traditional land use in Saskatchewan, including łuezą́n tué chogh (Carswell Lake), łuezą́n túaze (Cluff Lake), and the southern shore of Lake Athabasca. ACFN members additionally report several important and actively used land trails to traplines, cabins, and harvesting areas through La Loche, łuezą́n túaze, łuezą́n tué chogh,

and Patterson Lake, and a trail spanning over 25km from łuezą́n túaze to łuezą́n tué chogh. Transportation routes extend north of Lake Athabasca up through Fontaine Lake, Scott Lake and into the Northwest Territories.

18. These vital transportation routes provide ACFN members with access to our ancestral homelands, resource harvesting areas, cabins and homesteads that have been occupied for generations, including a portion of Trapline N22 which is held by ACFN community members. Other key areas include the north and east shores of Lake Athabasca where community members continue to hunt etthén (barren land caribou), and use Trapline N22 which is held by ACFN community members. ACFN members not only use these routes to get from point A to B, but engage in hunting, fishing, trapping, and harvesting along the way and throughout our traditional territories, across Alberta's borders with Saskatchewan and the Northwest Territories.

19. Almost 50 "Habitation Values" are recorded in the CKK in Saskatchewan. These are places like cabins and campsites that have been used for shelter and to reside by several generations of a family. Considering the small number of Respondents interviewed for the TLUS, the number of Habitation Values mapped is remarkable and indicative of ACFN's historical and continuing reliance on this area as a key part of their ancestral homelands. The CKK shows an additional 10 Habitation Values reported by ACFN members in the Northwest Territories.

20. Notably, the data is not a complete picture of traditional use practices of ACFN members. Indeed, ACFN's first TLUS focused on our traditional land use in Saskatchewan was conducted only in 2023 and ACFN has never conducted a TLUS focused solely on ACFN traditional use in the Northwest Territories. The data available thus provides only a snapshot of the traditional land use activities of ACFN members throughout ACFN's traditional territories.

(b) The Proposal Would Interfere with ACFN's Cross-Boundary Rights

21. Our traditional land use practices and rights exercise depend on freedom of movement across Alberta's boundaries with Saskatchewan and the Northwest Territories. ACFN members exercising their rights today enjoy complete freedom of movement across boundaries. An international border would significantly restrict this movement.

22. If Alberta's provincial boundaries became international borders, rights holders would be subject to Canada Border Services Agency ("**CBSA**") regulations regarding border crossings. An excerpt of the CBSA's requirements for border crossings are summarized in a May 9, 2024 reminder for outdoor enthusiasts, attached at **Exhibit F.** According to CBSA guidelines, ACFN members would be required to report to an official port of entry in order to cross the border. This would severely restrict their ability to use their traditional routes, which are often unmarked and unlikely to ever qualify as "official ports of entry". They would also be prohibited from importing essential equipment including live bait for catching fish. An excerpt of a Notice to the Industry regarding changes to the requirements for importing earthworms is attached at **Exhibit G.**

23. There are very few roads in this part of ACFN's territory. It would be completely impractical to cross using highway crossings, which are the most likely points for official ports of entry and border crossings. The closest highway crossing into Saskatchewan, for example, is 750 kilometers south near Cherry Grove. Between March and December, when the winter road is closed, this route is only possible by first taking a boat up the Athabasca River to Fort McKay. Once across the border, it would then be another 715 kilometers from there up to łuezą́n túaze. For context, this journey would be further than driving from Edmonton to Vancouver. As the crow flies, łuezą́n túaze is only about 100 kilometers from Fort Chipewyan.

24. Similar restrictions apply to private vessels like canoes and small boats. Our members would need to report to a reporting site or a telephone reporting site immediately upon entry into Canada and declare all firearms and food, plant and animal products before being approved to enter. An excerpt of travellers reporting requirements and exceptions can be found attached at **Exhibit H**.

25. Today, ACFN hunters also routinely cross provincial and territorial boundaries in canoes, quads, snowmobiles or pickup trucks with their rifles, shotguns and ammunition. This would subject them to the CBSA's firearm restrictions, which require firearms to be registered and presented to a border services officer. An excerpt of requirements with regard to entering Canada with a firearm is attached at **Exhibit I.**

26. In order to return home to Alberta with animals listed under the Convention on International Trade in Endangered Species ("**CITES**") harvested in Canada, such as Lynx, our members would need to get a CITES permit *before* leaving Canada. According to Environment and Natural Resources Canada, these take approximately 35 days to be issued. An excerpt of Canada's service standards for CITES permits is attached as **Exhibit J**. A screen capture of the CITES entry for Lynx canadensis taken from https://checklist.cites.org/ is attached as **Exhibit K.**

27. Additionally, non-citizens are inadmissible to Canada if they have been convicted of committing a crime. It is a generally recognized fact that Indigenous people in Canada are overrepresented in the criminal justice system. In light of this tragic reality, Indigenous Albertans including ACFN members are more likely to be inadmissible to Canada.

28. These are just a few examples of burdens our members would have to assume in order to exercise their treaty rights. There are many other issues, such as lack of recognition of inherent rights, that regularly plague Indigenous people trying to cross the border into Canada. This is

a problem that has been recognized by the Standing Senate Committee on Aboriginal Peoples. Excerpts of a Report on First Nation border crossing issues submitted to the Senate Standing Committee on August 31, 2017 is attached as **Exhibit L**, including a list of issues at Annex A.

SWORN BEFORE ME at Fort Chipewyan, Alberta, this 15 th day of October, 2025.

(Commissioner for Oaths in and for the Province of Alberta)

Julia Margaret Cardinal
PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

01/01/26

A Commissioner for Oaths
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
My Commission Expires 01/01/26

(Signature)

Lori Cyprien
Print Name

This is Exhibit "A" referred to in the Affidavit of:

Lori Cyprien

□ Sworn / □ Affirmed before me this

15 day of October, 2025

JML

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia MARGARET CARDINAL 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

ACFN Consultation Area

Athabasca Chipewyan First Nation

1:3,600,000

0 25 50 75 100

Kilometres

Legend

- Consultation area
- Treaty 8 area
- ACFN reserves
- Parks and protected areas

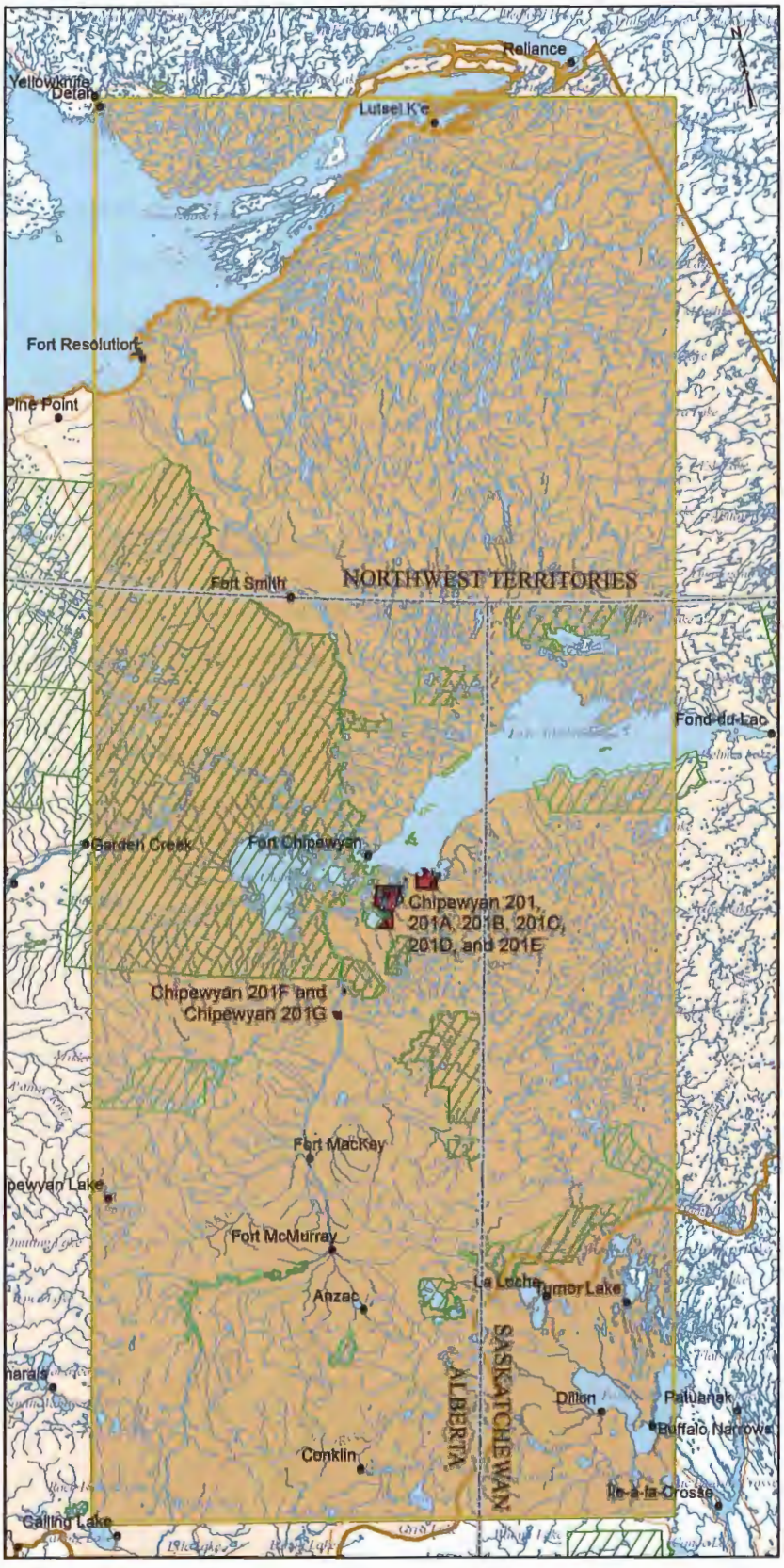
DRAFT

This map does not capture the complexity of ACFN's relationship to their traditional lands or the extent of the practice of treaty and aboriginal rights. Boundaries of the Consultation Area are subject to change over time as the recorded knowledge of ACFN land and resource use increases.

Map produced by Steven DeRoy of the Firelight Group on February 23, 2011. Base map data originates from the National Topographic System and Natural Resources Canada.

This map is preliminary, based on available information and constraints of time, budget and scope. This map is a living document and is intended to be amended and refined over time. It is not an expression of the extent of Athabasca Chipewyan First Nation's Aboriginal or treaty rights and interests. The data used to produce this map originate from multiple sources and are presented without prejudice. This map is property of the Athabasca Chipewyan First Nation and may only be reproduced with written permission.





This is Exhibit "B" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

Commissioner for Oaths, Justice of the Peace,

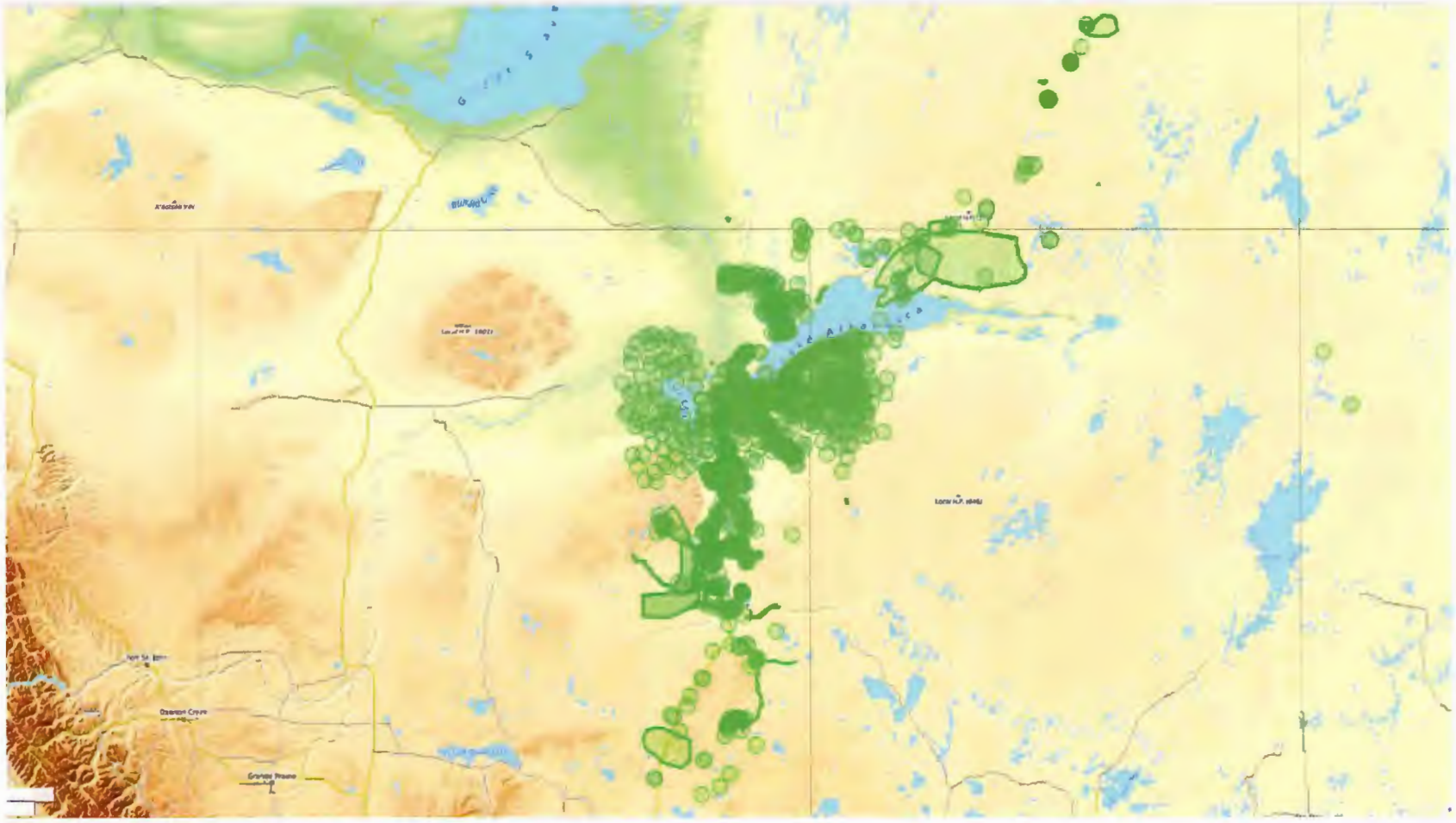
or Notary Public in and for Alberta

Julia Margaret Cardinal 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

CKK Map Illustrating Hunting Practices by ACFN Members



This is Exhibit "C" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

Commissioner for Oaths, Justice of the Peace,

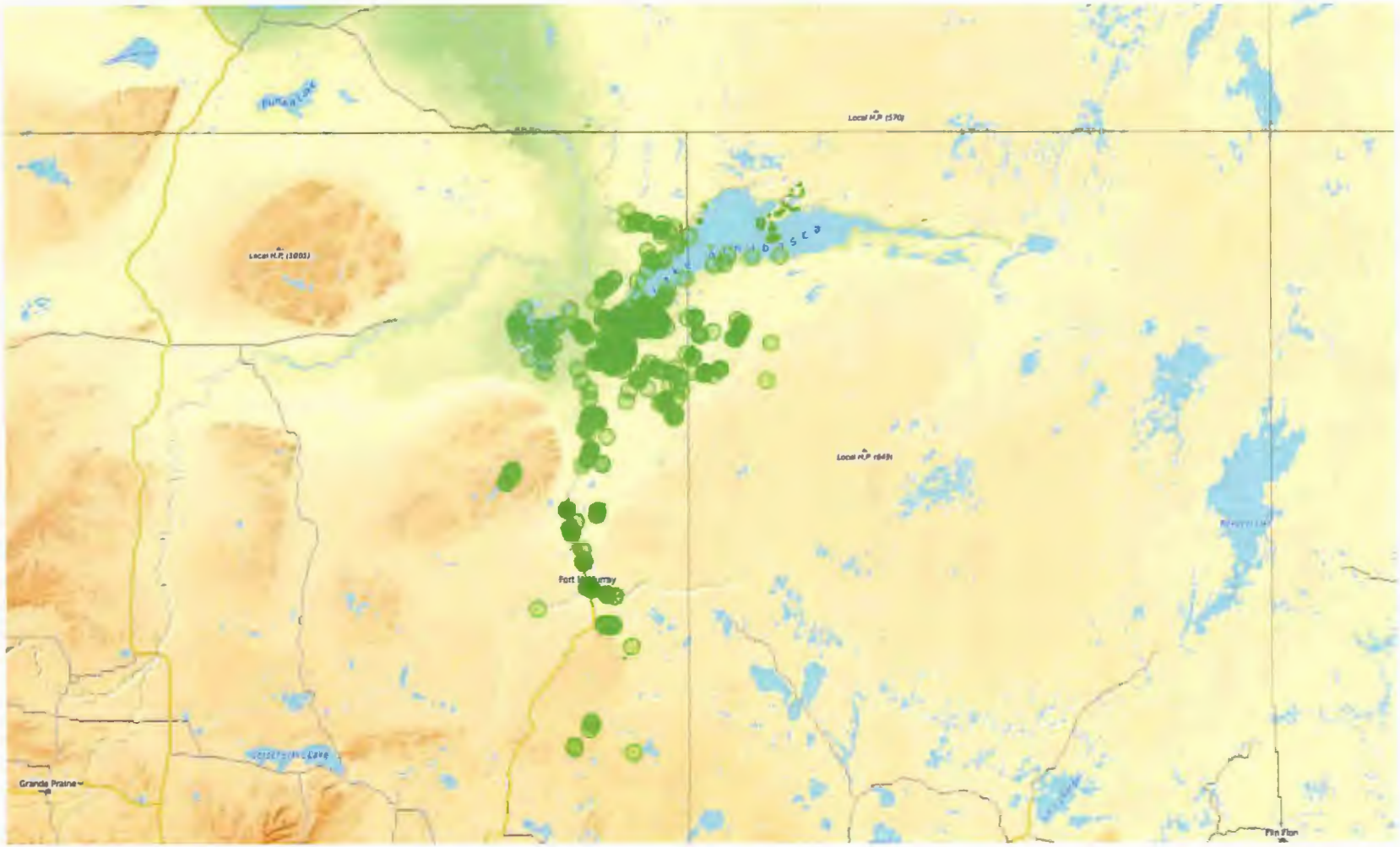
or Notary Public in and for Alberta

Julia Margaret Cardinal 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date 01/01/26

CKK Map Illustrating Fishing Practices by ACFN Members



This is Exhibit "D" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15th day of October, 2025

Commissioner for Oaths, Justice of the Peace,

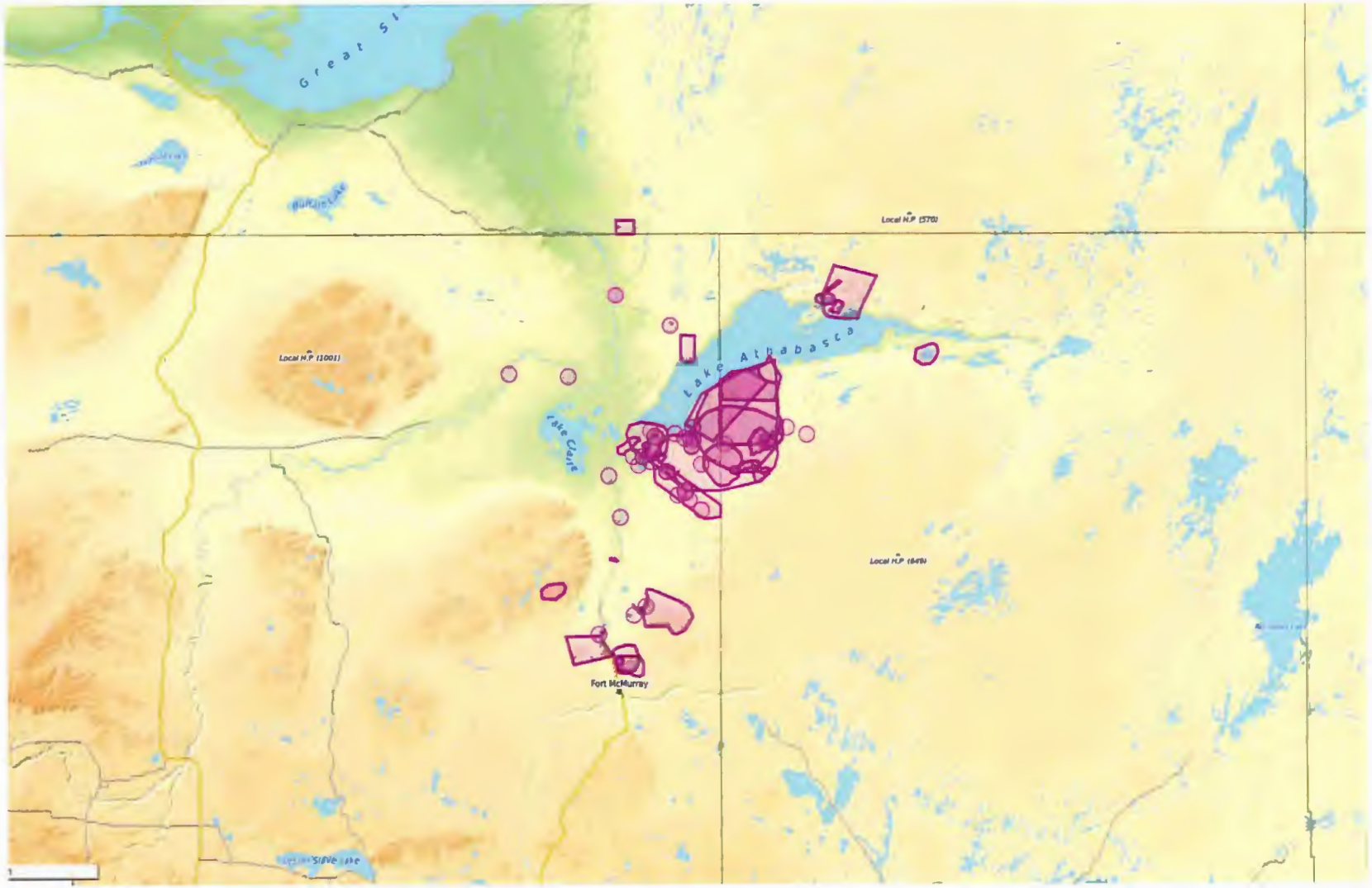
or Notary Public in and for Alberta

Julia Margaret Cardinal 01/01/26

Print Name and Expiry Date

A Notary Public in and for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

CKK Map Illustrating Fishing Practices by ACFN Members



This is Exhibit "E" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

JMC

Commissioner for Oaths, Justice of the Peace,

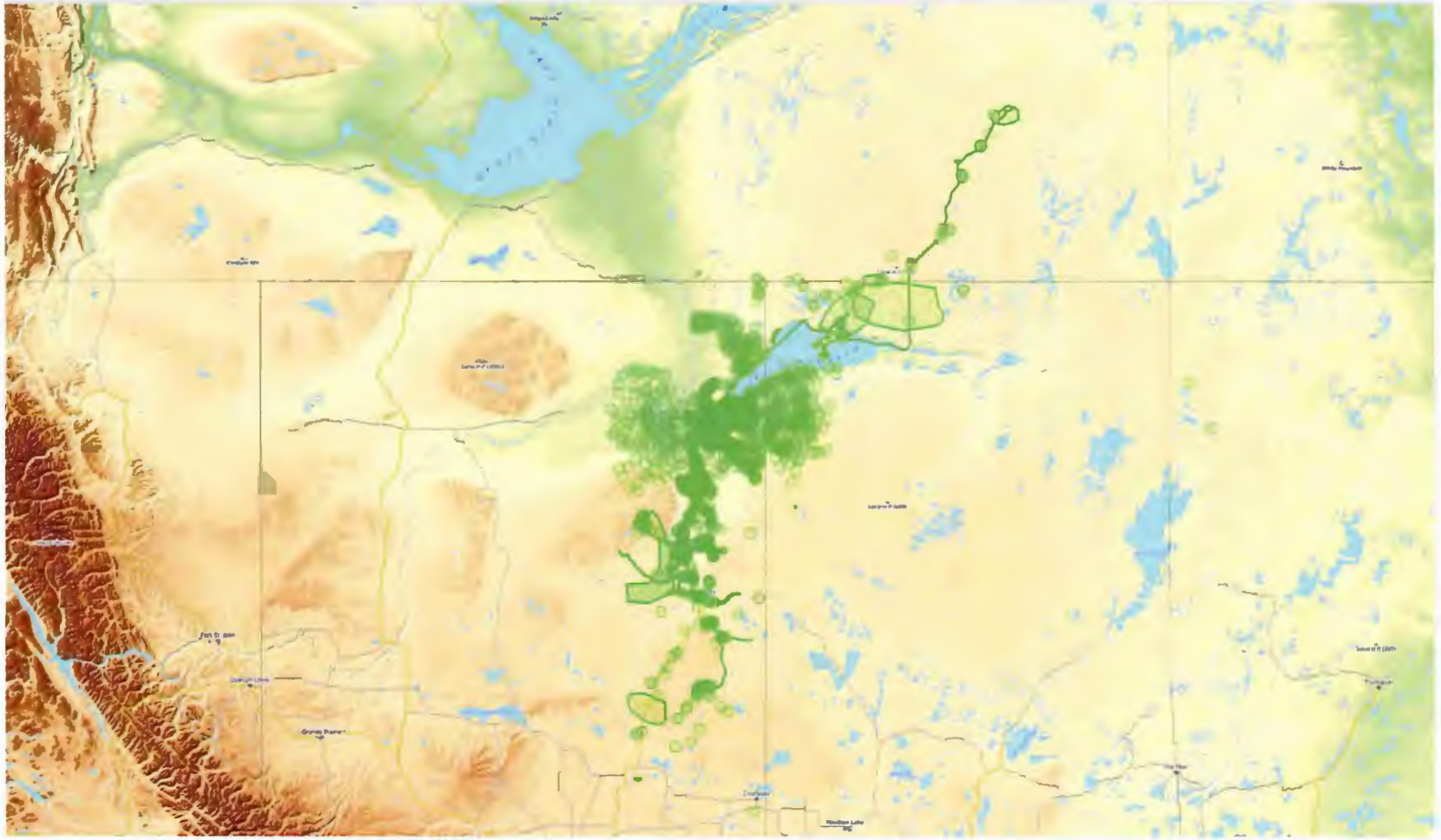
or Notary Public in and for Alberta

Julia Margaret Cardinal 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

CKK Map Illustrating All Subsistence Practices by ACFN Members



This is Exhibit "F" referred to in the Affidavit of:

Lori Cyprien

□ Sworn / □ Affirmed before me this

_____day of October, 2025

_____

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

_____

Print Name and Expiry Date

Government of Canada / Gouvernement du Canada

The CBSA reminds outdoor enthusiasts of reporting requirements when coming to Canada

From: Canada Border Services Agency

News release

May 9, 2024
Ottawa, Ontario

Calling all hikers, runners, cyclists, hunters, fishers, campers, horseback riders, ATV riders and boaters! With the warmer weather returning, the CBSA wants to remind you of your responsibilities when it comes to crossing the border into Canada. Whether coming to Canada by land or water, following these guidelines will help ensure a safe and enjoyable summer for all:

- Be aware of all entry requirements for coming to Canada before leaving on your trip. For more information, visit: Border Reminder Checklist.
- Report to an official port of entry, no matter how remote your location. The minimum fine for failing to report to the CBSA upon entry to Canada is $1,000. If you are a foreign national, non-compliance with these reporting requirements may affect your admissibility and ability to re-enter Canada in the future.

- Make sure you have all required identification and travel documents in hand.
- Entering Canada through a remote part of the country? There are special permits that you may be eligible for:
    - Remote Border Crossing Permit holders can cross the Canada-United States (U.S.) border in the following remote areas: Pigeon River through to and including Lake of the Woods, the Canadian shore of Lake Superior, Cockburn Island, Sault Ste. Marie (upper lock system) and the Northwest Angle Area.
    - The Pacific Crest Trail (PCT) is a long-distance hiking and equestrian trail on the Canada-U.S. Pacific Coast. To enter Canada via the PCT, you must obtain permission from the CBSA and carry a digital or paper copy of your entry permit with you at all times while in Canada.

Hunters:

- **Firearms**: You must declare any firearm you have with you to the CBSA. Be sure to check the rules on importing firearms and other restricted and prohibited goods, which includes certain knives.
- **Poultry and birds**: Carcasses of hunted wild game birds originating from the United States are permitted into Canada with a hunting permit. Check the latest Information for travellers: Restrictions on poultry and birds from the United States.
- **Bear Hunters**: Any bear bait imported for personal use that contains raw animal products or by-products (meat, fish, eggs, or milk products) is prohibited.

Campers: Bringing **firewood** from outside of Canada is not permitted as it could have invasive insects and/or diseases in it. Help protect our forests; buy local and burn local.

Advice for all travellers entering Canada by water; including fishers and boaters:

Be aware of all entry requirements for coming to Canada by boat before leaving on your trip. For more information, visit: Reporting requirements for private boaters.

- Help us protect Canada from invasive species:
  - Ensure all boats, trailers, vehicles, and other conveyances, are free of Zebra and Quagga mussels, whether they are alive or dead.
  - Ensure towed boats are cleaned, drained and dried.
  - Check official federal, provincial or territorial government websites for laws and regulations on bait for recreational fishing.
- Organizing a boating event and you will be in Canadian waters? You must contact the local CBSA office in your area as far in advance as possible and request that arrangements be made to accommodate the clearance of participants in your event.

Not sure? Ask a CBSA officer. The best thing you can do to save time is to be open and honest with the CBSA officer. Be sure to follow all instructions they provide to you. If you are not sure about what to declare, don't hesitate to ask. Our officers are here to help! You may also contact Border Information Service (BIS) line toll-free within Canada at **1-800-461-9999** for more information.

Associated links

- Plan your trip across the border
- Residents returning to Canada
- Border reminder checklist

This is Exhibit "G" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15th day of October, 2025

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia MARGARET CARDINAL 01/01/26

Print Name and Expiry Date

Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

Notice to industry - Changes to the requirements for importing earthworms into Canada

June 1, 2020

Beginning **October 1, 2020,** the following changes to the Canadian Food Inspection Agency's (CFIA) plant protection requirements for importing earthworms for commercial or personal purposes will come into effect:

- A plant protection permit will be required to import earthworms from the continental United States
- Plant protection requirements will not apply to aquatic earthworms
- The list of earthworms pre-approved for import will apply to earthworms of all origins, not just from the continental United States
- The CFIA will consider adding species that are present in the Canadian environment to the list of earthworms pre-approved for import

These changes follow a public consultation on a proposal to enhance alignment of the CFIA's earthworm import requirements with plant health risks and international plant protection principles.

Based on comments received during the consultation, the CFIA clarified and added a level of scrutiny to the process for adding to the list of earthworms pre-approved for import. The CFIA may add earthworms to the list:

- if five or more specimens are recorded from one site in Canada or if any number of specimens are recorded from two different sites and
- after consideration of:

This is Exhibit "H" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia Margaret Cardinal 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

Travellers

Reporting Exceptions

Background

The Conveyance Presentation and Reporting Requirements Modernization Act became law on June 19, 2017, thereby enacting new exceptions in the Customs Act to a person's obligation to present themselves and report their goods to the CBSA when entering Canadian waters.

Conditions for a Reporting Exception

Persons who enter Canadian waters are not required to present themselves and report their goods to the CBSA if they:

- do not land on Canadian soil and do not anchor, moor or make contact with another conveyance while in Canadian waters; and
- do not disembark or embark any people or goods in Canada.

Persons who leave and re-enter Canadian waters are not required to present themselves and report their goods to the CBSA if they:

- did not land outside Canada and did not anchor, moor or make contact with another conveyance while outside of Canadian waters; and
- did not embark or disembark any people or goods while outside Canada.

Other Requirements

Scope

The exceptions apply to all types of private and commercial cross-border movements through Canadian waters, regardless of their origin and destination. Boaters enjoying activities such as cruising, fishing, water skiing, tubing and swimming in Canadian waters qualify for an exception if the conditions are met.

The person in charge of the conveyance is also relieved from his/her obligation to transport passengers and crew to a CBSA office when the conditions for an exception are met.

Identification

Persons crossing an international border should carry proper identification, even if the conditions for an exception are met.

Canadian immigration law requires foreign nationals to be properly documented for entry into Canada and have in their possession acceptable identification and a valid visa (if necessary) at all time. In addition, commercial operators, such as tour boats and fishing charters, continue to require work permits (if necessary) and must meet their transportation company obligations.

Firearms

All firearms, including non-restricted firearms, must always be reported to the CBSA when entering Canadian waters. Firearms found on board the conveyance that have not been reported to the CBSA will be seized and the boater could face criminal charges, even if the conditions for an exception are met.

Restricted and Prohibited Goods

Goods on board the conveyance must be permissible for entry in Canada. Restricted and prohibited goods, including all types of firearms, must always be reported to the CBSA when entering Canadian waters. Restricted and prohibited goods found on board the conveyance will be seized and the boater could face criminal charges, even if the conditions for an exception are met.

Currency and Monetary Instruments

Currency and monetary instruments totaling CAN$10,000 or more on board the conveyance are not required to be reported to the CBSA when the conditions for an exception are met.

Making Contact with Law Enforcement Authorities

Boaters are not required to report to the CBSA if they make contact with a law enforcement vessel on the water and meet all other conditions for a reporting exception. Examples of law enforcement authorities who patrol the waters are the Royal Canadian Mounted Police, the United States Customs and Border Protection (USCBP), the Coast Guard, local police agencies, conservation officers, etc.

Boaters who make contact with any other type of conveyance are required to report to the CBSA.

Report to the USCBP

Boaters who voluntarily reported to USCBP by telephone (e.g., NEXUS members or I68 permit holders) but did not touch U.S. soil, did not anchor, moor or make contact with another conveyance, and did not embark or disembark people or goods while in U.S. waters, are not required to report to the CBSA upon their return to Canada.

Snowmobiles

The exceptions to the presentation and reporting of goods requirements are for persons on board marine vessels only, and do not apply to snowmobiles, hovercraft, or any other land-based conveyance arriving in Canada on frozen waterways. Persons on board a snowmobile or any other land-based conveyance are required to report to the CBSA, even if they do not touch land and stay on frozen Canadian waters.

Reporting to the CBSA

Persons who do not meet the conditions for an exception must proceed to a telephone reporting site/marine (TRS/M) to call the CBSA Telephone Reporting Centre (TRC) and request clearance to enter Canada, or proceed to a direct reporting site for marine private vessel (DRS/M) and present themselves in person to a border services officer.

Reporting from the water

Boaters who anchor in Canadian waters do not meet the conditions for an exception and must report to the CBSA. However, they are permitted to do so by calling the CBSA Telephone Reporting Centre (TRC) using a cell phone from their location in Canadian waters if they meet all of the other conditions for an exception.

Boaters who report to the TRC from the location where they anchor in Canadian waters may be required to proceed to a telephone reporting site/marine (TRS/M) or a direct reporting site for marine private vessel (DRS/M) for examination.

Contact information

Telephone Reporting Centre (TRC):
Toll free: 1-888-226-7277

Date modified:
2018-07-25

This is Exhibit "I" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

JMC

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia MARGARET CARDINAL 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths
in and for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

Government of Canada | Gouvernement du Canada

Firearms and weapons: Canadian border requirements

Learn about the **import and export laws and regulations** enforced by the Canada Border Services Agency (CBSA) and its partners. Be aware of the rules and restrictions before you cross the border with firearms, weapons or related parts and accessories.

On this page

- Procedures for individuals entering Canada with firearms
- Firearms import regulations for visitors
- Firearms import regulations for Canadian residents
- Import regulations for ammunition, cartridge magazine and firearm parts (barrels and handgun slides)
- Procedures for individuals leaving Canada with firearms
- Hunting requirements
- Transporting firearms
- Foreign requirements
- Related links

Procedures for individuals entering Canada with firearms

- Declare all firearms to a border services officer (BSO) when you arrive at the border
- Provide all documents required
  - Required documents for visitors
  - Required documents for Canadian residents
- Answer all questions truthfully

The BSO may verify your declaration. They must be satisfied that you have a valid reason for bringing firearms into Canada, and may check to ensure that you have stored your firearms properly for transportation. The BSO will also review your documents and may verify that the firearms you have matches the ones described on the documents.

If you have declared firearms but cannot meet the import requirements, or you do not have the proper documents, the BSO may at his or her discretion and dependant on the availability of services at the port of entry, allow you to export the firearm from Canada. Alternatively, the BSO may detain the firearm, issue you a receipt and allow you a reasonable amount of time to present the correct documents to the CBSA.

If you do not declare the firearm or are untruthful, the CBSA may seize it, and you may face criminal charges and/or monetary penalties.

In many cases, a Canadian Firearms Licence (Possession and Acquisition Licence [PAL]) is required to import firearms to Canada.

If you need information about obtaining a Canadian Firearms Licence importing a specific firearm or weapon, contact the Canadian Firearms Program or the Border Information Service.

Firearms import regulations for visitors

There are different rules that apply depending on whether you are a visitor or a Canadian resident and depending on the type of firearm you are bringing into Canada, or importing. However, anyone importing firearms to Canada must be at least 18 years of age.

To import firearms into Canada you must have a valid purpose. Valid purposes can include (but are not limited to) the following:

- hunting during hunting season (limited to non-restricted firearms only), refer to Hunting requirements section
- use in competitions
- repair
- in transit movement, that is, moving in the most direct route possible from point A to point B, through Canada
- protection against wildlife in remote areas (limited to non-restricted firearms only)

Non-restricted firearms

If you are importing non-restricted firearms and you hold a valid Canadian firearms licence, you will need to show the licence to a border services officer.

If you **do not** hold a valid Canadian firearms licence, you must:

- complete form RCMP 5589: Non-Resident Firearm Declaration (NRFD) (this form acts as the visitors firearms licence while in Canada)
- pay a CAN$25.00 fee

Once confirmed by a BSO, the declaration has the same effect as a temporary licence for the firearms for up to 60 days.

Restricted firearms

Visitors who do not hold a valid Canadian firearms licence and registration certificate for their restricted firearm must:

- complete form RCMP 5589: NRFD
- pay a CAN$25.00 fee

Once confirmed by a BSO, the form acts as the licence **and** as the temporary registration certificate for the firearms for up to 60 days.

To import restricted firearms you also need an authorization to transport (ATT). You can get one by following these steps:

- call the Canadian Firearms Program at **1-800-731-4000** to receive an application for an ATT
- apply and receive approval for an ATT from the Chief Firearms Officer of the province you will be visiting
- when arriving at the border, declare your firearms, present the approved ATT and apply for the form RCMP 5589: NRFD, if required

If you arrive at the border without an ATT for the restricted firearm, the CBSA may hold the firearm for 14 days while you apply for the form. Once obtained, you must present the ATT to the CBSA.

Prohibited firearms, devices and weapons

Visitors to Canada **cannot**, under any circumstances, import prohibited firearms, prohibited devices or prohibited weapons. A listing of these items may be found in the *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*.

Hunting requirements

Firearms are forbidden in many of Canada's national and provincial parks, game reserves and adjacent areas. Hunting in Canada is governed by federal, provincial and territorial laws. If you hunt in Canada, you must have a hunting licence from each province or territory you plan to hunt in. If you need more information about parks and hunting regulations, contact the appropriate provincial or territorial tourism information office or hunting licence authority.

Please note that only **non-restricted** firearms can be used for hunting purposes and protection against wildlife in remote areas. Use of firearms for personal protection, or protection of property is not deemed a valid purpose to import firearms into Canada.

Transporting firearms

Canadian law states that you have to transport all firearms, including antique firearms, unloaded. If you are transporting them in a vehicle, they must be kept out of sight in a part of a vehicle that is kept locked (the trunk, if there is one), unless the vehicle is supervised by an adult. You have to transport restricted and prohibited firearms in a locked case and equip them with locked safety devices to prevent firing. Antique handguns do not require a secure locking device, although all other transportation provisions apply.

If you are flying, please visit Canadian Air Transport Security Authority's website for information concerning the transportation of firearms and/or ammunition by air.

This is Exhibit "J" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia MARGARET CARDINAL

Print Name and Expiry Date 01/01/26

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

Government of Canada | Gouvernement du Canada

Service standards and performance targets for protected species trade

We issue permits to import and export protected species under the *Wild Animal and Plant Protection Regulation of International and Interprovincial Trade Act* (WAPPRIITA), and the *Wild Animal and Plant Trade Regulations* (WAPTR). Our service standards tell you how long it will normally take us to process and respond to your permit application. We base these timelines on our resources and our experience.

On this page

- Current service standards summary
- Background and detailed service standards
- Performance targets
- Performance reporting
- Service feedback
- Applying for a permit
- For more information

Current service standards summary

When you apply for a Convention on International Trade of Endangered Species (CITES) permit, we give you a decision within the following timelines [1]:

- hunting trophy export permit (excluding Polar Bears): 21 calendar days
- Polar Bear export permit: 70 calendar days
- all other CITES permit types: 35 calendar days

If your application is incomplete, we will notify you and the time limit will be paused until we receive all missing information.

Background and detailed service standards

Service standards are necessary for good client service and important for managing performance because they:

- set out expectations (both internally and externally)
- drive improvement
- contribute to results-based management

Our service standards set the timeframe for the Minister to issue or refuse to issue a permit under the WAPPRIITA and WAPTR. We regularly analyze performance data and review service standards for these permits.

Service standards and performance targets were reviewed in 2025 and no changes were made. The next review of service standards is scheduled for 2028.

This is Exhibit "K" referred to in the Affidavit of:

Lori Cyprien

☐ Sworn / ☑ Affirmed before me this

15 day of October, 2025

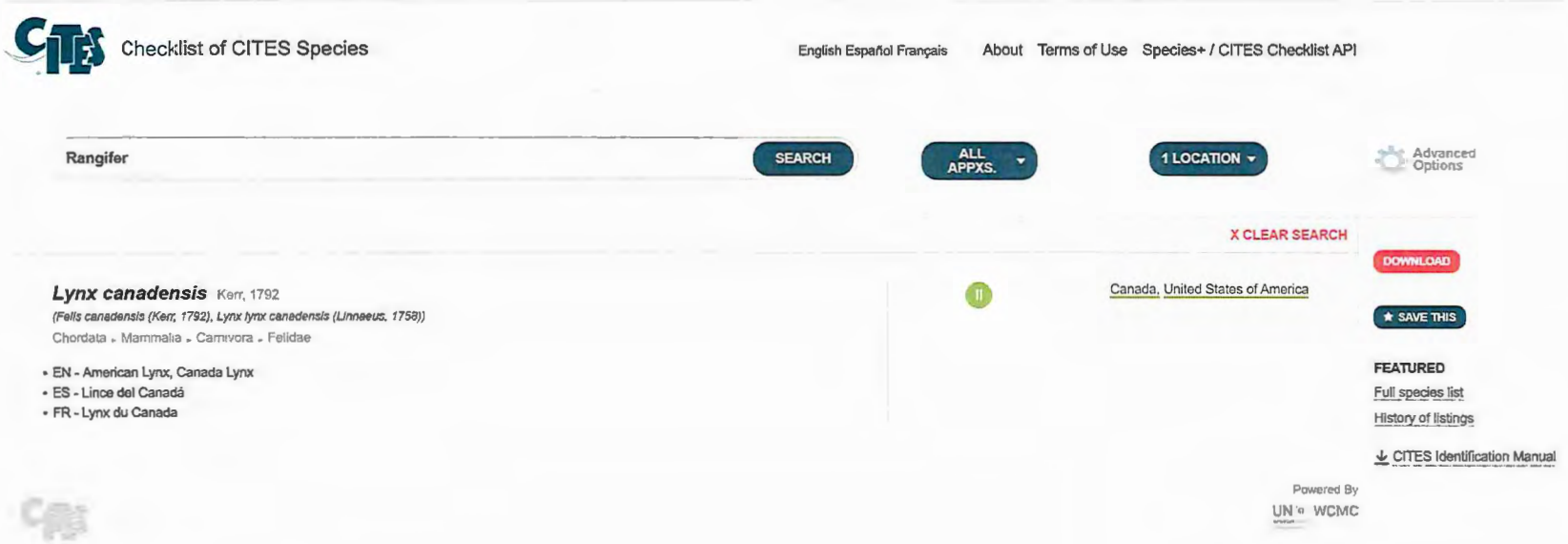
Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia MARGARET CARDINAL 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date 01/01/26


Checklist of CITES Species
English Español Français
About
Terms of Use
Species+ / CITES Checklist API
Rangifer
SEARCH
ALL APPXS.
1 LOCATION
Advanced Options
X CLEAR SEARCH
DOWNLOAD
SAVE THIS
Lynx canadensis Kerr, 1792
(Felis canadensis (Kerr, 1792), Lynx lynx canadensis (Linnaeus, 1758))
Chordata ▸ Mammalia ▸ Carnivora ▸ Felidae
• EN - American Lynx, Canada Lynx
• ES - Lince del Canadá
• FR - Lynx du Canada
II
Canada, United States of America
FEATURED
Full species list
History of listings
CITES Identification Manual
Powered By
UNEP WCMC

This is Exhibit "L" referred to in the Affidavit of:

Lori Cyprien

□ Sworn / □ Affirmed before me this

_____day of October, 2025

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Print Name and Expiry Date

Government of Canada / Gouvernement du Canada

Report on First Nation border crossing issues

From: Fred Caron CD, QC, Minister's Special Representative

Submitted: August 31, 2017

The opinions and views set out in this independent report are those of Fred Caron, the Minister's Special Representative on border crossing issues. They are not necessarily the opinions or views of the Government of Canada.

Table of contents

- Overview of mandate
- Part A: Purpose and engagement structure
  - Purpose of report
  - Approach to engagement with First Nations
  - Engagement with the Assembly of First Nations
- Part B: Approach and general observations
  - Approach to report

For other First Nations, the normal flow of family and cultural practices as well as of governmental and membership alliances has been disrupted by current immigration rules.

The most common instances cited were:

- The difficulties experienced with respect to Native American spouses who are not registered as Indians under the *Indian Act* and who wish to reside with their First Nation spouse in Canada. Whereas historic practices of First Nations recognized this right in accordance with their own membership rules, in the Canadian situation these individuals are treated under the immigration rules as foreign nationals without an automatic right of entry or residence in Canada.
- Native Americans having a criminal offence on their record may be refused entry to Canada even where the offence took place in the distant past and no re-offending has occurred.
- Situations of divorce or separation involving spouses or former spouses residing on different sides of the Canada-US border where family visits respecting children may become complicated for a variety of reasons, in particular, cases where the spouse is a Native American not having a legal right of entry into Canada.
- Medicine men and healers face challenges entering Canada based on the nature of the medicines in their possession, notably where they are unable to provide a scientific justification for the effectiveness of the medicine acceptable to the CBSA officer. Thus exchanges of medicines which have been used for many years may be blocked, as a result denying an ancient cultural practice. In other cases cited to me, medicine men from the US seeking admission to attend to individuals in Canada were questioned at the border to determine whether they were in possession of a permit in order to work in the country.

All of the above is respectfully submitted in the hope that it will help achieve long awaited progress. In addition to once again thanking First Nations members who provided such valuable input, I would like to acknowledge the valuable support provided by Canadian government officials, in particular Marc Wills, Kevin Nixon and Julie Gaudreau-Cormier of INAC.

Annexes

Annex A: Summary of First Nation border crossing issues and potential solutions proposed by participants in the engagement sessions

Issue	Potential solution proposed
1. Lack of recognition of inherent rights	1.1 Ratification by Canada of the Jay Treaty 1.2 Legislative or other framework for the recognition of rights
2. Adverse impact on family and cultural connections	2.1 Relaxation of Canadian restrictions on entry for those Native Americans having a criminal offence on their record 2.2 Amendment of Section 19 of the *Immigration and Refugee Protection Act* (IRPA) 2.3 Review of import restrictions as they relate to traditional medicines, and recognition of the not-for-profit nature of Indigenous healers practice

Issue	Potential solution proposed
3. Acceptability of identity documents at Ports of Entry	3.1 Creation of a separate page in the Canadian passport allowing primary identification of an individual to be that of a First Nations person, North American Indian, Treaty Indian, or other Indigenous identity 3.2 Creation of secure identity cards issued by First Nations for their members, compliant, for example, with the requirements of the US Western Hemisphere Travel Initiative for land border crossings 3.3 Improvement of service standards for the issuance of the Secure Certificate of Indian Status (SCIS), to make the time delay equivalent to that for obtaining a passport
4. Issues with treatment by officers of the Canada Border Services Agency (CBSA)	4.1 Mandatory cultural awareness training for CBSA officers 4.2 Increased hiring of First Nations people as CBSA officers 4.3 Creation of an independent mechanism to review complaints regarding treatment by CBSA officers 4.4 Outreach, education, and use of existing tools to support increased cooperation 4.5 Separate lanes for First Nations travellers at certain Ports of Entry

Issue	Potential solution proposed
5. Restrictions on trade and personal goods	5.1 Relaxation of import duty rules for personal use goods for communities in close proximity to the US border 5.2 Greater recognition of First Nations trading rights and consequent modification of import and export rules 5.3 Review of import and export rules respecting goods used for cultural purposes including medicines
6. Location of Ports of Entry	6.1 Relocation of the CBSA Ports of Entry at Cornwall, Ontario, and Beaver Creek, Yukon
7. Akwesasne	Adoption of proposed solutions 1.1, 2.1, 2.2, 4.3 and 6.1 plus: 7.1 Introduction of a machine readable zone on the Secure Certificate of Indian Status (SCIS) 7.2 Creation of a CBSA remote reporting kiosk on Cornwall Island 7.3 Elimination of the toll booths on the Seaway International Bridge 7.4 Creation by Indigenous and Northern Affairs Canada (INAC) of an international First Nation community funding model

Annex B: Engagement activities (January to August 2017)

COURT FILE NUMBER	2503 15116
COURT	ALBERTA COURT OF KING'S BENCH
JUDICIAL CENTRE	EDMONTON
APPLICANT	CHIEF ELECTORAL OFFICER
RESPONDENTS	MITCH SYLVESTRE and MINISTER OF JUSTICE OF ALBERTA
AMICI CURIAE	MATTHEW WOODLEY and ERIC ADAMS
DOCUMENT	**Affidavit of Chief Allan Adam**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Olthuis Kleer Townshend LLP
4902 49th Street, 3rd Floor, PO Box 1470
Yellowknife, NT X1A 2P1
Phone: 867-675-1131
Fax: 867-675-1269

Kevin Hille
khille@oktlaw.com
Counsel for the Proposed Intervener, Athabasca Chipewyan First Nation

Registrar's Stamp
JUDICIAL CENTRE OF EDMONTON
FILED
Oct 17 2025
by Email
CLERK OF THE COURT

AFFIDAVIT OF CHIEF ALLAN ADAM

I, Allan Adam of Fort Chipewyan, Alberta, SWEAR AND SAY THAT:

1. I am Chief of Athabasca Chipewyan First Nation ("**ACFN**"). ACFN is a band within the meaning of the *Indian Act*, R.S.C. 1985, c-I-5. I was elected chief of ACFN in 2007. Before that, I served as a councillor since 2003. I have personal knowledge of the facts set out in this affidavit, except where I have stated they are based on information and belief. In that case, I believe them to be true.
2. I swear this affidavit in support of ACFN's intervention in the above noted proceeding, bearing Court File Number 2503 15116. The proceeding concerns the constitutionality of the proposed citizen initiative petition of Mitch Sylvestre for Alberta to separate from

Canada, submitted to the Chief Electoral Officer of Alberta (the "**Proposal**"). ACFN was granted leave to intervene in this proceeding on the basis that its members' section 35 rights might be contravened by the Proposal.

3. In the following paragraphs I outline how ACFN will be affected by the Proposal for Alberta to separate from Canada:

   a. *Mobility Throughout our Traditional Territory Has Always Been Central to Our Way of Life* – Our traditional homeland long pre-dates the province of Alberta and our way of life has always depended upon travelling throughout our territory in Seasonal Rounds, following wildlife and waterways that regularly intersect witb Canada's arbitrary provincial and territorial boundaries.

   b. *We Signed Treaty 8 to Protect Our Way of Life and Freedom of Movement* – Our ancestors made it very clear in their negotiations with the Crown at Fort Chipewyan in 1899 that our freedom of movement across our territory was absolutely essential to us. We were promised the continuity of our mobile way of life.

   c. *The Proposal Would Interfere with Our Freedom of Movement and Way of Life* – The creation of an international boundary along the Alberta border would severely interfere with our way of life and rights exercise, interfering with the freedom of movement we have enjoyed since time immemorial.

   d. *The Proposal Would Fundamentally Change Our Treaty Relationship* – We signed Treaty 8 with the Crown in right of Canada, before Alberta was even a province. For ACFN, whose reserves are all located in Alberta, this would fundamentally change our treaty relationship with Canada.

(a) Mobility is Central to Our Way of Life

4. The people of ACFN are descendants of the Dënesųłiné people, historically known as the Etthen eldeli Dene, or "Caribou-Eaters" whose ancestral homelands — Denendheh — mapped onto the migration patterns of woodland and barren land caribou, stretching across what is now Saskatchewan, Alberta, and the Northwest Territories. We are the successor First Nation to the Chipewyan Band that adhered to Treaty 8 and today we have eight reserves on Lake Athabasca, within the Peace-Athabasca Delta, and on the Athabasca River.
5. Historically there were no hard boundaries between Dënesųłiné and other Dené bands. Each band had a traditional territory which it used and occupied, but there were protocols that allowed other bands to use these areas with permission of the chief or headmen. People could join and move to a different band by marriage or other primary kinship connections. As a result, Dené from across the region were, and remain, connected through an expansive network of kinship ties. ACFN and our members continue to have strong kinship ties to other Dënesųłiné communities and people throughout northern Alberta, northern Saskatchewan, the Northwest Territories, and elsewhere, based on our shared ancestry and longstanding presence in the region.
6. The heart of ACFN's territory was the Peace Athabasca Delta, and so we were known to other Dené as the K'ái Tailé Dené – "the people of the land of the willow". This more concentrated territory consisted of the area around Lake Claire and Lake Mamwai, the Peace Athabasca Delta, to the Namur Lake and the Birch Mountains, Fort McKay, and Janvier, the Richardson Backcountry and into Saskatchewan. We lived and harvested in what is known today as Wood Buffalo National Park, which straddles the border between Alberta and the Northwest Territories, before being systematically excluded from the park

during much of the 20th century. ACFN members were spread out throughout this area, using and living off all of these lands, and then would meet for a big gathering once a year at Lake Athabasca, east of Fort Chipewyan.

7. Our way of life and identity is deeply tied to our use of, and care for, our territory – in Alberta, Saskatchewan and the Northwest Territories. Our ancestors lived off the land, based on our lived experiences and environmental knowledge passed down through generations. We followed the migration patterns of woodland and barrenland caribou; trapped and hunted moose, beaver, bear, waterfowl, and muskrat; engaged in fishing; and harvested berries and traditional medicines seasonally.
8. Mobility has always been essential to this way of life. ACFN's ancestors travelled across and cared for their homelands in small groups connected to vast kinship networks in a pattern of movement known as the Seasonal Round. Rooted in in-depth ecological knowledge of the land developed over generations, the Seasonal Round involves travelling over land and water to access well-established hunting, fishing, plant harvesting, gathering, and trading sites.
9. The seasonal practices of the Dënesųłiné continue to influence the way of life of ACFN members today, who travel across ACFN ancestral territories to exercise rights. ACFN's reserves are within Alberta, but our traditional territory is part of Denendheh and spans a large area encompassing northeast Alberta into the Northwest Territories and across northern Saskatchewan. ACFN members continue to hunt, fish, trap, and harvest throughout our traditional territory and in the Treaty 8 area more broadly.
10. We continue to practice this way of life and maintain our ties, which routinely cross Canada's provincial and territorial borders. For example, we continue to hold registered trap lines in Saskatchewan which we have been given by the province in recognition of our

historical use and connection to the land. I continue to hunt and fish throughout our traditional territory as my ancestors did, including in the southern Northwest Territories and Saskatchewan. So do many other members of ACFN.

11. Waterways also remain critical transportation routes and areas for the exercise of our rights. Important waterways include the Athabasca River, the Peace River, Richardson River, Old Fort River, Margeurite River, Lake Claire, and Lake Athabasca. These rivers and lakes that we travel cross the administrative boundaries that divide Canadian provinces and territories. It is impossible to exercise these rights in the way that we do, and in the manner our ancestors have for centuries, without the ability to move freely on these waterways and through our traditional territory.

12. ACFN's Dené ancestors had unrestricted access to these lands and deep kinship ties with people and communities throughout Denendheh. Freedom of movement was essential to the Dené way of life. Families had family grounds and traplines which were discussed and known, and many had traplines in Saskatchewan. Even after the administrative borders between provinces were created our elders did not understand the need for them. They have a saying in our language that roughly translates to "what is the line over the land there for". It is difficult for me today to recognize the existence of provincial and territorial borders because those boundaries are not relevant to our territory and have never impacted the way we move across our territory and practice our rights.

(b) ACFN Signed Treaty 8 to Protect Our Freedom of Movement and Way of Life

13. ACFN is signatory to Treaty 8. Our ancestors entered Treaty 8 with the Crown in Right of Canada ("**Canada**") at Fort Chipewyan in 1899. My Elders have taught me, and the Court has recognized, that under the treaty Canada promised ACFN that we would be allowed to

continue living off the land throughout the Treaty 8 territory as our ancestors have for millennia.

14. Mobility and freedom of movement was a central part of the Treaty negotiations. It was essential to the Fort Chipewyan delegation to retain complete freedom to move around the territory. I have learned this from my elders and it is confirmed in the contemporary accounts, which have since been studied and compiled by historians such as Richard Daniel. Excerpts from his chapter "The Spirit and Terms of Treaty Eight" from the book "The Spirit of the Alberta Indian Treaties" is attached at **Exhibit A**. These records indicate the following (with emphasis added):

    a. On 25 January 1899, in reply to a missionary who had been unable to answer certain questions from the Indians, the superintendent general of Indian Affairs, Clifford Sifton, wrote: "There is no general prohibition in consequence of the treaty of the freedom of the Indian in *roaming and hunting over the country*." (Exhibit A, p 68)

    b. In reply to another inquiry, David Laird , lieutenant governor of the Territories and Treaty Eight commissioner, also indicated that: "the Indians will be allowed to hunt and fish *all over the country* as they do now." (Exhibit A, p 68)

    c. Treaty Commissioner Laird stated in his opening speech on June 20, 1899: "We understand stories have been told you, that if you made a treaty with us you would become servants and slaves; but we wish you to understand that such is not the case, but that you will be *just as free* after signing a treaty as you are now. The treaty is a free offer; take it or not, just as you please… Indians have been told that if they make a treaty they will not be allowed to hunt and fish as they do now. This is not true. Indians who take treaty will be just as free to hunt and fish *all over* as they now are." (Exhibit A, pp 75-76)

d. Isador Willier, who was over one hundred years old when interviewed, said that the Indians were told that: "The way you have been struggling for a livelihood - no one will ever stop that form of livelihood. If you should take treaty, this is the way you will make your livelihood. Moose, cariboo, and any other wild bush animals, no one will ever stop you from obtaining these animals *anywhere*. You will always make your livelihood that way. If you should take treaty, ... nothing will stop you from fishing and duck hunting." (Exhibit A, p 93)

15. After reviewing the contemporaneous records, Richard Daniel came to the conclusion that the "Indians made it quite clear… that they would not favour a treaty unless they were assured that their way of life would not be restricted" (Exhibit A, p 68) and "whatever the government's intentions might have been in giving these assurances, the Indians saw them as guarantees of *freedom to hunt, fish, and trap throughout the area* - an assurance that they would be able to continue their way of making a living if they chose." (Exhibit A, p 82). This confirms what I have been taught by my Elders about the Treaty.

16. Father Breynat who attended the Fort Chipewyan negotiations recalled: "Discussions were long enough but sincere…It was essential to them to retain *complete freedom to move around.*" Father Rene Fumoleau summarized that "[t]he Indians themselves were satisfied with the Treaty, believing that it would protect their freedom to hunt, trap, fish, and *move freely through the country*". An excerpt of his book *As Long As The Land Shall Last* containing these accounts is attached at **Exhibit B.**

17. To us, the Treaty clearly meant not only a promise that we would maintain our ability to hunt, trap, and gather as we always had, but also the freedom to move throughout our territory. As I already described above, mobility is essential to our way of life and to

respond to the natural cycles of the environment. Protecting that was essential to the decision to enter Treaty.

18. In the end, we were promised by the Treaty Commissioners that we would be able to practice our traditional way of life and "would be free to hunt and fish after the treaty as they would be if they never entered into it". An excerpt of the Treaty Commissioner Report is attached at **Exhibit C.** To us, the Treaty clearly meant not only a promise that we would maintain our ability to hunt, trap, and gather as we always had, but also the freedom to move throughout our territory. As I already described above, mobility is essential to our way of life and to respond to the natural cycles of the environment. Protecting that was essential to the decision of our ancestors to enter Treaty.

(c) The Proposal Would Interfere with Our Freedom of Movement and Way of Life

19. The Proposal would introduce an international boundary through the heart of our traditional territory, which would inevitably have significant impacts on freedom of movement, our way of life, and the exercise of our Treaty rights. A border would significantly restrict our mobility across it and interfere with the freedom of movement we have enjoyed throughout our territory for time immemorial, which we sought to protect through the Treaty. It would disrupt our kinship and cultural ties to Dënesųłiné communities in Northwest Territories and Saskatchewan, and prevent us from exercising our rights the way we always have.

20. This should be self-evident. But the Attorneys-General of Alberta and Canada have also made it abundantly clear in their submissions to the Supreme Court of Canada in *R v Desautel,* [2021] 1 SCR 533. I have been advised by my lawyers that Alberta and Canada have taken the position – along with other Attorneys-General – that the mobility aspect of Aboriginal rights exercise is either fundamentally incompatible with Crown Sovereignty and control of the borders, or likely to be infringed. An excerpt of the factum of the

Attorney-General of Alberta is attached at **Exhibit D.** An excerpt of the factum of Canada is attached at **Exhibit E.**

21. Canada has repeatedly advanced this argument before the Supreme Court of Canada. In the case of *Mitchell v M.N.R*, [2001] 1 SCR 911 Canada insisted at paragraph 33 of its factum that "an alleged aboriginal practice of free movement back and forth across the international boundary is not consistent with one of the essential features of sovereignty." An excerpt of the factum of Canada is attached at **Exhibit F.**

22. Alberta and Canada's position is that our current freedom of movement across territorial and provincial borders would be incompatible with their sovereign control over an international border. To create an international border in our territory would pose a grave risk to our way of life as there is no guarantee that our rights will be protected from the exercise of border controls by Canada or Alberta.

23. I have read the Affidavit of Lori Cyprien, Executive Director of our Dene Lands and Resources Management ("**DLRM**") department, and it describes in detail the area and methods of current rights exercise by our members. It also describes the ways in which a border – and the laws, policies and enforcement practices of the Canadian Border Services Agency – would impact our ability to access our traditional territory in the Northwest Territories and Saskatchewan. That evidence should be read along with mine, to understand the interference.

(d) The Proposal Would Fundamentally Change Our Treaty Relationship

24. Alberta did not exist when ACFN signed Treaty 8 in 1899 and was not a signatory to the treaty. Alberta only became a province in 1905. ACFN signed the Treaty with Canada and still has a treaty relationship with Canada. This includes outstanding treaty annuities and

land entitlement obligations that Canada must meet. It also means a relationship in which Canada promised to be ACFN's protector.

25. The Proposal would undo this treaty relationship. ACFN's reserves are wholly within Alberta, which under the Proposal would become a new sovereign state. I do not see how we would be able to maintain our treaty relationship with Canada – to have it honour its treaty obligations to us and its role as protector. Instead, we would be entirely subject to Alberta, which to date has proved more interested in extracting the bitumen beneath our lands than our way of life or welfare.

26. Our treaty relationship is fundamentally a relationship with Canada. If the Proposal is successful not only will that relationship be irrevocably severed, but our associated rights will be severely curtailed. The Proposal comes from a private citizen, yet what it is proposing is a radical change in our treaty relationship with the Crown. That cannot be right. Our interests must be heard and protected.

SWORN BEFORE ME at Fort Chipewyan, Alberta, this 20 th day of October, 2025.

(Commissioner for Oaths in and for the Province of Alberta)

Julia M. CARDINAL
PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

01/01/26

(Signature)

Allan Adam
Print Name

This is Exhibit "A" referred to in the Affidavit of:

Chief Allan Adam

☐ Sworn / ☒ Affirmed before me this

20 day of October, 2025

Julie M. Carolan

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julie M. CAROLAN

Print Name and Expiry Date 01/01/26

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Declarant - person who makes the statement

A Commissioner for Oaths in and for Alberta
Barrister & Solicitor
Julie Margaret Carolan
Expires Dec.

Chapter Three

The Spirit and Terms of Treaty Eight

by
Richard Daniel

> *You may be assured that my Government of Canada recognizes the importance of full compliance with the spirit and terms of your Treaties.*
> *Queen Elizabeth II**

As its title suggests, this paper is concerned with much more than a narrow reading of the written terms of Treaty Eight of 1899. If, as the above quote from Queen Elizabeth suggests, the Government of Canada intends to respect the spirit in which its representatives and the Indian people reached an agreement on their future relations eighty years ago, then we must attempt to define that "spirit" as closely as possible. The first thing that must be understood in this regard is that the written document that was supposedly assented to by the government and the Indians in 1899 and 1900 is of very limited value in indicating the spirit of the agreements. To begin with, it was written in legalistic language and presented to non-literate people unfamiliar with legal agreements based on written documents. Although the document was apparently read and translated to the Indian people, this was only a small part of the exchange between the parties, not only during the treaty meetings, but in the months of preparation for those meetings. We must look at the entire negotiating process to determine the commitments made by both parties.

However, aside from the "outside promises" that were made by both parties and not necessarily included in the written document, by "spirit of the treaty," Indian people understand much more. We must attempt, therefore, to go beyond the very incomplete evidence of what was actually said at the negotiations to make a serious effort to understand what both sides may have intended by their respective commitments. On the government side, this paper will look at internal government correspondence in the period leading up to the treaty as well as correspondence with those outside the government. On the Indian side, we will look at historical and anthropological material as well as the oral tradition within Indian communities, which has preserved their understanding of the treaty. The result, hopefully, will be a much more

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* Calgary, 5 July 1973.

development of natural resources seemed imminent. The treaties with the Prairie Indians had proven to be more costly than anticipated, and at the same time, far from successful in their aim of providing the Indians with the means to adapt to an agricultural economy. There were fears that a northern treaty might encourage Indians to abandon the difficult life of hunters and trappers in favour of dependence on government provisions.

Pre-treaty correspondence of the Department of Indian Affairs reflects a strong emphasis on the need for peace and friendship between the native people and settlers and miners. The Order in Council setting up the commission for Treaty Eight reflects this concern:

> On a report dated 30th November, 1898, from the Superintendent General of Indian Affairs . . . it was set forth that the commissioner of the North West Mounted Police had pointed out the desirability of steps being taken for the making of a treaty with the Indians occupying the proposed line of route from Edmonton to Pelly River; that he had intimated that these Indians, as well as the Beaver Indians of the Peace and Nelson Rivers, and the Sicamas and Nihamas Indians, were inclined to be turbulent and were liable to give trouble to isolated parties of miners or traders who might be regarded by the Indians as interfering with their vested rights; and that he had stated that the situation was made more difficult by the presence of numerous travellers who had come into the country and were scattered at various points between Lesser Slave Lake and Peace River.[79]

When it became apparent that the treaty could not be signed in 1898 as planned, but would have to wait until the summer of 1899, the government distributed public notices throughout the proposed treaty area, setting the dates for the meetings in the following year. This notice included the phrase, "...it is deemed advisable to include within the said treaty the extinguishment of their title to the lands. . . ."[80] Missionaries and members of the North West Mounted Police distributed the notice and answered questions to the best of their ability. As a result of their discussions with the Indians, missionaries began to report to the government that the Indians were inclined to refuse treaty and to oppose settlement, due to their fear that they would lose their hunting, fishing, and trapping rights.[81]

Part of the government's response to this resistance was to persuade Father Lacombe and other missionaries to help in the negotiations. The assistance they gave in persuading the Indians to accept the treaty is discussed in a later section of this chapter.

In addition to seeking Lacombe's aid, the government also saw the need for giving the Indians some assurances that they would not be greatly affected by the treaty. On 25 January 1899, in reply to a missionary who had been

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[79] Canada, Department of Indian Affairs and Northern Development, *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.* (Ottawa: Queen's Printer, 1966), p. 3.

[80] Public notice, June 1898, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1.

[81] Fumoleau, *Land Shall Last*, pp. 65-66.

unable to answer certain questions from the Indians, the superintendent general of Indian Affairs, Clifford Sifton, wrote:

> The game and fishery laws will, of course, apply to the country; but as the manner and extent of their enforcement must necessarily depend upon conditions of settlement, etc., there is not likely to be any marked change on account of the making of treaty. There will be reserves set aside for the Indians and in doing so everything possible will be done to meet their wishes as to the selection of localities. There is no general prohibition in consequence of the treaty of the freedom of the Indian in roaming and hunting over the country. Of course when settlement advances there will be the restriction which necessarily follows, and it is to meet such contingencies that reserves are set aside.[82]

Sifton was indicating that the Indians of Treaty Eight would be subject to the same legal restrictions as Indians of previous treaties, but that the effect of these restrictions would be minimal, due to less white settlement. In reply to another inquiry, David Laird, lieutenant governor of the Territories and Treaty Eight commissioner, also indicated that restrictions would be necessary, not so much as a result of settlement as for conservation for the Indians' benefit:

> You may explain to them that the Queen or Great Mother while promising by her Commissioners to give them Reserves, which they can call their own, and upon which whitemen will not be allowed to settle without payment and the consent of the Indians before a Government officer, yet the Indians will be allowed to hunt and fish all over the country as they do now, subject to such laws as may be made for the protection of game and fish in the breeding season; and also so long as the Indians do not molest or interfere with settlers, miners or travellers. These restrictions and laws however are not peculiar to Treaty Indians; whitemen, half-breeds and Indians who do not take Treaty, will not be allowed by the Great Mother to disturb or hurt any of her children whatever be their colour. It should likewise be remembered that laws for preventing game from being destroyed in the breeding season are rather for the benefit of the Indians than of the whitemen, as the whitemen live more on farm products than on game.[83]

During this period between the summer of 1898, when the treaty notice came out, and the following summer, when the treaty was made, the Indians made it quite clear (through missionaries, traders, and policemen who acted as intermediaries) that they would not favour a treaty unless they were assured that their way of life would not be restricted. The government strove to correct the "misleading reports" that were circulating to the effect that if Indians took treaty they would lose their hunting, fishing, and trapping rights.

It would appear that at least one of the commissioners, J.A. McKenna, was still worried that opposition to reserves and the fear of losing their

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[82] Sifton to Rev. Charles R. Weaver, 25 January 1899, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1

[83] Laird to W.H. Routledge, 3 February 1899, ibid.

day, the treaty. They discussed it for three days to find out how it would work best, how the Indian would make his living when he accepted treaty.[99]

The commissioners appointed Albert Tate and Samuel Cunningham as interpreters and told the meeting that Cunningham would represent the Indians and that the two men would check each others' work.[100] Also present were three Catholic missionaries (Father Lacombe, Bishop Grouard, and Father Falher) and three Anglican missionaries.

Laird, after introducing the members of his commission, spoke for about an hour. Mair gives the most complete account of his opening speech:

> I have to say, on behalf of the Queen and the Government of Canada, that we have come to make you an offer. We have made treaties in former years with all the Indians of the prairie, and from there to Lake Superior. As white people are coming into your country, we have thought it well to tell you what is required of you. The Queen wants all white, half-breeds and Indians to be at peace with one another, and to shake hands when they meet. The Queen's laws must be obeyed all over the country, both by the whites and the Indians. It is not alone that we wish to prevent Indians from molesting the whites, it is also to prevent the whites from molesting or doing harm to the Indians. The Queen's soldiers are just as much for the protection of the Indians as for the white man.
>
> The Commissioners made an appointment to meet you at a certain time, but on account of bad weather on river and lake, we are late, which we are sorry for, but are glad to meet so many of you here today.
>
> We understand stories have been told you, that if you made a treaty with us you would become servants and slaves; but we wish you to understand that such is not the case, but that you will be just as free after signing a treaty as you are now. The treaty is a free offer; take it or not, just as you please. If you refuse it there is no harm done; we will not be bad friends on that account. One thing Indians must understand, that if they do not make a treaty they must obey the laws of the land—that will be just the same whether you make a treaty or not; the laws must be obeyed. The Queen's Government wishes to give the Indians here the same terms as it has given all the Indians all over the country, from the prairies to Lake Superior. Indians in other places, who took treaty years ago, are now better off than they were before. They grow grain and raise cattle like the white people. Their children have learned to read and write.
>
> Now, I will give you an outline of the terms we offer you. If you agree, to take treaty, every one this year gets a present of $12.00. A family of five, man, wife and three children, will thus get $60.00; a family of eight, $96.00; and after this year, and for every year afterwards, $5.00 for each person forever. To such chiefs as you may select, and that the Government approves of, we will give $25.00 each year, and the counsellors $15.00 each. The chiefs also get a silver medal and a flag, such as you see now at our tent, right now as soon as the treaty is signed. Next year, as soon as we know how many chiefs there are, and every three years thereafter, each chief will get a suit of clothes, and every counsellor a suit, only not quite so good as that of the chief. Then, as the white men are coming in and settling in the country, and as the Queen wishes the Indians to have lands of their own, we will give one square mile, or 640 acres, to each family of five; but there will be no compulsion to force Indians to

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[99] See chapter five, "Interviews with Elders," William Okeymaw, Sucker Creek Reserve, 27 March 1975.

[100] See footnote 98.

go into a reserve. He who does not wish to go into a band can get 160 acres of land for himself, and the same for each member of his family. These reserves are holdings you can select when you please, subject to the approval of the Government, for you might select lands which might interfere with the rights or lands of settlers. The Government must be sure that the land which you select is in the right place. Then, again, as some of you may want to sow grain or potatoes, the Government will give you ploughs or harrows, hoes, etc., to enable you to do so, and every spring will furnish you with provisions to enable you to work and put in your crop. Again, if you do not wish to grow grain, but want to raise cattle, the Government will give you bulls and cows so that you may raise stock. If you do not wish to grow grain or raise cattle, the Government will furnish you with ammunition for your hunt, and with twine to catch fish. The Government will also provide schools to teach your children to read and write, and do other things like white men and their children. Schools will be established where there is a sufficient number of children. The Government will give the chiefs axes and tools to make houses to live in and be comfortable. Indians have been told that if they make a treaty they will not be allowed to hunt and fish as they do now. This is not true. Indians who take treaty will be just as free to hunt and fish all over as they now are.

In return for this the Government expects that the Indians will not interfere with or molest any miner, traveller or settler.

We expect you to be good friends with everyone, and shake hands with all you meet. If any whites molest you in any way, shoot your dogs or horses, or do you any harm, you have only to report the matter to the police, and they will see that justice is done to you. There may be some things we have not mentioned, but these can be mentioned later on. Commissioners Walker and Cote are here for the half-breeds, who later on, if treaty is made with you, will take down the names of half-breed and their children, and find out if they are entitled to scrip. The reason the Government does this is because the half-breeds have Indian blood in their veins, and have claims on that account. The government does not make treaty with them, as they live as whitemen do, so it gives them scrip to settle their claims, at once and forever. Half-breeds living like Indians have the chance to take the treaty instead, if they wish to do so. They have their choice, but only after the treaty is signed. If there is no treaty made, scrip cannot be given. After the treaty is signed, the Commissioners will take up half-breed claims.[101]

Laird concluded by briefly outlining the Métis scrip provisions and by indicating that at the end of the meeting everyone would get flour, bacon, tea, and tobacco as a free gift from the Queen whether a treaty was made or not. He summed up the governments's position: " . . . the Queen owns the country, but is willing to acknowledge the Indian's claims, and offers them terms as an offset to all of them"; and then he asked the Indians to speak.[102]

The Indians were hesitant about the terms set forth by Laird. Kinosayoo began:

> You say we are brothers. I cannot understand how we are so. I live differently from you. I can only understand that Indians will benefit in a very small degree from your offer. You have told us you come in the Queen's name. We surely have also a right to

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[101] Mair, *Through the Mackenzie Basin*, pp. 56-59.

[102] Ibid., p. 59.

account, Kinosayoo and Moostoos assented to the terms, but the dissent among others appeared to present a serious threat to the signing of the treaty and was only overcome by a lengthy discussion.[118] Little of this discussion was recorded, but the report of the commissioners refers to some of the major concerns of the Indian people and the promises that were made to overcome them:

> Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it .... the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provisions for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.[119]

Whatever the government's intentions might have been in giving these assurances, the Indians saw them as guarantees of freedom to hunt, fish, and trap throughout the area—an assurance that they would be able to continue their way of making a living if they chose.

Interviews with Indian elders in the Lesser Slave Lake area indicate that this understanding of the treaty as a guarantee of their traditional livelihood is still very strong and widespread. Some have understood the treaty as leaving the Indians with ownership of wildlife:

> He [the King] made a promise to the Indian when he first gave them reserves: "as long as I live, I will look after you, my people, in this manner, and better if you respect me. I will look after your children and your wild game. Game will not be bought. Share with one another equally, carefully, totally. When we have this, we will vote, then the Indian will own what game he chooses for his consumption and use." This is what was decided about the moose. Moose is our main source of livelihood on this earth. Not like the white man, the King; he lived mainly on bread, he said. But the Indian lived on fish, ducks, anything. The King asked the Indian what he wanted for a livelihood. The Indian chose hunting and fishing not to be limited. As long as he lived.[120]

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[118] Mair, *Through the Mackenzie Basin*, p. 64.

[119] Canada, *Treaty No. 8*, pp. 6-7.

[120] T.A.R.R. Interview with Elders Program, interview with Samuel Giroux, location and date not recorded.

had been to take adhesions at Fort St. John and Fort Resolution, because the 1899 expedition had not reached these distant points. However, the Crees of Sturgeon Lake and the Slaveys of Upper Hay River met him and asked to be included. Because they were obviously entitled, Macrae drew up adhesions for them.[145]

Macrae's report on the 1900 expedition indicates that he encountered the same concerns among the Indians as in 1899:

> As was reported by your commissioners last year, there is little disposition on the part of most of the northern Indians to settle down upon land or to ask to have reserves set apart. Dealing, under your instructions, with demands for land, two small provisional reserves were laid out at Lesser Slave Lake for Kinoosayo's band, and fifteen or sixteen applications were registered for land in severalty by Indians who have already, to some extent, taken to agriculture.
>
> It appears that this disinclination to adopt agriculture as a means of livelihood is not unwisely entertained, for the more congenial occupations of hunting and fishing are still open, and agriculture is not only arduous to those untrained to it, but in many districts it as yet remains untried. A consequence of this preference of old pursuits is that the government will not be called upon for years to make those expenditures which are entailed by the treaty when the Indians take to soil for subsistence.[146]

Macrae also reported that the Indians who had been present at the 1899 meeting requested extended explanations of the terms for those who had not understood. Not surprisingly, the hurried 1899 trip had left something less than a clear understanding in its wake.

A medical doctor accompanied Macrae, and his services were appreciated by the Indians.[147]

Macrae recognized that, even with this trip in 1900, the task of taking all Indians into treaty was incomplete. There still remained a number of Indians (Macrae estimated over five hundred) who lived at points distant from those visited and who had not been given the option of taking treaty or scrip. Notwithstanding this, Macrae concluded that "the Indian title . . . may be fairly regarded as extinguished."[148]

INDIAN PERCEPTIONS OF THE TREATY

In the preceding sections, we have assembled available archival evidence on the historical background to Treaty Eight and the negotiations themselves. Where appropriate, brief reference has been made to the oral tradition of Indian communities, which has transmitted an understanding of the spirit and terms of Treaty Eight to the Indian elders of today. The present section will look more closely at the views of the Indian elders, and will

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[145] Canada, *Treaty No. 8*, p. 20.

[146] Ibid., p. 21.

[147] Ibid.

[148] Ibid.

attempt to explain divergence within the oral tradition, as well as between the archival evidence and the oral tradition. Our aim is to determine how the Indian people might have understood Treaty Eight in 1899. This is not to assume that the Indian understanding of recent years will be identical to that of 1899, but that the testimony of today's elders constitutes an essential source of evidence on the treaties.

Of all the subjects discussed by the elders in these interviews, hunting, fishing, and trapping rights emerge as the most significant. Overwhelmingly, the elders of the Treaty Eight area believed that the treaty promised that there would be no restriction on their right to hunt, fish, and trap. The most common responses were either a simple statement to the effect that they were guaranteed that there would be no restrictions, or that they would be allowed to continue their "livelihood." Any requirements, such as hunting or fishing licences, are seen as a violation of treaty rights.

Melanie Hamelin, seventy years old, heard from her grandfather that "there would not be any restrictions on the pursuit of their livelihood. There would not be any restrictions on their hunting or the animals they killed."[149]

Isador Willier, who was over one hundred years old when interviewed, said that the Indians were told that

> . . . The way you have been struggling for a livelihood—no one will ever stop that form of livelihood. If you should take treaty, this is the way you will make your livelihood. Moose, cariboo, and any other wild bush animals, no one will ever stop you from obtaining these animals anywhere . . . .You will always make your livelihood that way. If you should take treaty, . . . nothing will stop you from fishing and duck hunting . . . .[150]

Several interviews conceived these rights to mean that Indians would retain ownership of all fish and wildlife. A few interviews mention the limitation that Indians would not be able to hunt on the white man's land or to shoot at his farm animals or buildings.

Unfortunately, the interviews did not dwell on the distinction between commercial and non-commercial hunting, fishing, and trapping. However, the frequent reference to the right to continue their "livelihood" would suggest that the Indians understood that they would be able to pursue these activities on a commercial basis, as they had before the treaty. A few interviews imply that Indians can hunt only to supply family needs, but this may be a reflection of current legal realities rather than treaty promises.

On the basis of oral and archival evidence, it would seem that the treaty would not have been signed if the Indians had not been given assurances that they would be as free to hunt, fish, and trap after the treaty as before. They

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[149] T.A.R.R. Interview with Elders Program, interview with Melanie Hamelin, location and date not recorded.

[150] Ibid., interview with Isadore Willier, location not recorded, 18 November 1972.

This is Exhibit "B" referred to in the Affidavit of:

Chief Allan Adam

☐ Sworn / ☒ Affirmed before me this

20 day of October, 2025

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia M. Cardinal 01/01/26

Print Name and Expiry Date

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date: 01/01/26

THIS LAND SHALL LAST

A HISTORY OF TREATY 8 AND TREATY 11, 1870–1939

RENÉ FUMOLEAU, OMI





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Ph: 867.874.8480
info@denecultute.org

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1300 avenue Maguire
Sillery, Quebec
G1T 1Z3
Ph: 418.688.3556

Breynat's recollection of the occasion reflects the main concern of the Indians:

> Discussions were long enough but sincere; Crees and Chipewyans refused to be treated like Prairie Indians, and to be parked on reserves.... It was essential to them to retain complete freedom to move around.[108]

On the evening of July 14, Laird, Grouard and Lacombe, all members of the second Treaty group, sailed into Fort Chipewyan, accompanied by Brother Jean Marie le Creff. The appearance of this second group was cause for special celebration. A correspondent from the *Edmonton Bulletin*, who was on board the scow, recounts that he was quite startled when they received the customary welcome and were,

> ... greeted by a general firing of guns by the Indians and Half-breeds as well as the Free traders on shore, and it looked from the boats in the dark as if a battle were raging, judging by the flashes seen in all directions. The shore for about a mile was literally ablaze.[109]

During his stay, Lacombe noted in his diary that "The Treaty was made amiably. All the Indians are contented."[110] In the chronicle of the Grey Nuns no mention is made of the Treaty, other than details of the reception given by the school children for the visitors.[111]

It would seem that few people were concerned with the land ownership question, the real reason for the coming of these visitors. The Indians themselves were satisfied with the Treaty, believing that it would protect their freedom to hunt, trap, fish, and move freely through the country. For them, these were the real issues. Pierre Mercredi, interpreter for the Chipewyans, indicated in a later statement what had become of that precious freedom to hunt:

> I interpreted the words of Queen Victoria to Alexandre Laviolette, Chief of the Chipewyans and his band.... I know, because I read the Treaty to them, that there was no clause in it which said they might have to obey regulations about hunting. They left us no copy of the Treaty we signed, saying that they would have it printed and send a copy to us. When the copy came back, that second clause (that they

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Chief Allan Adam

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Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia M. CARDINAL

Print Name and Expiry Date 01/01/26

Government of Canada | Gouvernement du Canada

Treaty Texts: Treaty No. 8

Treaty No. (Number) 8 Made June 21, 1899 and Adhesions, Reports, Etc.

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unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.

We assured them that the treaty would not lead to any forced interference with their mode of life, that it did not open the way to the imposition of any tax, and that there was no fear of enforced military service. We showed them that, whether treaty was made or not, they were subject to the law, bound to obey it, and liable to punishment for any infringements of it. We pointed out that the law was designed for the protection of all, and must be respected by all the inhabitants of the country, irrespective of colour or origin; and that, in requiring them to live at peace with white men who came into the country, and not to molest them in person or in property, it only required them to do what white men were required to do as to the Indians.

As to education the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.

We should add that the chief of the Chipewyans of Fort Chipewyan asked that the Government should undertake to have a railway built into the country, as the cost of goods which the Indians require would be thereby

This is Exhibit "D" referred to in the Affidavit of:

Chief Allan Adam

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20 day of October, 2025

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or Notary Public in and for Alberta

Julia M. Cardinal

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Julia Margaret Cardinal
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SCC File No. 38734

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant
(Appellant)

-and-

RICHARD LEE DESAUTEL

Respondent
(Respondent)

-and-

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL FOR SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF THE YUKON TERRITORY, PESKOTOMUHKATI NATION, INDIGENOUS BAR ASSOCIATION IN CANADA, WHITECAP DAKOTA FIRST NATION, GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE)/CREE NATION GOVERNMENT, OKANAGAN NATION ALLIANCE, MOHAWK COUNCIL OF KAHNAWÀ:KE, ASSEMBLY OF FIRST NATIONS, MÉTIS NATIONAL COUNCIL AND MANITOBA MÉTIS FEDERATION INC., NUCHATLAHT FIRST NATION, CONGRESS OF ABORIGINAL PEOPLES and LUMMI NATION

Interveners
(Interveners)

FACTUM OF THE INTERVENER,
ATTORNEY GENERAL OF ALBERTA
(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada, SOR/2002-156)

Attorney General of Alberta
10th Floor, 102A Tower
10025-102A Avenue
Edmonton, Alberta T5J 2Z2

Angela Edgington
Brooklyn Leclair
Telephone: 780-427-1482
Fax: 780-643-0852
Email: angela.edgington@gov.ab.ca
brooklyn.leclair@gov.ab.ca

Counsel for the Intervener,
Attorney General of Alberta

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt
Telephone: 613-786-8695
Fax: 613-788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for the Intervener,
Attorney General of Alberta

PART I – OVERVIEW AND STATEMENT OF FACTS

1. It is Alberta's position that the right asserted by Mr. Desautel has a mobility aspect and is incompatible with Crown sovereignty. Further, s. 35 relates to the relationship between Canada and its Aboriginal peoples. When interpreted properly, in accordance with this Court's jurisprudence, it is clear that it was not intended to provide constitutional recognition of rights for Aboriginal collectives that are not part of Canadian society. Finally, the facts found by the Trial Judge do not meet the test for establishing an Aboriginal right.

2. Alberta accepts the facts as set out in the Appellant's Factum.

PART II – OVERVIEW OF POSITION

3. Alberta will address the following issues that arise on this Appeal:

(1) Is the right claimed by Mr. Desautel incompatible with Crown sovereignty?

(2) Does s. 35 of the *Constitution Act, 1982* extend to Aboriginal collectives that are located outside Canada?

(3) Did the courts below err in the application of the test for Aboriginal rights to the facts found by the Trial Judge?

4. It is Alberta's position that the courts below erred in determining that Mr. Desautel has an Aboriginal right to hunt in British Columbia (BC) which is protected by s. 35 of the *Constitution Act, 1982*.[1]

PART III – ARGUMENT

A. The Right when Properly Characterized is Incompatible with Crown Sovereignty

(i) The Common Law did not Extend to Rights Incompatible with Sovereignty

5. The common law protected Aboriginal interests and laws as Aboriginal rights upon the assertion of Crown sovereignty over the territory that is now Canada. This protection was subject to certain exceptions: (i) where the rights were incompatible with Crown sovereignty; (ii) where the rights had been surrendered under treaty; and (iii) where the rights were extinguished.[2]

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[1] *Constitution Act, 1982*, s. 35(1), being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[2] *Mitchell v MNR*, 2001 SCC 33 (*Mitchell*) at para 10.

(iv) The Courts Below Erred in Finding no Mobility Aspect to the Claimed Right

15. The hunting activity undertaken by Mr. Desautel is alleged to be the exercise of an Aboriginal right; however, the activity does not, on its own, indicate the scope of the right claimed.[18] This Court has identified three factors involved in the characterization of a claimed right: (i) the nature of the action claimed to he done pursuant to an Aboriginal right; (ii) the government action or legislation alleged to infringe the right; and (iii) the ancestral traditions or practices relied on to establish the right.[19]

16. In this case, the nature of the action claimed to be done pursuant to an Aboriginal right was not just hunting - it was hunting in Sinixt traditional territory in BC. The alleged infringing legislation prohibited hunting without a license and hunting big game while not being a resident of BC. The ancestral practice relied on was hunting in the Sinixt traditional territory which included lands in both BC and Washington.[20]

17. The courts below rejected that there is a mobility aspect to the claimed Aboriginal right to hunt. A site-specific right to hunt includes physical access to the territory and the right to travel to the hunting grounds.[21] Mr. Desautel is a citizen and resident of a foreign country. Alberta submits that the right he asserts must include a mobilty aspect for it to be meaningfully exercised. Including a mobility component more accurately reflects the factors set out by this Court to properly characterize the right at issue. The Sinixt were "a mobile people" who exercised a "seasonal round" in their territory to hunt, fish and gather.[22] One of the charges Mr. Desautel was facing included a residency component.

18. In *Mitchell*, Chief Mitchell denied that his claim entailed the right to freely pass the border – a mobility right. As a Canadian citizen, Chief Mitchell did not require a right to cross the border into Canada. However, Chief Justice McLachlin rejected his contention that it was unnecessary to consider mobility. She noted that once an Aboriginal right has been established it encompasses other rights necessary to its meaningful exercise. The evidence had shown that trade involved travel and that finding a trading right would confirm an included mobility right.[23]

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[18] *Mitchell* at para 14.
[19] *Mitchell* at para 15.
[20] *Trial Decision* at paras 20 and 32.
[21] *R v Côté*, [1996] 3 SCR 139 (*Côté*) at para 57; *Simon v The Queen*, [1985] 2 SCR 387 at 403.
[22] *Trial Decision* at para 24.
[23] *Mitchell* at para 22.

(v) The Right at Issue is Incompatible with Crown Sovereignty

19. Alberta is aware of decisions where the court considered or commented upon an Aboriginal right with a cross-border mobility component. None of these prior cases determined the existence of such an Aboriginal right.[24] A majority of this Court has yet to consider whether such a mobility right is compatible with Crown sovereignty. This is an appropriate case to consider that issue.

20. Control of a country's borders, and who may enter and remain in that country, is a fundamental attribute of sovereignty.[25] In 1846, the Oregon Boundary Treaty established the border along the 49th parallel. At that time, the common law right of the Sinixt who resided in Washington to freely travel to and hunt in the area that became BC was no longer compatible with Canadian sovereignty. The common law right of the Sinixt who resided in Washington did not become incorporated into Canadian law and was not an existing right when s. 35 came into force.

21. The fact that some Sinixt who lived south of the 49th parallel still traveled into Canadian territory to hunt in the late 19th and early 20th century[26] is not determinative of whether the alleged right is incompatible with Canadian sovereignty. As stated by Justice Binnie: "This aspect of the debate … is not at the level of *fact* about the effectiveness of border controls in the 18th century."[27] Whether an asserted right is incompatible with Canadian sovereignty is a legal question.

22. As noted above, the Trial Judge expressed concern with the Crown's sovereign incompatibility argument as, in her view, the hunting rights of the Sinixt who remained in BC would not have survived the assertion of sovereignty. Those Sinixt became their own collective – the Arrow Lakes Band. There is no reason why the practice of hunting in their traditional territory north of the 49th parallel would not have survived the imposition of the border and been incorporated into the common law as a right.

23. The courts below suggested that any border mobility issues that arise can be dealt with in the infringement and justification analysis.[28] In terms of a hallmark indicia of sovereignty – control of the border – this is an unworkable solution. The Crown should not have the burden of justifying why a

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[24] *Mitchell; R v Campbell*, 2000 BCSC 956; *Watt v Liebelt*, [1999] 2 FC 455 (CA); *R v Shenandoah*, 2015 ONCJ 541 (*Shenandoah*).
[25] *Mitchell* at paras 160-163.
[26] *Trial Decision* at paras 40-50 and 137-138.
[27] *Mitchell* at para 73 [emphasis in original].
[28] *Trial Decision* at para 146; *BCSC Decision* at para 108; *BCCA Decision* at para 70.

person who was denied entry into Canada to exercise an alleged Sinixt right to hunt should continue to be denied entry.[29]

24. Finding that the right asserted by Mr. Desautel is incompatible with Crown sovereignty is not at odds with the purpose of s. 35. That purpose is to reconcile the pre-existence of Aboriginal societies with Canadian sovereignty and the interests of all Canadians, including the Aboriginal peoples who are citizens in this country. This issue is dispositive of the appeal and the Court need not make a determination on the additional issues set out below.

B. Section 35 Does Not Include Aboriginal Collectives Outside Canada

25. It is Alberta's position that the interpretation of s. 35 is a threshold issue which should be considered prior to the Court applying the test for establishing an Aboriginal right. Alberta submits that s. 35 does not apply to Aboriginal collectives outside of Canada.

(i) Interpretation Principles

26. In *R v Sparrow*, the Court stated that: "The approach to be taken with respect to interpreting the meaning of s. 35(1) is derived from general principles of constitutional interpretation, principles relating to aboriginal rights, and the purposes behind the constitutional provision itself."[30]

27. When interpreting constitutional rights, the wording of the Constitution should be given a "purposive"[31] interpretation; however, the interpretation must begin with the language of the constitutional provision in question.[32] Interpreting a constitutional provision begins with the ordinary meaning of the language, followed by the historical context and the philosophy and objectives underlying the words and guarantees.[33]

28. A generous and liberal interpretation of s. 35 is required and any ambiguity will be resolved in favour of Aboriginal peoples.[34] However, this does not mean that the Court must adopt an interpretation that is favoured by Aboriginal peoples over competing interpretations. Rather, the Court must reconcile any interpretation with the policies the provision seeks to promote.[35]

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[29] *Mitchell* at para 153.
[30] *Sparrow* at 1106.
[31] *Caron v Alberta*, 2015 SCC 56 (*Caron*) at para 35.
[32] *Caron* at paras 36-37.
[33] *Caron* at para 38.
[34] *Sparrow* at 1106-1107; *R v Van der Peet*, [1996] 2 SCR 507 (*Van der Peet*) at para 25.
[35] *Mitchell v Peguis Indian Band*, [1990] 2 SCR 85 at 142-143 (per LaForest J.).

This is Exhibit "E" referred to in the Affidavit of:

Chief Allan Adam

☐ Sworn / ☒ Affirmed before me this

20 day of October, 2025

_____

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia M. CARDINAL

Print Name and Expiry Date 01/01/26

A Commissioner for Oaths/
Notary Public in and
for the Province of Alberta
Julia Margaret Cardinal
Expiry Date 01/01/26

Court File No. 38734

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL for BRITISH COLUMBIA)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

RICHARD LEE DESAUTEL

Respondent

- and -

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF THE YUKON TERRITORY

Interveners

(Title of proceedings continued on next page)

FACTUM OF THE ATTORNEY GENERAL OF CANADA
pursuant to Rule 37 of the *Supreme Court Rules*

ATTORNEY GENERAL OF CANADA

Department of Justice Canada
National Litigation Sector
500 - 50 O'Connor Street
Ottawa, ON K1A 0H8
Fax: 613-954-1920

Per: Christopher Rupar
Dayna Anderson

Tel: 613-670-6290
E-mail: christopher.rupar@justice.gc.ca

Counsel for the Attorney General of Canada

DEPUTY ATTORNEY GENERAL OF CANADA

Department of Justice Canada
National Litigation Sector
500 - 50 O'Connor Street
Ottawa, ON K1A 0H8
Fax: 613-954-1920

Per: Robert Frater Q.C.

Tel: 613-670-6289
E-mail: rfrater@justice.gc.ca

Agent for the Attorney General of Canada

solution, more is required than a finding of "continuity" between an historic Indigenous collective that existed in what is now Canada and a contemporary collective now located outside of Canada. A flexible approach to s. 35 should require that the individual claimant demonstrate continuity through the Indigenous collective in Canada.

4. In order to determine whether a sufficient connection exists such that a non-domiciled individual may exercise s. 35 aboriginal rights, one should look to both historical and modern ties between the non-domiciled individual and the Indigenous collective in Canada. The non-domiciled individual should demonstrate a significant modern-day connection to the rights-bearing collective residing in Canada, as well as community acceptance by and permission from that resident collective. This ensures that the non-domiciled individual is exercising s. 35 aboriginal rights held or asserted by the Indigenous collective in Canada. The scope of the individual's ability to exercise the s. 35 right will depend on the context of each ease, including the impact of exercising the right on limited or shared resources. The scope may also be restricted to specifically delineated rights at the discretion of the Indigenous collective in Canada, or by federal or provincial legislation, regulation or policy that can be justified pursuant to the framework set out in *R v Sparrow*.

5. The issue of Canadian territorial sovereignty does not squarely arise in this case because Mr. Desautel has not asserted a right to enter Canada. However, should the Court decide to consider the issue, it should be presumed that non-domiciled Indigenous individuals who seek to exercise a s. 35 right may not be permitted to enter Canada in all circumstances. Control over borders is a crucial aspect of national sovereignty. Parliament must maintain the ability to make reasonable choices for the general welfare of the nation and therefore must be able to pursue pressing objectives such as maintaining national security and preserving public health. Any alleged infringement of the exercise of a presumptively established s. 35 right by a non-domiciled Indigenous person should generally be reviewed pursuant to the justification framework set out in *R v Sparrow*. Although, in general, a mobility right may not necessarily be incompatible with Canada's sovereignty, the manner in which the right interacts with Canadian sovereignty should be determined on the specific facts of each case.

impacts that a broader interpretation of s. 35 rights holders may have on their own ability to exercise their s. 35 rights, including impacts on resources and practices like hunting and fishing.

IV. Sovereignty and Section 35(1)

50. The courts below determined that the issue of sovereign incompatibility did not arise on the facts of this case, primarily because there was no assertion that Mr. Desautel entered Canada illegally. Consequently, the issue of sovereign incompatibility and section 35(1) aboriginal rights (including the possibility of incidental mobility rights) should be determined in a case where the issue is squarely raised and a full evidentiary record is before the courts.[88]

51. However, should this Court determine the issue must be addressed in this case, the following factors should guide the analysis. First, the exercise of government power is not absolute, just as s. 35 and *Charter* rights are not absolute. Canada has, by its Constitution, limited the exercise of government powers which may be inherent as a sovereign state. Section 35 is one such limit; the *Charter* is another. Canadian authorities are subject to these self-imposed limitations on what would otherwise be an incident of sovereign power.[89] Even if this limitation is accepted, individuals who are non-domiciled Indigenous persons, but who may exercise s. 35 rights, may not be permitted to enter Canada in every circumstance.

52. Parliament must maintain the ability to make reasonable choices for the general welfare of the nation[90] and pursue pressing objectives. This may include maintaining national security and public health, which makes control over borders a crucial aspect of sovereignty. The *Immigration and Refugee Protection Act* (*IRPA*)[91] sets out broad objectives and principles that are applied to a full spectrum of unique immigration situations. Under the existing *IRPA* framework, whether a

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[88] *Mackay v Manitoba*, [1989] 2 SCR 357, pp 361-363; *Danson v Ontario (AG)*, [1990] 2 SCR 1086, pp 1099-1102
[89] *Watt v Liebelt*, [1999] 2 FC 455 (Appeal Division), para 15 [*Watt*]
[90] *R v Simmons*, [1988] 2 SCR 495, p 528
[91] SC 2001, c 27 [*IRPA*]

non-domiciled Indigenous individual can exercise a s. 35 right in Canada is a relevant (but not determinative) consideration in deciding whether to allow entry into Canada.[92]

53. Second, assuming no extinguishment of the asserted right prior to 1982, the question arises as to whether an incidental mobility right exists. This will depend entirely on whether the incidental mobility right is required to meaningfully exercise the claimed aboriginal right.[93] The scope of such a right should be defined based on the particular evidence in each case and would almost always need to be limited to mobility through a particular territory for particular purposes.

54. Third, if a claimant has established the ability to exercise a s. 35(1) right, an incidental mobility right to access certain territory in Canada may also need to be determined. The manner in which such a right interacts with Canadian sovereignty should be determined on the specific facts of each case. The majority of this Court in *Mitchell* has suggested that the framework to determine such matters generally lies in the law of infringement and justification under the *Sparrow* framework.[94]

55. The imposition of a border control, including the denial of entry to an individual who claims a mobility right, may infringe that individual's ability to exercise s. 35 rights. Any such infringement should be reviewed pursuant to the *Sparrow* framework. The outcome will depend on the evidence in the particular case.[95] In this case, there is no evidence that Mr. Desautel was denied entry to Canada, so there is no need to consider whether an incidental mobility right exists or was justifiably infringed.

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[92] See for example *IRPA*, ss 20-22, 24-25 and 25.2
[93] *Mitchell*, para 22
[94] *Mitchell*, para 63
[95] *Watt*, paras 17 and 20

This is Exhibit "F" referred to in the Affidavit of:

Chief Allan Adam

☐ Sworn / ☒ Affirmed before me this

20 day of October, 2025

mc

Commissioner for Oaths, Justice of the Peace,

or Notary Public in and for Alberta

Julia M. CARDINAL

Print Name and Expiry Date 01/01/26

A Commissioner for Oaths
Notary Public in and
for the Province of Alberta
Julie Margaret Cardinal
Expiry Date: 01/01/26

(24 copies)

No. 27066

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

IN THE MATTER OF an Appeal pursuant to section 135 of the *Customs Act*, S.C. 1986, c. 1 and
IN THE MATTER OF an Action for declaratory relief

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Appellant
(Defendant)

- and -

GRAND CHIEF MICHAEL MITCHELL
also known as KANANTAKERON

Respondent
(Plaintiff)

APPELLANT'S FACTUM

Deputy Attorney General of Canada
Department of Justice
2199 - 284 Wellington Street
Ottawa, Ontario K1A 0H8

per: Graham Garton, Q.C.
Sandra Phillips
Tel.: (613) 957-4842
Fax: (613) 954-1920
Counsel for the Appellant

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SUPREME COURT OF CANADA
COUR SUPREME DU CANADA
DÉPOSÉ

Hutchins, Soroka & Dionne
Suite 400 - 245 St-Jacques Street
Montreal, Quebec H2Y 1M6

per: Peter W. Hutchins
Anjali Choksi
Micha Menczer
Tel.: (514) 849-2403
Fax: (514) 849-4907
Counsel for the Respondent

Gowling, Strathy & Henderson
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3

Tel.: (613) 233-1781
Fax: (613) 563-9869
Ottawa Agent for the Respondent

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right as a mobility right rather than as a mere customs exemption is more consistent with the actions of the respondent, the aboriginal practice he relied upon, and the evidence he adduced.

(b) The Practice Relied Upon is not Reconcilable with Crown Sovereignty

30. As Lamer C.J. explained in *R. v. Van der Peet*, s. 35(1) of the *Constitution Act, 1982* only recognizes and affirms as constitutional rights those aboriginal practices which can be reconciled with the sovereignty of the Crown: "To reconcile aboriginal societies with Crown sovereignty it is necessary to identify the distinctive features of those societies; it is precisely those distinctive features which need to be acknowledged and reconciled with the sovereignty of the Crown."[33] This Court has appreciated that control of the borders, both with respect to the movement of people and the movement of goods, is essential to the maintenance of Canadian sovereignty. The practice asserted by the respondent in this case is a denial of the authority of the Crown to control the borders and is therefore inconsistent with sovereignty.

31. In international law, a core feature of sovereignty is "a jurisdiction, prima facie exclusive, over a territory and the permanent population living there."[34] The courts have always understood that in order to meet this standard for the recognition of statehood, a political community must have the ability to control its borders. In the first instance, this necessitates a power to regulate the admission of persons whose claim to enter the territory does not rest on citizenship. As Lord Atkinson put it in *Attorney General for Canada v. Cain*:

> One of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State opposed to its peace, order, and good government, or to its social or material interests: ... .[35]

32. The sovereign may grant non-citizens the right to enter (as has been done in s. 4(3) of the

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[33] *Supra* note 16, at para. 57. See also paras. 31 and 61 [Tab 30].

[34] Ian Brownlie, *Principles of Public International Law*, 4th ed. (1990), at p. 287 [Tab 37].

[35] [1906] A.C. 542, at p. 546 [Tab 1]. As noted above, the respondent does not claim to be a Canadian citizen, and in any event cannot rely on a statutory right of entry as a basis for an aboriginal right.

Immigration Act for persons registered as Indians), but in the absence of such a grant no non-citizen can assert that he or she is entitled to enter the state as of right. To make such an assertion is to deny an indispensable attribute of sovereignty. Control of the border is inextricably linked to sovereignty, as the U.S. Supreme Court emphasized in *Ekiu v. United States*:

> It is an accepted maxim of international law, that every sovereign nation has the power, as **inherent in sovereignty, and essential to self-preservation,** to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.[36] [Emphasis added]

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33. Thus, an alleged aboriginal practice of free movement back and forth across the international boundary is not consistent with one of the essential features of sovereignty. In this case, the Court of Appeal agreed that such a practice could not be recognized as an aboriginal right.[37] That is why it sought to characterize the claimed right more narrowly. As previously submitted, however, the right in issue, when properly understood, is not capable of subdivision, and the aboriginal practice of free passage on which it is based is not reconcilable with the sovereignty of the Crown.

34. But even if the right could be subdivided (and, contrary to the claim and the evidence in this case, could be asserted as an aboriginal right to ship goods by common carrier rather than to carry them personally across the boundary), the state's interest in self-preservation would still be engaged by the attempt to bring goods into the country. This Court has repeatedly held that control of the borders, both with respect to the movement of people **and** the movement of goods, is fundamental to the preservation of Canadian sovereignty. The seminal decision on this subject is *R. v. Simmons*, in which Dickson C.J. for the Court said:

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> National self-protection becomes a compelling component in the calculus. I accept the proposition advanced by the Crown that the degree of personal privacy reasonably expected at customs is lower than in most other situations. People do not expect to be able to cross international borders free from scrutiny. It is commonly accepted that sovereign states have the right to control **both who and what** enters their boundaries. For the general welfare of the nation the state is expected to perform this role. Without the ability to establish that all persons who seek to cross its borders and their goods are legally entitled to enter the country,

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[36] (1892), 142 U.S. 651, *per* Gray J. at p. 659 [Tab 7].

[37] Reasons of Letourneau J.A., paras. 31-33, **Appellant's Record** vol. 5, pp. 869-71.

Premier Danielle Smith
Members of Cabinet and Executive Council
Lieutenant Governor of Alberta
Alberta Legislature Building
10800 - 97 Avenue
Edmonton, AB
T5K 2B6

May 1, 2026

Re. Implications of Alberta Independence and Dené Law

My name is François Paulette. I am a member of the Tthebatthi Dënésułıné Nation. I live in Tthebatthi Dënésułıné Nation, otherwise known as Smith's Landing First Nation in Treaty 8 territory and have lived my life on my people's ancestral lands.

I have been asked to provide my views on the implications of calling a referendum about Alberta's independence from Canada for Treaty 8 – which my ancestors signed – and our understandings of the treaty relationship between the Dene and the Crown.

BACKGROUND AND EXPERTISE

I am descended from a line of Chiefs who have led my people since before we signed Treaty 8 with the Crown in 1899. In 1971, I became the youngest Chief within the Dene Nation. In 1972, together with sixteen other Chiefs from the Mackenzie Valley, I challenged the Crown to recognize Dene treaty rights and Aboriginal title to approximately 450,000 square miles of our traditional territory in Treaties 8 and 11 in the series of cases known as *Paulette et. al. v. the Queen*.

I was Chief of my Nation from 1972 until 1980. I continued to represent my community after serving as Chief, most notably as Chief Negotiator for the Tthebatthi Dënésułıné Nation in concluding a Treaty Land Entitlement Agreement. I have remained actively involved in the protection and interpretation of treaty rights for many decades. I am a founding member of the Dene Cultural Institute and continue to work as an interpreter of Dene traditional knowledge and a facilitator of cross-cultural understanding.

I contributed to the Indigenous Peoples' Traditional Knowledge articles of the Paris Agreement on Climate Change and have participated in annual meetings of the United Nations Conference of Parties on Climate Change. As a past member of the Assembly of First Nations Elders Council, I aided in the development of traditional knowledge protocols and policy for the Canadian Ministry of Climate Change and the Environment.

I work as an Adjunct Professor at the University of Alberta's School of Public Health and as an Elder Advisor at the Institute for Circumpolar Health Research (ICHR). I act as the

Chair of the Governing Council for the Northwest Territories Network Environments for Indigenous Health Research. I hold an honorary Doctorate of Law from Kwantlen Polytechnic University, and in 2020 I was named an Officer of the Order of Canada.

My expertise and knowledge derive from my family, my Nation, and my continued relationship with the ancestral lands of the Denesųłiné. I have prepared this report to provide an opinion that is fair, objective and non-partisan with respect to Dene treaty-making history, principles of Dene law, and Dene understandings of Treaty 8. These topics are within my area of expertise, and I do not propose to go beyond them. I provide this report in the hope that it will assist the Government of Alberta, or any other decision makers for whom it is relevant, to remember the Crown's commitments to the First Nations of these treaty territories.

HISTORY AND TREATY MAKING IN DENE TERRITORY

The stories and history of Treaty 8 were passed down to my father from his father, Johnny Paulette, who was Chief of my people and present at the signing of Treaty 8. This history tells me that the Dene had experience treaty making long before the signing of Treaty 8. Long before the arrival of Europeans, Dene peoples had a history of entering into treaties and peace agreements with neighbouring nations. These agreements are grounded in ceremony, spiritual law, mutual respect and sharing of the land in the interest of peaceful coexistence.

In the early 1700s, for example, the Dene and the Cree were in conflict over lands and territory. A woman by the name of Thanadelthur brought our people together to negotiate a peace and to commemorate the peace with ceremony. That early treaty brought balance between the Cree and the Dene, and that balance meant that we could live peacefully together.

It has always been our custom to travel with the seasons throughout our territory. We do not begrudge others traveling through our territory as well, as long as they understand and abide by the agreements which form the basis of our peaceful coexistence. For as long as we have lived alongside the Europeans, it has always been clear that our territories belong to us, but that we would share them with whomever we could treat with. In the 1770s, the Dene leader Matonabee acted as a guide for Samuel Hearne who brought the Hudson's Bay Company north to our lands. Matonabee guided Hearne through the territories of the Cree and Dene Tribes and he explained that the land belonged to the Dene and that we shared the land with other Dene Tribes and the Cree.

The Hudson's Bay Company would soon come to live with us in our territories, but the fact that we shared the land did not mean that it ceased to be ours. The Company never owned any land in our territories or asserted any laws or governance over our people. They had their rules, and we had ours. They traded with us, and we traded with them.

That trade, in turn, gave rise to tensions over harvesting territory. In 1781, the Denesuline, Dane-zaa (Beavers), Cree and Slavey nations came together at Peace Point and again made Treaty. The nations agreed to coexist peacefully and share the land, and they commemorated the peace through ceremony and celebration that lasted a week. The Peace River Treaty was about sharing the land and trapping and harvesting amongst the four nations.

SIGNING OF TREATY 8

In 1899, representatives of the Crown came into Dene territory to negotiate Treaty 8. We did not invite the Europeans into our lands, though we had heard they were entering into treaties in the south. When they arrived, we greeted them and met with them, but we knew that there was risk in treating with them. The Europeans had brought sickness, and we knew that the buffalo herds had been depleted. We knew the Europeans did not have the same spiritual understanding of our way of life. They did not know our language, and they did not know our history, so their presence required careful consideration and caution.

We did not know that a draft Treaty existed.That was not explained to us. As part of our protocol for negotiating agreements, we would select one leader, *dené tthe theda*, to talk with the newcomer. The *dené tthe theda* would then negotiate on behalf of the rest of the community. The community would not know all of the details of the Treaty being negotiated, except that we all knew that our interest in the Treaty was that our way of life would not be infringed on. The *dené tthe theda* reached an oral agreement with the Treaty commissioners, the terms of which were never properly translated into the written text. As was the case in previous Treaty-making among the Dene, the Treaty involved spiritual leaders and ceremony.

When Treaty 8 was entered into in 1899, the clear understanding of the Dene was that the Crown would live alongside us in peace and friendship and would not interfere with Dene governance, laws, spiritual practices, or our *Dëné Ch'anıe* (meaning "way of life"). The Crown made promises that our *Dëné Ch'anıe* would continue as it always had. These promises formed a central part of the treaty relationship.

There was no discussion or agreement to surrender or extinguish Dene land. In the Dene language, there is no word that means surrender or extinguish. It was not part of our language, and it was not part of our culture or our practice. It simply would not have made sense. The Treaty meant we could maintain our right to self-government and we could co-exist, in a very interdependent way. Simple as that.

DENE PRINCIPLES OF LAW, CULTURE, AND NON-INTERFERENCE

Dene law is based on balance, non-interference, kinship, and shared responsibility. This includes respect for other nations and for newcomers who live among us. The treaty relationship reflects these principles: separate ways of life co-existing without interference, governed by mutual respect. These principles do not require exclusive occupation and use of land.

Treaty was meant to establish a lasting framework for peace that would allow the peaceful sharing of lands. The Treaty protected our right to the *Dëné Ch'anıe* – "the path" that we live by – including the spiritual laws and government laws that we chose. The *Dëné Ch'anıe* is a description of our civilization, spiritually emotionally mentally physically, it is everything that makes us a people. The Treaty lets us co-exist with the Crown in commerce and trade but protects our *Dëné Ch'anıe.*

The negotiations did not arise in the context of a conflict over territory, as they had with the Dane-zaa, Cree and Slavey nations at Peace Point. Rather, the Crown was negotiating to live amongst us and to co-exist. And so, the Treaty was not primarily about land or boundaries - it was about defining the boundaries of our *Dëné Ch'anıe* within our territory. The Europeans lived so differently to the way we lived as Dene. They did not have an understanding of our spiritual way of life. They didn't know our language, and they didn't know our history and the occupation of the land that we lived on. Our ancestors were strong. They asserted our right to our *Dëné Ch'anıe,* and through Treaty 8 the Crown accepted and agreed not to interfere with our way of life.

Treaty 8 holds the balance of power between the Crown and the Nations. Absolutely no other third party can enter into that Treaty. Treaty 8 is understood by the Dene to exist as long as the sun shines, the river flows, and the grass grows. Treaty is paramount. It overrides all laws in our existence as modern people living in relationship with the Crown and cannot be overridden by provincial or administrative governments.

A REFERENDUM ON ALBERTA INDEPENDENCE IS BREACH OF DENE LAW, PROTOCOL AND UNDERSTANDING OF THE TREATY

The creation of the Province of Alberta in 1905 was never discussed with the Dene and did not alter the treaty relationship. Our treaty is with the Crown, not with provinces or other third parties. Alberta is an administration of the Crown and has no authority or jurisdiction over the Dene.

Provincial laws and boundaries were never accepted as limiting Dene jurisdiction or our relationship with the land. The only international boundaries are Treaties 6, 7, 8, and 11. Treaty remains the highest authority governing our relationship with the Crown. Alberta cannot alter, interfere with, or assume treaty obligations without violating the Treaty and

Dene law. There is no “starting point” for a discussion that is premised on the idea that Alberta would “take over” the Treaty relationship. It is simply not possible in Dene law.

In our language, the word for reconciliation is *?ełk'eré t'á benánudhi xá* which means to “take down” and start over. We cannot amend or end Treaty 8, as it is paramount and was entered into for future generations. We can only move into a new relationship by sitting down and starting over in the interest of reconciliation with our people, and with mother earth and our lands.

If Alberta wants to explore the prospect of a new Treaty relationship with our people, apart from Canada, that process must begin with respectful dialogue grounded in the spirit of reconciliation. The outcome cannot be pre-determined or pre-supposed by a popular referendum, which will only damage the prospect of reconciliation. Our ancestors could never have anticipated that Alberta would throw open the question of fundamental changes to the treaty and treaty relationship to the general settler public before coming to speak with us Dene. To do so would be a profound breach of Dene protocol – throwing central questions about our relationship to the public at large before discussing them with us and our leadership first.

Respectfully,

François Paulette

François Paulette, LLD (Hon), OC

AS LONG AS

As long as this land shall last it will be cried by as I have said
Chief Monfwi, during treaty negotiations at Fort Rae in 1921

THIS LAND SHALL LAST

A HISTORY OF TREATY 8 AND TREATY 11, 1870–1939

RENÉ FUMOLEAU, OMI

UNIVERSITY OF CALGARY PRESS

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To the youngest Dene child in the Northwest Territories

Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

Government Census of 1890

	Men	Women	Children
Fort Chipewyan	90		
Fond du Lac	60		
Fort Smith	56		
Fort Resolution	86		
Fort Simpson	130	136	234
Fort Providence	92	106	258
Fort Rae	128	147	340

Fort Wrigley with about 50 hunters is outside of the proposed boundary, but the Indians all belong to the Fort Simpson Band and traded there until a few years ago, and should therefore be included with Fort Simpson.

The posts of Nelson and Liard are both outside of the boundary and in British Columbia, but should be included ...

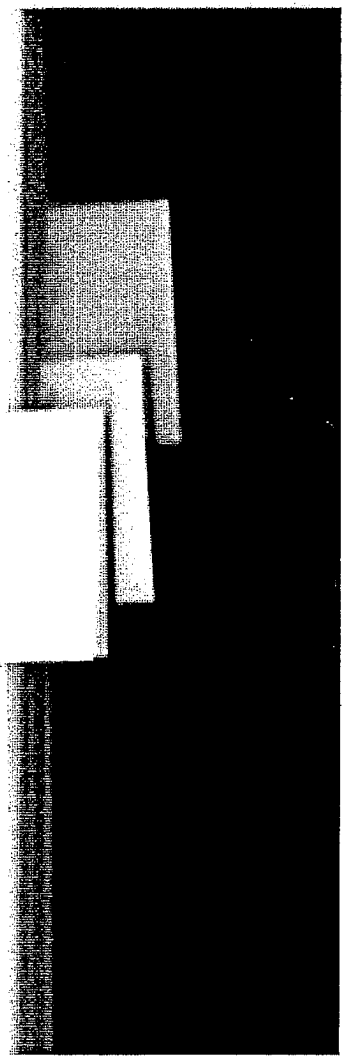
The Indians of Liard and Nelson, if treated with, should be met at the former point. At one time they all traded at Liard along with a number of others who have lately been drawn to Cassiar District.[57]

The total Indian population to be treated with was 4,500. The provisions required were: 190 sacks of flour; 9,600 pounds of bacon; 1,125 pounds of tobacco; 1,125 pounds of tea; and 3,500 pounds of sugar.[58] Other estimates were drawn up and more correspondence exchanged. However, on July 3, 1891, the Superintendent-General of Indian Affairs wrote, "before going any further in this matter, we had better wait to see whether the money will be voted for this year or not."[59] This caution was prompted by the political confusion which followed the death of Prime Minister John A. Macdonald on June 6, 1891. The money was not voted.

The next five years saw a succession of four Prime Ministers. Stability returned to Government with the election in July, 1896, of Sir Wilfrid Laurier, who was to continue in office for fifteen years. The politicians had been disappointed with the rate of oil exploration and exploitation in the north, and soon lost interest in treaty negotiations. It was not until the Klondike gold rush that public attention was once more focused on the wealth and opportunities hidden in the north, and treaty negotiations began.

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10. PAC, RG10, BS, file 241,209-1, Vankoughnet to John A. Macdonald, 5 November 1885.
11. The Fort Nelson Indian Band gave its adhesion to Treaty 8 in 1910.
12. PAC, *McFarlane Papers*, MG29, D9, vol. 1, pp. 332–33. "Macfarlane" was his own orthography. Now, many people write his name "MacFarlane" or "McFarlane."
13. Ibid., pp. 808–9, Fort Chipewyan, 24 December 1880.
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21. Ibid., Macfarlane to Lawrence Clarke, 28 May 1884.
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26. Ibid., file 19,502-1, Clut to John A. Macdonald, 18 May 1888.
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dence at the outset, for the Indian character is such that, if suspicion or distrust once be aroused, the task of eradication is extremely difficult.

For these reasons it was considered that the time was ripe for entering into treaty relations with the Indians of the district, and so setting at rest the feeling of uneasiness which was beginning to take hold of them, and laying the foundation for permanent friendly and profitable relations between the races.[17] *

In addition to extinguishing Indian title to the land, the Government was looking for tighter control over both Indians and whites, to insure peaceful settlement and development of the land, and to promote the harmonious co-existence of Indians and whites. In the North, as everywhere else, economic considerations far out-weighed all others in the formulation of Indian policy.

A new political entity, the Yukon Territory, was created at that time. Given the economic implications of gold in the Yukon, there is some wonder that the Government did not initiate treaty negotiations with the Yukon Indians at the time of the gold rush. No document has yet been found to indicate that a treaty was ever considered. Perhaps Ottawa was

* Modern historians agree on the motives behind the negotiations of Treaty 8:

"There were talks of railway from Edmonton to the Nelson River or to the Liard River, and thence to the Yukon. All these reasons compelled the Government to organize some kind of administration and to deal by treaty with the Northern Indians as had been done with the Prairie Indians." – Bishop Grouard, *Soixante Ans d'Apostolat*, p. 358.

"Since a find of minerals was liable at any time to send a rush of other and more permanent settlers there, it became necessary for the Government to get some control of the Crees, Chipewyans and Beavers in the Athabasca and Peace River countries.

It was consequently decided to send a party of Commissioners in to bring these tribes into treaty relations with the Government." – K. Hughes, *Father Lacombe, The Black Robe Voyageur*, 1911, p. 377.

"It was not so much to preserve order as to protect them [the Indians] from the Whites, who, now that the country south was fast settling, would surely encroach on their domain, that this treaty [Treaty 8] was made." – Sir C. E. Denny, *The Law Marches West*, 1931, p. 300.

"Large crowds of gold-seekers were then moving to the Yukon, (1898). To prevent any trouble between these foreigners and the Indian tribes whose territories they were crossing, a Treaty commission was sent to the Great North in 1899." – A. G. Morice, OMI, *Histoire Abrégée de l'Ouest-Canadien*, 1914, p. 130.

"Reacting first to the advent of prospectors and settlers during and after the Klondike gold-rush, the department [of Indian Affairs] made preparations to bring under treaty the Indians of the Athabasca and Peace River districts north of Treaty 6 and south of Great Slave Lake." –M. Zaslow, *The Opening of the Canadian North*, 1971, pp. 224–25.

that the Indians would put too high a price on their rich land and wished to avoid the formality of a treaty.

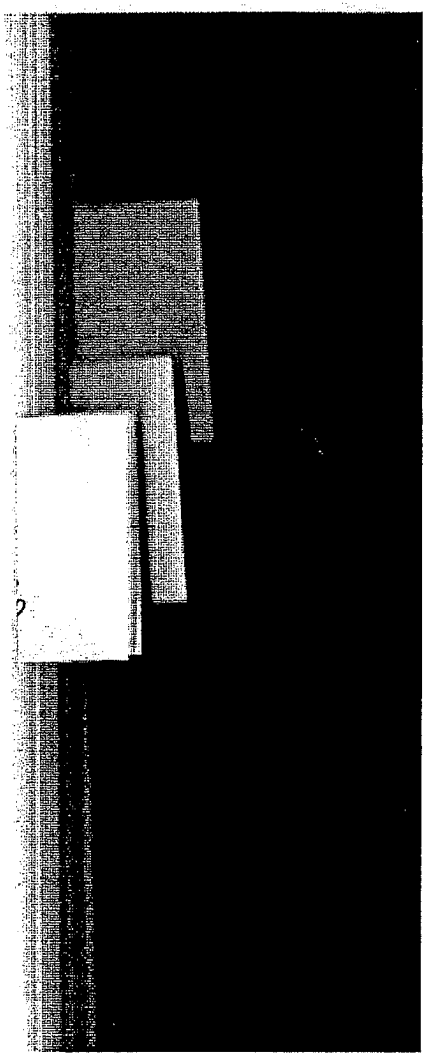
As for the Athabasca-Mackenzie District, it was the Klondike gold rush with all of its attendant political, economic, and social implications, which finally forced the Government to come to terms with its responsibilities in that part of the North covered by Treaty 8.

NORTH WEST MOUNTED POLICE PATROLS, 1897–1899

On January 4, 1897, a North West Mounted Police patrol left divisional headquarters at Fort Saskatchewan, Alberta, by dog-team. It was the first of annual patrols which would penetrate the Peace River country and the north beyond. Led by Inspector Arthur Murray Jarvis, the first patrol reached Fort Resolution on February 13, and was back at Fort Saskatchewan on April 14, having travelled more than two thousand miles. Ostensibly the patrol was in the Athabasca District "to look into various matters such as the prevalence of destructive fires, traffic in liquor, and the allegedly wholesale setting out of poison by white trappers in the area."[18] As the first official Government presence in the north, other than the Dominion land surveyors who had travelled the country since 1882, the police patrol would also serve to secure Canadian sovereignty over the vast land. Complete reports of all northern patrols from 1897 until the First World War are published in Canada Sessional Papers for the edification, no doubt, of interested foreign powers.

These reports constitute the earliest and only official records of the northern districts. For the purpose of evaluating conditions affecting the signing of Treaty 8, these reports are invaluable. They describe the Indian's way of life, his complaints as increasing numbers of traders, trappers, and prospectors invade his ancestral hunting grounds, and his reactions when confronted for the first time with the enforcement of Canadian laws.

The next two patrols were led by Inspector W. R. Routledge. In the winter of 1897–98 he reached Fort Simpson, covering 2,172 miles in eighty days. The following winter the patrol went as far as Fort Resolution, proceeding on the way back into the Peace River country which was to be included in Treaty 8. Throughout the journey the patrols



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were vigilant for evidence of violations of fire, liquor, poison, and [illegible] laws, faithfully recording details of irregularities.

LIQUOR TRAFFIC

Although relatively minuscule in volume, the illegal traffic of liquor in the North was one of the first targets of the police patrols. Jarvis reported that,

> ... considerable quantities of spirits and extracts are smuggled in and given and traded to the Indians.... Some of the Indians are said to journey all the way to Edmonton in the Spring to trade their furs, and return with whisky which they smuggle through for themselves and other Indians who intrust them with furs to take out for the same purpose.[19]

Routledge noted that this liquor traffic "is confined to the lower class of White hunters and Half-breeds employed on the River."[20] During the time of the patrols the prohibitory clauses of the Northwest Territories Act were strictly enforced, e.g., "Thomas McClelland [was] trading liquor and causing drunkenness in the Indian camps. I tried him, found him guilty and fined him $300 and costs."[21] The news of the Klondike gold rush led Routledge to fear an increase in liquor problems:

> In view of the number of strangers who will now pass through those districts en route to the northern gold fields, many of whom will remain for prospecting purposes, and the fact that the Indians have had, so far, little dealings with Whites outside of the Hudson's Bay Company's officials, missionaries and a few White hunters, I would respectfully suggest that the prohibitory law be strictly enforced."[22]

THE USE OF POISON BAITS

The use of poison to kill fur-bearing animals was unknown in Indian territory until the arrival of white hunters and trappers in the Athabasca and Mackenzie Districts.[23] Frank Russell, an American naturalist, spent three winters in the Mackenzie District and noted that at Fort Rae during the month of February, 1894:

[illegible] Hodgson and I maintained a "trapping track," or rather, a line of poisoned baits, thirty miles in length. The Dog Ribs were so afraid of strychnine that they would not even touch an animal killed by it. The Loucheux of the Lower Mackenzie are not so timid, they use strychnine for baits without fear. Nearly every clerk [trader] sets a few baits each winter, which usually succeed in killing the favorite fur of the post, a red or cross fox, or very rarely a silver fox.[24]

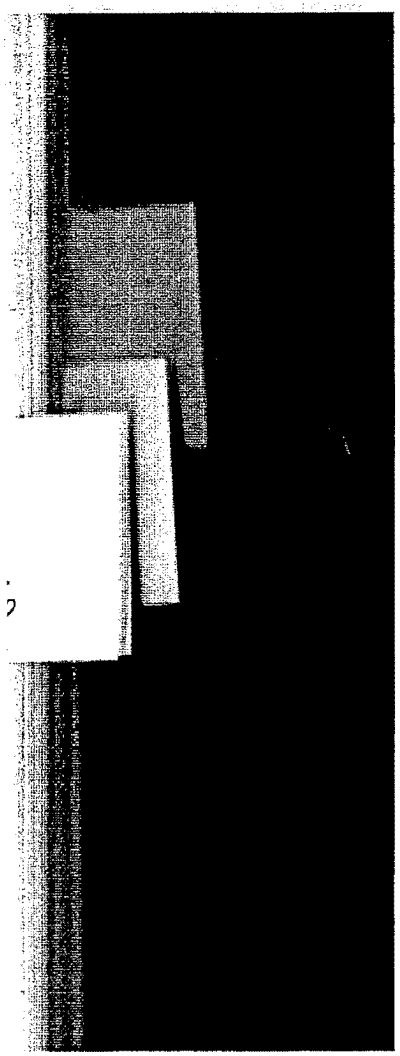
Everywhere along his route, Inspector Jarvis found evidence that poison was being used:

> Some damage [by poison] has been done, principally by the destruction of Indian hunting dogs, which are valuable to their owners, and also a great loss of fur takes place by poisoned animals wandering off when poisoned, and are also dangerous to hungry Indians who may discover and eat the poisoned carcasses.
>
> Indians complained bitterly of the use of this poison put out by White men and Half-breed trappers with whom they are unable to compete, and think it hard that people who are not owners of the country are allowed to rob them of their living.[25]

A few whites and half-breeds were taken to court by Jarvis, convicted of using poison, and fined $25 or $50. Small wonder that "the Indians were much pleased at the visit of the Police and their action towards the suppression of laying out poison."[26] Inspector Routledge's report of 1898 indicated that "the use of poison in the North country seems to have been pretty well stamped out."[27] It was the white trappers "who were the greatest offenders,"[28] and the departure of some for the Klondike gold fields reduced the use of poison. However, it still remained an occasional means of getting furs and a source of complaint to the Indians until late in the 1930s.

GAME LAWS

On July 23, 1894, royal assent was given to "An Act for the Preservation of Game in the Unorganized Portions of the Northwest Territories of Canada."[29] Men like Macfarlane had questioned the validity of game laws in a country not yet surrendered to the Crown. Could such regula-



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tions be imposed on Indians without injustice? Day Hort MacDowell, Member of Parliament, had this to say on April 30, 1894:

> As to the legal right of the Government in prohibiting the Indians and Half-breeds catching fish out of season, or killing game out of season, I believe that by a recent decision of the Imperial Privy Council, which was given about 14 months ago, they have every legal right to do this: that there is no necessity for the Government to make a Treaty with Indians, or anybody else; that the treaties made have merely been to bring about a peaceful, happy and speedy conclusion of the entry of whites into lands formerly occupied by Indians, but that the Privy Council have decided once and for all that the whole North West of Canada belongs to Her Majesty, that it is her property, and that she has absolute rights to do whatever she wishes. And in consequence if Her responsible advisors recommend Her to prohibit fishing and shooting out of season, even though Treaty has [not?] been made with the Indians, it is a perfectly justifiable and legal act.[33]

The Game Act came into force on January 1, 1896. Section 4 of the Act stated that: "except as hereinafter provided, buffalo and bison shall not be hunted, taken, killed, shot at, wounded, injured, or molested in any way, at any time of the year until the first day of January, A.D. 1900."[34] Other sections of the act concerned musk-oxen, moose, deer, mink, otter, beaver, muskrat, swan, wild ducks, geese, etc., but apparently only the regulations concerning buffalo were seriously enforced by the police patrols of 1897, 1898, and 1899. Accounts of the Indians' reaction to these laws are not without humour and pathos. At Smith Landing (Fort Fitzgerald), the centre of buffalo country, Inspector Jarvis reported:

> ... on my arrival I found a party of hunters who had already made their long hunting snowshoes and were ready to start in search of buffalo.... These people had never heard of a Game Law and were much surprised on hearing of it, but willingly gave up their hunt when I explained to them the necessity of complying with this law.[35]

> A party who had prepared their outfit for a buffalo hunt, when told by me of the necessity of complying with the law, cheerfully desisted [illegible] postponed their hunt, at any rate, during my stay in the country.

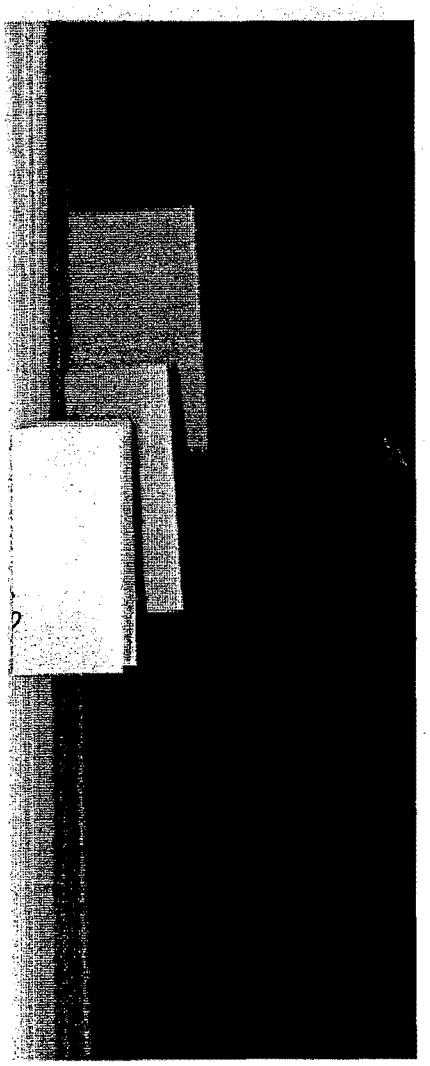
But not everyone was so cheerful and obliging. Inspector Routledge had to report:

> One François Byskie, a Chipewyan Indian, was brought before me charged with the killing of 2 buffalo near "Lying Wood" Mountain on the 14th of December 1897. The man pleaded guilty to the charge and gave as his reason that he was starving. If he had contented himself with killing one, which would have satisfied his wants sufficiently long to have enabled him to kill other game, I probably would have believed his story, but having killed 2, all that were in sight at the time, I came to the conclusion that it was the spirit of mischief that prompted his action.... I fined the man in the sum of $10, or in default 10 days imprisonment with hard labour.[36]

Routledge emphasized protection of the buffalo as a future source of food and was satisfied that, "provided white men with evil intentions do not encourage the Indians to break the law, I think they will not trouble the buffalo."[35] The Inspector's faith was rewarded one year later, when the same François Byskie while on a hunting trip, reportedly "came up to some fresh buffalo tracks, the temptation to follow was strong, but, after consideration, he concluded not to do so, and fired his rifle in the air several times to scare them away, and continued his journey in an opposite direction."[36] The Indians must have experienced some bewilderment, nevertheless, when they saw buffalo and musk oxen being killed by sportsmen in search of trophies and not food. Caspar Whitney, a sportsman who passed through in 1895, expressed this opinion on the threat to buffalo:

> Bison are not being killed in large numbers nor shot frequently as individuals. They range over a country too large and too difficult to reach, and require more skillful hunting than the average Indian is capable of. When I was in the country in the winter of 1894–1895 not

[36] Sportsmen of some renown came into Indian territory in search of trophies: Frank Russell, 1894; Caspar Whitney and Henry Toke Munn, 1895; David T. Hanbury, 1896.



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even a bison track had been seen up to the time of our hunt.... The extermination of wood bison through their hunting by Indians is not to be apprehended....[37]

BUILDING TRUST

In the face of the frequent misery and starvation of the Indian people, the Government's concern for preserving game seemed misplaced. Constable H. Giroux, OMI, Catholic missionary at Arctic Red River, wrote to Inspector Jarvis on July 1, 1897, and contrasted the Government's prompt action and efforts to preserve valuable animals and its apparent unconcern for the Indians. "I, at the same time, would beg of you to endeavour to get the same Government to show as much zeal in preserving the lives of human beings who are to be found therein."[38] The police patrols of 1897, 1898, and 1899 witnessed and recorded these conditions:

> ... a large number of Indians, both Crees and Chipewyan, living near Fort Chipewyan, are suffering from hunger on account of the small supply of furs.... The Hudson's Bay Company and Mr. Colin Fraser, before my arrival had advanced a certain amount of assistance to these starving people, some of whom died during my stay at Chipewyan. I [Inspector Jarvis] also gave a small amount of relief....[39]
>
> During my [Inspector Routledge] stay at Resolution a party of starving Indians from Fond du Lac, Great Slave Lake [Snowdrift] visited me. They were in a wretched state, having travelled some 150 miles on a scanty allowance of fish, to make known the condition of their people.[40] ... in the winter of 1898–1899, the Indians at Fond-du-Lac [Sask.] were in very destitute circumstances....[41]

From Fond du Lac Father Breynat gave this account of that terrible winter:

> Dogs died of hunger, and people had no more transportation. Some people walked to the village for three days without food. Some arrived with hands and nose frozen.... An old man who came to the Mission, had left his camp 4 days ago with his nephew. As the young man couldn't walk any more, he was left 30 miles behind, alone. I went with another man, and rescued him.... Influenza followed [illegible].... The old man, "a Man's Shadow," was found dead, outside, and half-eaten by dogs.[42]

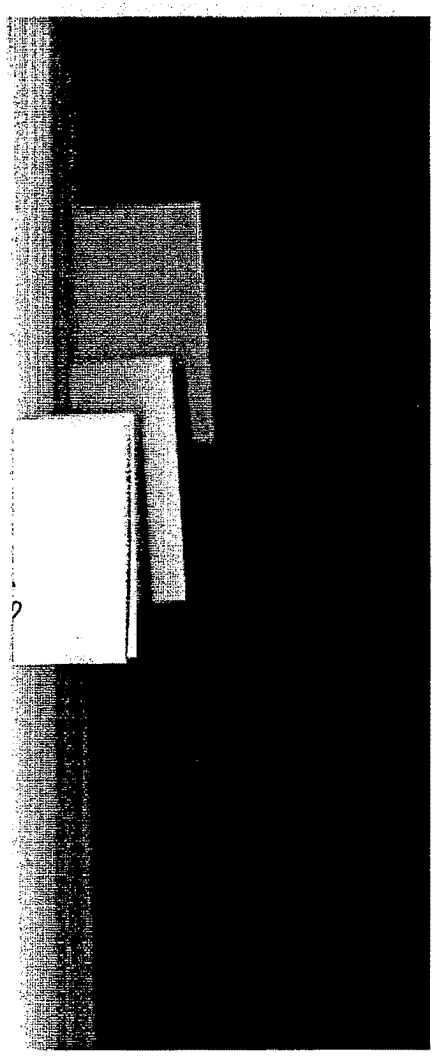
These words echo descriptions of similar misery written ten and twenty years earlier. Previous appeals to Ottawa had taken months to be heard and years to be answered. Now with the presence of the North West Mounted Police, government did not seem so remote nor assistance so far away. By means of the annual patrol, the Police had gained the respect of the people, giving as it did the semblance of protection against intruders and security in troubled times. Some people at Fort Chipewyan firmly believe that their forefathers signed Treaty 8 because they were told that "the Queen will never let your children die from hunger."[43] This might well be true.

OTTAWA PREPARES FOR THE TREATY, 1897–1899

In November, 1897, the Honorable Clifford Sifton, Minister of the Interior and Superintendent-General of Indian Affairs, and James Walker, a retired officer of the Royal Northwest Mounted Police and former Indian Agent, met in Calgary to discuss the necessity of treaties with the Indians of the Athabaska and the Yukon. In a letter of November 30, 1897, Walker put in writing his thoughts on the subject:

> From all appearances there will be a rush of miners and others to the Yukon and the mineral regions of the Peace, Liard, and other rivers in Athabasca during the next year.... In the face of this influx of settlers into that country, no time should be lost by the Government in making a treaty with these Indians for their rights over this territory. They will be more easily dealt with now than they would be when their country is overrun with prospectors and valuable mines be discovered. They would then place a higher value on their rights than they would before these discoveries are made and if they are like some of the Indians of Saskatchewan, they may object to prospectors going into that country until their rights are settled.[44]

The Commissioner of the North West Mounted Police acting on reports from his officers in the field, wrote to Ottawa pointing out:



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Nonetheless, the Metis "Rebellion" of 1885 which culminated in the battle of Batoche, left bitter memories in the minds of the Metis. They had suffered in their bodies and in their souls. At the end of the 19th century they still resented the cruel manner in which Canada had treated them.

Metis have been part of northern history from the beginning of the fur trade. Many families had moved westward from Rupert's Land in quest of land, fur, adventure, or seeking employment with the Hudson's Bay Company. By the late 1890s a number of Metis had settled in the Athabasca-Mackenzie District. Laurence William Herchmer, NWMP Commissioner in Regina, remarked on December 2, 1897, that "the Half-breeds of Lesser Slave Lake [were] dissatisfied with the presence of the Police in that district."[54] He feared they could influence the Indians during treaty negotiations. Indian commissioner Forget supported the suggestion, "strongly impressed" upon him "by Grouard and persons who had full knowledge of the situation," that the government "be prepared to deal with the Half-breeds simultaneously with the Indians as, otherwise ... the influence which the Half-breeds might exercise over the Indians might be detrimental to our treating with the latter."[55] He also recommended that as many Half-breeds as possible should be taken into treaty "with the same privileges as the pure-blooded Indians" rather than be given "scrips"[56] or scripts, i.e., certificates enabling them to select for themselves 240 acres of land.

In the past, many Metis had been permitted to join Treaties 1 to 6. What offer was to be made to the Metis of the Athabasca-Mackenzie District? Of prime importance was that "their acquiescence in the relinquishment of the aboriginal title should be secured." Finally, it was considered more conducive to their welfare and more in the public interest to take them into treaty than to give them scrip. Metis would be allowed to take treaty, if they so desired, on the judgement of the Commissioners who would determine which Metis would be dealt with as Indians.[57] Those who were unwilling or not allowed would receive a scrip[58] to either $240 or 240 acres of land.[59] One of the Indian treaty commissioners, James A. J. McKenna, was not entirely satisfied with these terms. He wrote to Sifton on April 17, 1899:

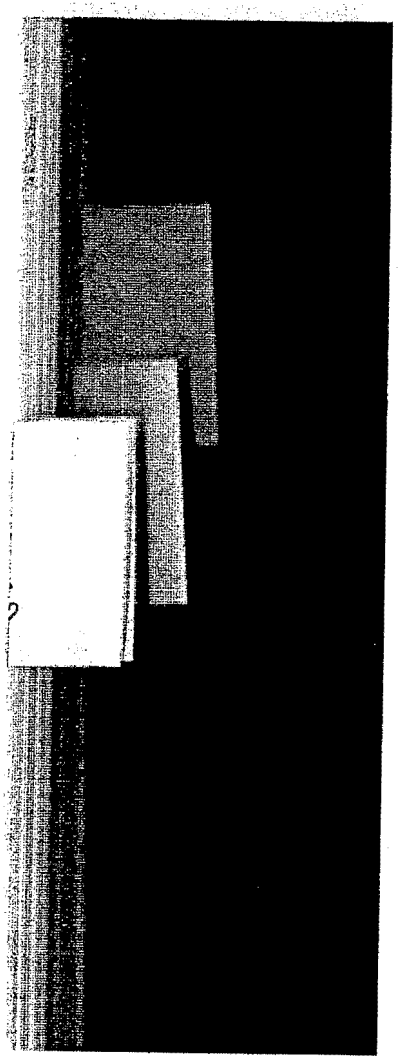
> I fear that the Commissioner who will be charged with effecting a settlement with the Halfbreeds will find it very difficult to do so under the scope given him by the Act, and that the consequent dissatisfaction among the halfbreeds may lead to their using their influence with the Indians in such a way as to make it difficult to negotiate a treaty.[60]

Those fears were not unfounded as the history of the Half-breed Commission of 1899 will show.

TREATY BOUNDARIES

Since 1896, most of the traffic to the Yukon progressed via the Pacific Coast. A few overland routes from Edmonton to the gold fields were attempted but proved to be difficult. Communities and businessmen of Western Canada, desiring to profit in the trade for supplies, and strongly supported by the Northwest Territories Government, pressured the Dominion Government to establish a safe overland road from Edmonton northward. By 1899 a passable road had been built between Fort St. John and Peace River Crossing. The presence of many gold miners and/or prospectors, the expectation of an intense traffic on this overland route to the Klondike, and the necessity to establish peaceful relations between Indians and newcomers were deciding factors in determining boundaries for the Treaty. On a map dated January 12, 1898, Indian Commissioner Forget outlined an area where there was "considerable activity in mining matters." It covered the valleys of the Athabasca and Peace Rivers north of the Treaty 6 area, and the valleys of the Nelson, upper Peace, and upper Liard Rivers in British Columbia (see map, p. 29).

> Beyond these points, however, I do not consider that the Government would be justified in undertaking the negotiation of treaties which would involve very heavy outlay for comparatively inadequate returns insofar as the value of the territory to be ceded, or the rights of the Indian owners, are concerned.... I would not be in favor of undertaking the cession of territory beyond the latitude of Fort Simpson on the Mackenzie River and then only if absolutely necessary, and would confine the treaty entirely to the valley of that river excluding the Great Slave Lake District.... The Mackenzie Basin is at present only affected to a limited extent by the Gold Movement...."[61]



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

Three months later, Forget repeated that the treaty should not include the area inhabited by, "the Indians about Great Slave and Great Bear Lakes and along the Mackenzie River ... their territory so far as is at present known is of no particular value and they very rarely come into contact with Whites...." [52] Officials discussed at length whether or not the northeastern part of British Columbia should be included in the treaty. This would include the districts of Fort St. John, Fort Nelson, Fort Halkett, and Hudson's Hope, bringing the boundary to the Rocky Mountains. A natural boundary would have much more appeal to the Indians than an artificial one. Moreover, this area was the route taken by many miners and prospectors headed for gold fields in the Yukon. "... the lives and property of those who may enter therein [would be] safeguarded by the making of provision which will remove all hostile feeling from the minds of the Indians and lead them to peacefully acquiesce in the changing conditions." [53] On the other hand, an agreement between the Federal Government and the Province of British Columbia in 1876 had stipulated that the Province itself would be responsible for negotiating with the Indians for their land and for setting up Indian reserves. [54]

The name "Treaty 8" was used for the first time on January 7, 1899, by David Laird who had been named Indian Commissioner for the Northwest Territories the year before. In his memorandum he noted certain practical considerations for determining the itinerary of the treaty party:

> The Treaty Commissioners would not have time to go north beyond Fort Smith. It may perhaps be possible to drop [the treaty boundary] down the Great Slave River as far as Fort Resolution. If this could be done, the whole territory to the Southern shore of Great Slave Lake might be included in the surrender.... I, however, do not deem it advisable to attempt going to Fort Resolution this year unless the Government, on account of applications for permits to mining prospectors, consider[s] highly important that the surrendered territory should extend to Great Slave Lake. [55]

Sifton felt that due to the "many claims now staked at Great Slave Lake," the area was, indeed desirable for a treaty. [56] His final recommendation to the Treaty Commissioners stated:

> In view of the reported mining development in the Great Slave Lake district it is important that a treaty should be extended to embrace that country if at all possible. [57]

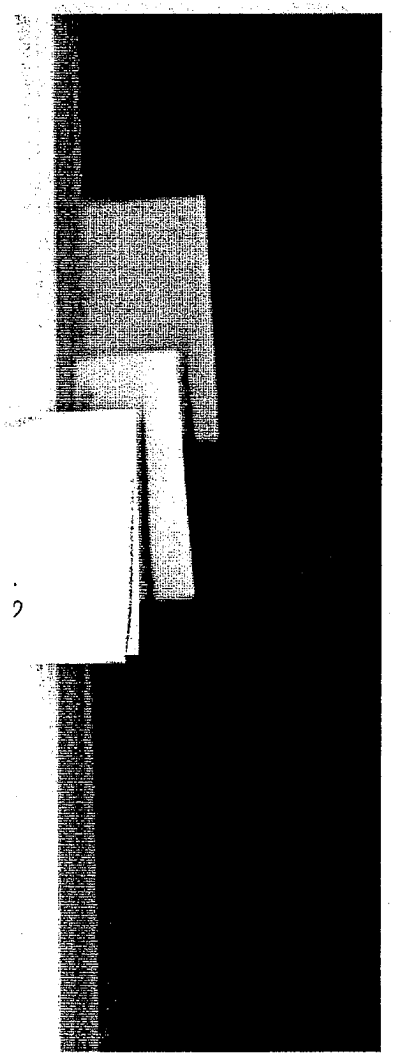
The best description of the boundaries of Treaty 8 was provided by Laird when some years later he was asked to explain these boundary decisions:

> The scope of the Commissioners' instructions was to obtain the relinquishment of the Indian and Halfbreed title in that tract of territory north of Treaty 6 to which Governmental authority had to some extent been extended by sending Northwest Mounted Police there to protect and control whites who were going into the country as traders, travelers to the Klondike, explorers, and miners. The territory watered by the Lesser Slave Lake, the Peace and Athabasca Rivers, the Athabasca Lake, the South of Great Slave Lake and their tributaries, was where these whites were finding their way, and the Commissioners did not deem it necessary to extend Treaty 8 farther than they did.... [58]

Two factors which could have influenced the boundaries and the timing of Treaty 8 should be mentioned here. Agitation by the Metis people of the Lesser Slave Lake and Peace River areas for recognition of their land claims could well have accelerated treaty plans since traditionally, settlement with the Metis had never preceded an Indian treaty.

This theory is more credible when comparison is made with the Yukon where, at the time of Treaty 8, political, economic, and social factors were similar to those in the Athabasca-Mackenzie area, but where there was no Metis population to be pacified.

In a similar vein, the influence of a powerful Edmonton politician, in the person of Frank Oliver, could well have been a determining factor in setting boundary lines. In promoting an all-Canada route to the Klondike, with Edmonton as the gateway, Oliver would try to draw Ottawa's attention to northern Alberta.



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RESERVES OR LAND IN SEVERALTY?

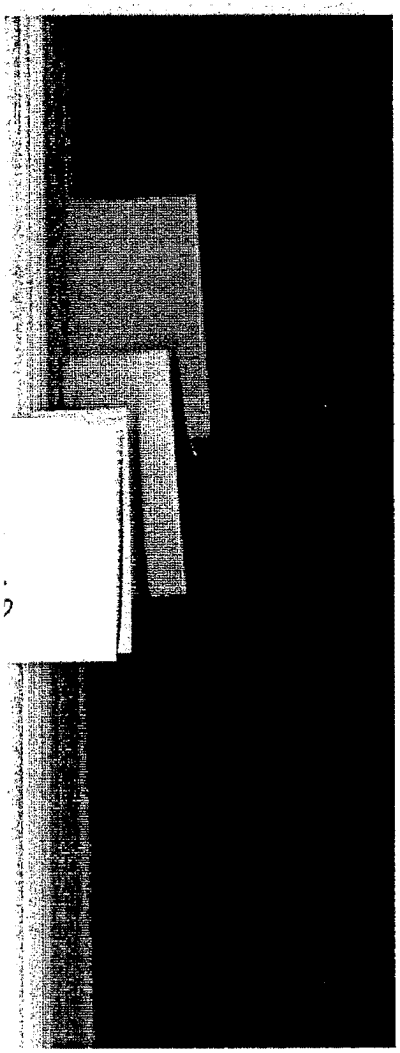
Under all previous treaties, lands had been set aside for Indians signing the treaties. These lands have been called "reserves" and are "held by Her Majesty for the use and benefit of the respective bands."[69] The area to be covered by Treaty 8 was unlike the western prairies or the fertile belt. Also the social organization of northern Indian bands differed from that of the Plains Indians. For these reasons, Forget doubted that a reserve system could be applied in the north. He proposed, instead, that a certain amount of land would be allocated to each Indian family."[70] The question was discussed by a Privy Council Committee which decided on June 27, 1898, that "the Treaty Commissioners should be given discretionary powers both as to the annuities to be paid to and the reservations of land to be set apart for the Indians."[71] McKenna expressed his views on the reserve system in a letter to Sifton dated April 17, 1899:

> ... it might be desirable to give the Commissioners a freer hand. We can scarcely rely on the experience of the past in dealing with the Indians now to be treated with. When the Government negotiated for the surrender of the Indian title to the land in the organized territories, it had to deal with Indian nations which had distinct tribal organizations. The communal idea was strong and made necessary the setting apart of reserves for the continuance of the common life until the Indians could be gradually weaned from it.
>
> The most that can be said in favour of the reserve system, however, is that reserves made is easier for the Government to control and feed the Indians in a country where it was necessary to do so. Experience does not favour the view that the system makes for the advancement of the Indians. We should not be anxious to extend it for its own sake; and the conditions of the country to be treated for are not such as to make its extension necessary. From information which has come to hand it would appear that the Indians whom we are to meet fear that the making of a treaty will lead to their being grouped on reserves. Of course, grouping is not now contemplated; but there is the view that reserves for future use should be provided for in the treaty. I do not think this is necessary.
>
> From what I have been able to learn of the North country, it would appear that the Indians there act rather as individuals than as a nation, and that any tribal organization which may exist is very slight. They live by hunting, and by individual effort, very much as the halfbreeds in that country live. They are averse to living on reserves; and as that country is not one that will ever be settled extensively for agricultural purposes it is questionable whether it would be good policy to even suggest grouping them in the future. The reserve idea is inconsistent with the life of a hunter, and is only applicable to an agricultural country. The most the Indians are likely to require in the way of reserves are small fishing stations at certain points which they might desire to have secured to them. I do not think the Commissioners should go further in the way of general reservations, unless they should find that circumstances compel them. But they should have authority to guarantee to every Indian settled upon, or in occupation of land, an individual title thereto. The limit might be put at 160 acres as the Indians are likely to require very small holdings.[72]

Sifton gave the Treaty Commissioners their final instructions on the matter, on May 12, 1899. Indian people could either select reserves for their bands or hold land "in severally." This meant that any Indian family could have its own small reserve, apart from those of other families or bands:

> As to reserves, it has been thought that the conditions of the North Country may make it more desirable to depart from the old system and, if the Indians are agreeable, to provide land in severalty of 160 acres to each, the land to be conveyed with proviso as to non alienation without the consent of the Governor General in Council. Of course, if the Indians prefer reserves, you are at liberty to undertake to set them aside.
>
> The terms of the treaty are left to your discretion with this stipulation that obligations to be assumed under it shall not be in excess of those assumed in the treaties covering the North West Territories.[73]

For all practical purposes these discretionary powers would assure the best possible bargain for the Government.



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LAND PAYMENT: CASH OR CREDIT?

Most previous Indian treaties had promised a perpetual annuity of five dollars for each Indian. From December, 1898, until April, 1899, Indian Affairs officials discussed the pros and cons of perpetual annuities as opposed to a single cash payment at the signing of the treaty. James Ansdell Macrae, Secretary of the Department of Indian Affairs, believed that a single payment "say, for the sake of argument, $100.00 per head" would appeal to the Indians more than remote advantages. He argued that the situation had altered since the first treaties, and,

> ... what might have been deemed advantageous in granting such annuities when the Indians were looked upon as a disappearing race should be regarded as disadvantageous now that their ability to continue to exist, and increase, under changed conditions is established.[74]

Indian Commissioner Forget favoured instead the annuity plan, introducing a kind of slide-rule arrangement for greater economy:

> ... basing the amount of annuity to be offered on the comparative value of the country to be ceded ... for instance, while the Lesser Slave Lake and Peace River Indians might be tendered an annuity of $5.00 per head, those at Fort McMurray and Fort Chipewyan might be offered $4.00, and those further north, if treated with, $3.00 per head....[75]

He furnished the Department with an estimate of the Indian population of the area in 1898:

Fort Chipewyan and Fond du Lac	841
Fort Smith	280
Fort Liard	205
Fort Simpson, Rampart House and vicinity	599
Fort Good Hope and vicinity	1,255
Fort Norman and vicinity	604
Fort Resolution and vicinity	533
Fort Providence and vicinity	1,382

[illegible] objected to doing away with annuity payments and offered several financial arguments to support his case:

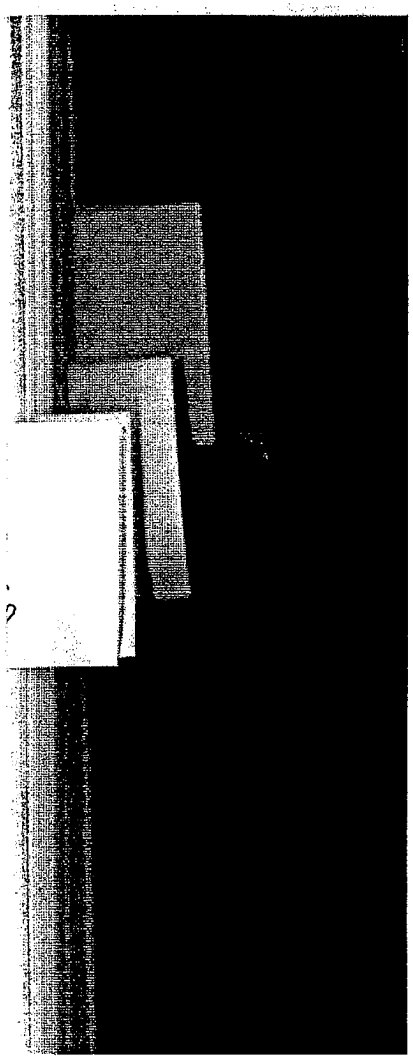
> In the first place, even though only $100 were paid to each Indian accepting the treaty, it would, estimating the number at 3700, involve a vote of $370,000 for payment to Indians alone this year, a sum which Parliament would probably hesitate to grant. Again, the proposal, though it might be welcomed by the Indians of today would be unjust to their children and descendants. The money, in some cases, $800 or $1000 to a family, would be to a great extent squandered forthwith, and future generations of Indians would reap no benefit from it whatever. All the same, if they became destitute the Government would have to come to their assistance and the expense of employing agents to look after them would not be obviated. The question of commuting with the Indians for their annuities is, in my opinion, one that will have to be deferred until they have made some progress in civilization.[76]

For his part, the accountant in the Department of Indian Affairs did an in-depth study of alternative methods of payment. His memorandum dated March 27, 1899, listed the following plans:

1. $25.00 per head every 10 years.
2. $50.00 per head every 10 years.
3. A single payment of $50.00 per head.
4. A single payment of $100.00 per head.
5. $5.00 annuity per head.
6. $2.50 annuity per head.

His calculations "for a period of 30 years" showed the cash saving or expense for the Government for each of the six plans.[77] An important memo from McKenna to Sifton on April 17, 1899, summarized the arguments for and against annuities. It also exposed the philosophy behind the policies of the Department:

> As to the payment of annuity, although Mr. Laird is favorable to it I am rather disposed to the contrary view, and Mr. Ross with whom I



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

discussed the matter questions its benefit and is of the opinion that the Indians themselves will not place much value on it. I do not know that we have any reason to be desirous of extending the system if it can be avoided. As to the North country there is the objection that the yearly payment would cost a large sum.

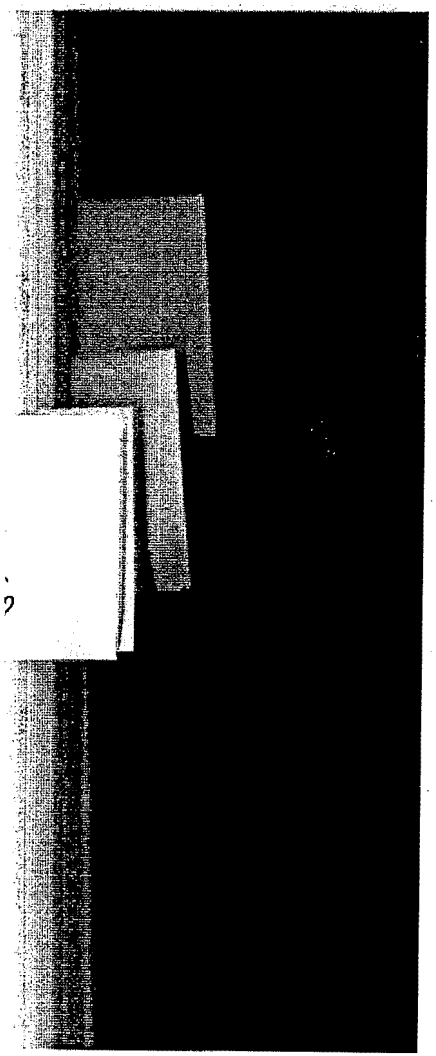
Since Treaty 3, the Dominion in all treaties with the Indians has undertaken to pay $5 a year to each Indian in perpetuity, and $15 to headmen and $25 to Chiefs. Now the question arises: – if this was considered a fair money compensation for the land in Manitoba and the organized territories, what would be a fair compensation for the land *in* the territory now to be treated for. The former land was admirably suited for agriculture. Its settlement was necessary for the real making of the Dominion. The building of the trans-continental railway made the wiping out of the Indian title urgent; and the changing condition interfered with the Indians' means of livelihood and mode of life. There were, therefore, good reasons for giving them the maximum of compensation. The latter land is not of appreciable value agriculturally. There is no urgent public need of its acquirement. There may be mineral development and some consequent settlement in spots; but this will not bring sudden or great changes likely to interfere to any marked degree with the Indian mode of life and means of Livelihood. I think it would not be illiberal to answer the question by saying that half the amount which we agreed to pay under former treaties would be ample compensation for the Indians who are to be parties to the proposed one. And as the making of the treaty will not be the forerunner of changes that will to any great extent alter existing conditions in the country, and as the Indians will continue to have the same means of livelihood as they have at present, it may fairly be laid down that the object of the Commissioners should simply be to secure the relinquishment of the Indian title at as small a cost as possible.

The difficulty is that if we start to negotiate on the perpetual annuity principle the Indians will hold out for the same terms as were given their neighbors to the immediate south; and the cost of paying a yearly annuity in that country added to the amount of the annuity, would make the price paid for it altogether out of proportion to its value.

But how shall we proceed if not in the old way? We could hardly give the Indians Halfbreed scrip. That would practically amount to paying them once for all in paper money subject to a heavy discount. It would be fairer to pay them a reasonable sum in cash. It has been objected that if this be done the Indians will squander what they receive. There is truth in this. But annuity is also squandered; and it is – generally speaking – only a question of squandering a little each year in perpetuity or a large sum at once. It has been held that such a procedure would be unjust to future generations in that it would fail to provide compensation to them for the alienation of their title; and would necessitate the Government's coming to their assistance in the event of the Indians becoming destitute in the future. But the fact is that the annuity amounts to very little, either as respects the compensation of future generations, or in the way of providing against destitution. As compensation for territorial title it is more fanciful than real. And it may safely be stated that the extent of relief to Indians has never been appreciably lessened by any annuity paid them. Indeed, for years provision has quietly been made for extending through the Hudson's Bay Company relief to Indians outside of treaty; and whether annuity be given or not, we must always be prepared to grant aid in the years when the hunt is a failure. If in the future the country should be depleted of its fur bearing animals, permanent provision would have to be made to assist the Indians; and in that event I fear that the payment of an annuity would be found to be simply an additional burden."[78]

After two long pages of financial alternatives which rivaled those of the accountant in complexity, McKenna still favoured one large payment over small annuities. His final and most sensible reason was that "The adoption of this course might possibly result in some of the Halfbreeds, who are estimated at 1,700, preferring to enter such a treaty to taking Halfbreed scrip."[79]

Sifton disregarded the advice of Macrae and McKenna. He informed the Treaty Commissioners on May 12, 1899, that "the Government ... has concluded that it is best to proceed upon the usual lines of providing for the payments of annuities to the Indians."[80]



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PROTECTION OF GAME

Officials in Ottawa who had drafted the terms of Treaty 8 failed to make adequate provisions for the protection of what was essential to the Indians, i.e., game and forest. Many of the treaty promises which had taken months to discuss and prepare were of secondary importance to the Indians. Their main concern was for the protection of their freedom to hunt, trap, and fish. McKenna had foreseen the necessity of some measure of protection and conservation of the environment, and had offered this advice:

> The Commissioners should, I think, be authorized to add that the Government will cause notice to be given to white men that the forests and game are to be protected and will be ready should occasion call for such action to send Mounted Police to secure such protection.
>
> I am convinced that the forest fires caused by prospectors last year have so angered the Indians that some specific undertaking as to protection will have to be given. It may be necessary to go further and say that the ear of the Government will always be open to well grounded complaints from the Indians, and that when aid is asked and really required it will be forthcoming. Assistance will have to be given when needed.[81]

Only when the Treaty Commissioners promised them that they would be free to hunt and trap and fish for a living, and that their rights would be protected against the abuses of white hunters and trappers, did the Indians at each trading post of the Treaty 8 area consent to sign the Treaty.

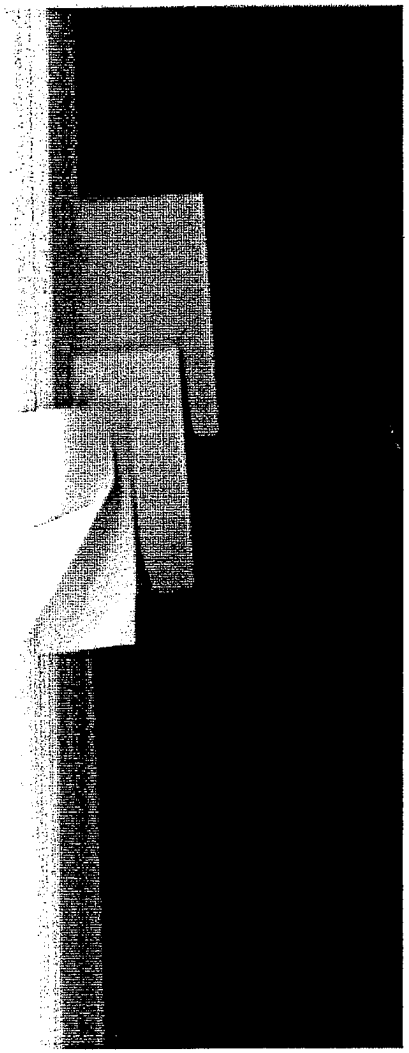
FATHER LACOMBE INVITED

From the very beginning of treaty preparations, Indian Commissioner Forget realized that "the Northern native population is not any too well disposed to view favorably any proposition involving the cession of their rights to their country."[82] Inspector Routledge reported that the Indians and Metis showed considerable interest in the treaty question and held meetings at Lesser Slave Lake; an Anglican Missionary wrote:

> The Indians, all thro[ugh] the Peace River District, are considerably excited over the proposed Treaty. 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. So, until the gov't comes and the result is known, we shall have a rather anxious time.[83]

The Government became alarmed by these rumours of unrest. On May 9, 1899, the Privy Council Committee assessed the situation and recommended that the Government enlist the help of Father Lacombe:

> the Commissioners appointed to negotiate a treaty with the Indians of the Athabasca District and adjoining country, and to deal with the claims of the Halfbreeds, will meet with great difficulty in their mission for the reason that the Halfbreeds are dissatisfied with the measure of recognition which by law is accorded to their claims, and because the Indians are suspicious of Governmental interference and are hostile to the incoming of White men whose advent they fear will destroy their hunting grounds. Moreover, the Commissioners will be handicapped at the very beginning of their negotiations by the fact that the Department of the Indian Affairs cannot furnish them with any reliable information as to the manners, customs and characteristics of the Indians of the North country.
>
> The Minister submits that these considerations have led him to the conclusion that it would be very desirable if the Commissioners could have the assistance and council of the Very Reverend Father Lacombe. Father Lacombe has been so long in the country as a missionary, knows the Indians and the Halfbreeds so intimately, and possesses their confidence in so marked a degree that he would be able to render most valuable and effective assistance to the Commissioners in their difficult mission.
>
> The Minister being convinced that it is in the public interest that everything possible should be done to assure the success of the Indian Treaty negotiations, and to satisfy the reasonable claims of the Halfbreeds, recommends that the Very Reverend Albert Lacombe, OMI, be attached to the Commission appointed to negotiate a treaty with the Indians of the District of Athabasca and adjoining country.[84]



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

The decision apparently pleased all Government officials. When the proposed treaty was under discussion in the House of Commons in June of that year, Sifton declared:

> Along with this Commission we have asked the Reverend Father Lacombe to go, not as a member of the Commission, but in an advisory capacity. Everyone who has lived in the northwest for the last fifteen or twenty years, Protestant and Catholic, knows well that there is no man in the northwest looked upon by the Indians with the same reverence and affection as Father Lacombe.[85]

Lacombe was then seventy-two years old. He argued that he was too old, but when the Prime Minister added his persuasion, Lacombe advised Sifton on May 14, 1899:

> My religious Superiors of Edmonton and St. Albert approving of my appointment by your department, I am glad to inform you that I accept the position to be a member of the Commission going this summer to make treaties with the Cree-Indians and Halfbreeds of Lesser Slave Lake, Peace River, Athabaskaw, etc. ...
>
> I hope my health will stand to the fatigues and difficulties of such a trip.
>
> It is for your sake and the sake of the Country that I am willing to accept such a position.
>
> Wishing you good health and success in your undertaking for these treaties.[86]

Lacombe accepted this role of advisor more out of a sense of duty than of personal inclination. The difficulties of the trip worried him but he could not refuse to help achieve better understanding and friendship between the Indians and Canada. He wrote in his diary on May 27, 1899: "My health is holding out. I foresee that I can make this journey. Anyway, may the will of God be done. I am ready for anything so as to do some good for all."[87] Other missionaries also helped to establish friendly relations between the Indians and the Government at the time of Treaty 8. Their motives were probably similar to those of Lacombe. Certainly they were not naive enough to believe that the treaty would solve all of the Indians' problems, but they could hope that things would not get worse. In later

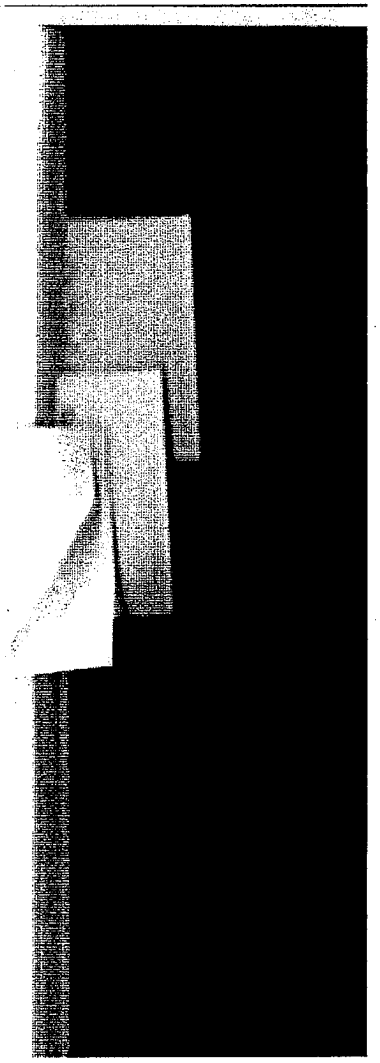
years [illegible] felt that they had been used by the Government, and were bitterly disappointed to see that the Indians were not treated as well as had been promised. This deception is expressed by Constant Falher, [illegible] in a letter to Breynat:

> If in 1899 we had not prepared the Lesser Slave Lake people to accept a treaty with the Government; if Bishop Grouard had not advised the chiefs to sign the treaty, telling them there was nothing which was not to their advantage; the treaty would still be waiting to be signed today. When Bishop Grouard sent me to Wabasca (at the request of Mr. Laird) to prepare the people and calm them, (it was then said that they were more or less in a state of revolt) I carried with me the Government promises, and I was very surprised when later on I was shown the document supposedly signed by the Indian Chiefs at Grouard [a village at the west end of Lesser Slave Lake] and thereabouts. So many important things are missing ... but we do remember these things, and we suffer.[88]

Although they encouraged the Indians to take advantage of the treaty, the missionaries recognized that it was the end of an era, the end of "Fur and Mission" days. Bishop Grouard revealed to Lacombe that the changes necessitating or resulting from the signing of a treaty worried him. "You know that the Government will make a Treaty with the Indians. This makes me extremely worried. Alas, our good days are over!"[89]* Lacombe was more optimistic. One week before the first signing of Treaty 8, he wrote Grouard:

> Are not the Church and the Government going to work together, and open, officially this great Northern district to civilization and to brotherly relations and harmony between the White man and the Indian? Does not the Government seem to acknowledge what the Church has done so far for the good of the poor Indians?[90]

*In his autobiography, *Souvenir Ans d'Apostolat*, Grouard included an entire chapter on Treaty 8, clearly mentioned is his concern, at the time of Treaty 8, about how much the government would interfere, "help or hinder our missionary work."



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Lacombe accompanied the Treaty party to four of the nine posts where Treaty 8 was signed in 1899. He was present for the signing at Lesser Slave Lake, Peace River Landing, Fort Vermilion and Fort McMurray. He did not return with the Treaty party the following year, when treaty negotiations were completed.

IN THE EYES OF THE LAW

In 1899 the Minister of Justice of the Government of Canada was asked to commute the death sentence passed on an Indian from Great Slave Lake. Although unrelated to Treaty 8 or its signing, this incident is significant in establishing the accepted legal opinion of the day regarding Indians. The Deputy Superintendent of Indian Affairs, James A. Smart, based his plea for mercy on the legal responsibility of the convicted Indian:

> I have the honour to draw attention to the fact that the accused was from Great Slave Lake, a section of the country inhabited by Indians with whom no Treaty has as yet been made and which is not yet in touch with civilization, and that he can therefore hardly be regarded otherwise than as an untutored savage....
>
> I submit for your consideration the impossibility of judging only by the white man's methods, the conduct of a savage governed by superstitions and whose habits are entirely opposed to those of civilization ... the enforcement of the extreme penalty might create an impression, amongst the Indians with whom the accused is connected, that contact with civilization imperiled their existence. Such an impression would defeat the object, recognized by the Indian Act and the provision made by Parliament from time to time for the Indians, namely gradually to inculcate in them habits of thought similar to those of the white population in this country. As a first step in this direction it may be necessary in the not remote future to negotiate a Treaty with the Indians of Great Slave Lake; and it would be unfortunate if these people were found then to hold the view that the white man's justice was without mercy and without consideration of their ignorance and general condition....
>
> ... I have the honour to ask your consideration of the question whether the interests of justice would not be best served by treatment of an Indian unacquainted with civilization in a manner no more severe than would be accorded a child below the age of fourteen years, concerning whom there is a prima facie presumption that he does not understand the nature and consequences of his act. Even the most highly educated Indian until enfranchised is subject to civil disabilities though capable of crime. Whatever his actual age he is still an infant in the eyes of the law; and in view of the wide distinction between him and an Indian of the class of the accused it appears to be a matter fairly open to question whether the latter should be considered more responsible for his actions than a child of the age mentioned."[1]

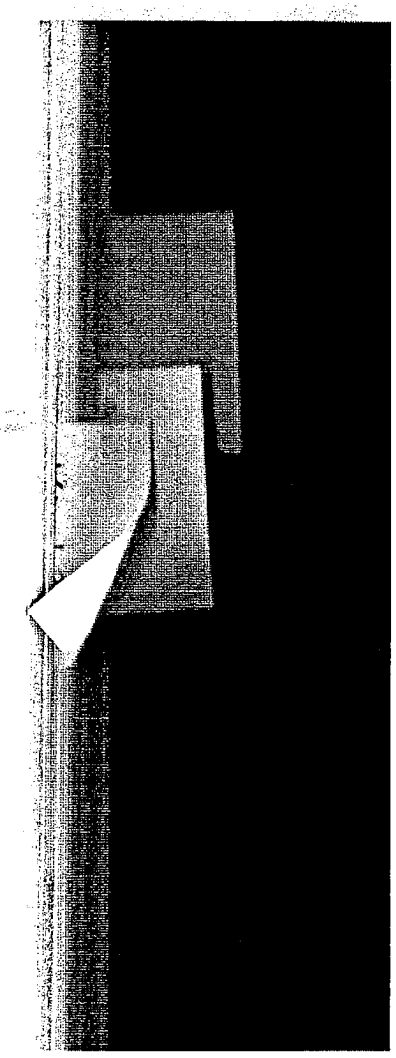
In the eyes of the law an Indian was treated as a child, not able to understand the nature and consequences of his act. If Smart's argument would be applied to the signing of Treaty 8, it seems hardly likely that the "untutored savages" of the north would be able to legally bind themselves by a treaty in the first place, much less be responsible for its legal consequences on future generations of Indians.

TREATY 8 – SUMMERS OF 1899 AND 1900

FINAL APPROACH – TEXT OF THE TREATY

A few months before its signing, the importance of Treaty 8 for the Canadian public was discussed in an article appearing in the *Ottawa Citizen* of February 28, 1899:

> In an immense tract of land north of the Athabasca River, extending from the Rocky Mountains to Hudson's Bay, there are about 2700 Indians and 1700 half-breeds with whom treaty arrangements have not yet been entered into. With the march of civilization northward, necessity has arisen for negotiating treaties with the scattered inhabitants of this territory. Mining operations are being carried on as far north as Great Slave Lake, and the Indians and half-breeds have objected to the White man's invasion. The gov't promised a year ago to appoint a commission to negotiate a treaty, and in pursuance of this promise, Mr. Jas. Ross, of the Northwest Territorial gov't, Regina; Mr. David Laird, Indian Commissioner at Winnipeg, and



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

J. A. J. McKenna, will leave Edmt. [Edmonton] about May 24 next. They will confer with Indians and half-breeds at different points on the way to Great Slave Lake and there come to terms.

Little is known of the northern Indians and half-breeds as they have never been subject to gov't control and have remained practically without the pale of civilization. The Indians are Wood Crees, Chipewyans, and Beavers, and like the half-breeds, are engaged in hunting fur-bearing animals for the Hudson's Bay Company. It is probable that some have drifted from the south with the pressure of civilization upon their hunting ground, but the majority are natives of the country they now inhabit. The policy of the gov't in dealing with the Indians in other parts of Canada has been to pay them a gratuity at the making of the treaty and to provide for the payment in perpetuity of an annuity, in consideration of the surrender of their territorial rights.

The conditions of the country to be treated for differ considerably from those existing in the territories formerly ceded, and the commissioners who are given discretionary powers, will have to be guided by circumstances. The commissioners will devote the whole of next summer to the work, and it is expected that they will bring back not only a satisfactory treaty, but much information about this part of Canada."[2]

During the summer of 1899, the *Edmonton Bulletin* printed detailed accounts of the progress of both the Treaty 8 Commission and the Half-breed Commission. Charles Mair, a member of the Half-breed Commission, also published long articles in the *Toronto Globe*. These were later collected in his "Narrative of the Athabasca and Peace River Treaty Expedition of 1899,"[3] which is the most comprehensive document available on the subject. The trip was neither a fast nor a pleasant one. Although steamboats had been in service on the Athabasca River for nearly fifteen years, the members of the Treaty party travelled with two scows and one York boat, which were pulled upstream by thirteen trackers. The party left Athabasca Landing on June 2, 1899, but due to lack of manpower, travelled only eight miles during the first two days. The ten members of the NWMP escort were enlisted to track one of the scows:

> Nothing indeed can be imagined more arduous than this tracking up a swift river, against constant head winds in bad weather. Much of it is in the water, wading up "snies"*, or tortuous shallow channels, plunging into numberless creeks, clambering up slimy banks, creeping under or passing the line over fallen trees, wading out in the stream to round long spits of sand or boulders, floundering in gumbo slides, tripping, crawling, plunging, and, finally, tottering to the camping-place sweating like horses, and mud to the eyes – but never grumbling."[4]

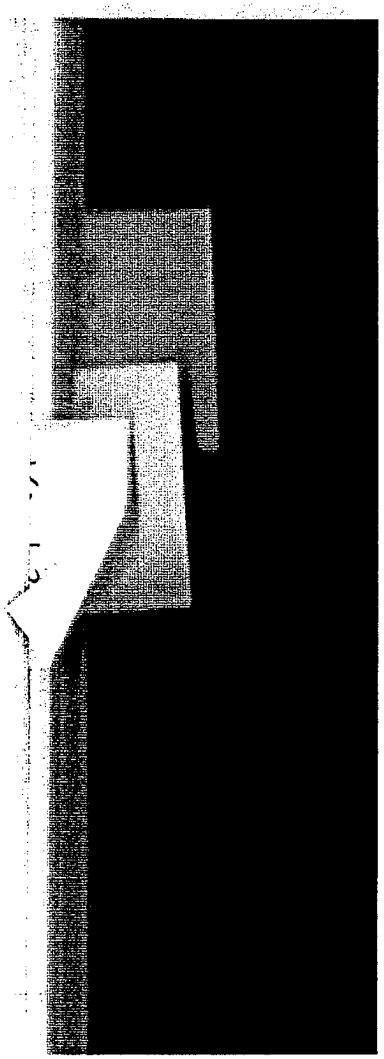
After nineteen days the Treaty party finally reached Lesser Slave Lake. It was time for the Indians to hear "the just and generous terms proffered by Government to an isolated but highly interesting and deserving people."[5] As found in the official Government version, Treaty 8 read as follows:[6]

TREATY NO. 8.

ARTICLES OF A TREATY made and concluded at the several dates mentioned therein, in the year of Our Lord one thousand eight hundred and ninety-nine, between Her most Gracious Majesty the Queen of Great Britain and Ireland, by Her Commissioners the Honorable David Laird, of Winnipeg, Manitoba, Indian Commissioner for the said Province and the Northwest Territories; James Andrew Joseph McKenna, of Ottawa, Ontario, Esquire, and the Honorable James Hamilton Ross, of Regina, in the Northwest Territories, of the one part: and the Cree, Beaver, Chipewyan and other Indians, inhabitants of the territory within the limits hereinafter defined and described, by their Chiefs and Headmen, hereunto subscribed, of the other part:

WHEREAS, the Indians inhabiting the territory hereinafter defined have, pursuant to notice given by the Honorable Superintendant General of Indian Affairs in the year 1898, been convened to meet a Commission representing Her Majesty's Government of the Dominion of Canada at certain places in the said territory in this present year 1899, to deliberate upon certain matters of interest to

*A snye is a narrow channel of a river. This word, commonly used in the North, is the way English speaking people write the French word *chenal*, according to the way it sounds.



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

Her Most Gracious Majesty, of the one part, and the said Indians of the other.

AND WHEREAS, the said Indians have been notified and informed by Her Majesty's said Commission that it is Her desire to open for settlement, immigration, trade, travel, mining, lumbering, and such other purposes as to Her Majesty may seem meet, a tract of country bounded and described as hereinafter mentioned, and to obtain the consent thereto of Her Indian subjects inhabiting the said tract, and to make a treaty, and arrange with them, so that there may be peace and good will between them and Her Majesty's other subjects, and that Her Indian people may know and reassured of what allowances they are to count upon and receive from Her Majesty's bounty and benevolence.

AND WHEREAS, the Indians of the said tract, duly convened in council at the respective points named hereunder, and being requested by Her Majesty's Commissioners to name certain Chiefs and Headmen who should be authorized on their behalf to conduct such negotiations and sign any treaty to be founded thereon, and to become responsible to Her Majesty for the faithful performance by their respective bands of such obligations as shall be assumed by them, the said Indians have therefore acknowledged for that purpose the several Chiefs and Headmen who have subscribed hereto.

AND WHEREAS, the said Commissioners have proceeded to negotiate a treaty with the Cree, Beaver, Chipewyan and other Indians, inhabiting the district hereinafter defined and described, and the same has been agreed upon and concluded by the respective bands at the dates mentioned hereunder, the said Indians DO HEREBY CEDE, RELEASE, SURRENDER AND YIELD UP to the Government of the Dominion of Canada, for Her Majesty the Queen and Her successors for ever, all their rights, titles and privileges whatsoever, to the lands included within the following limits, that is to say:

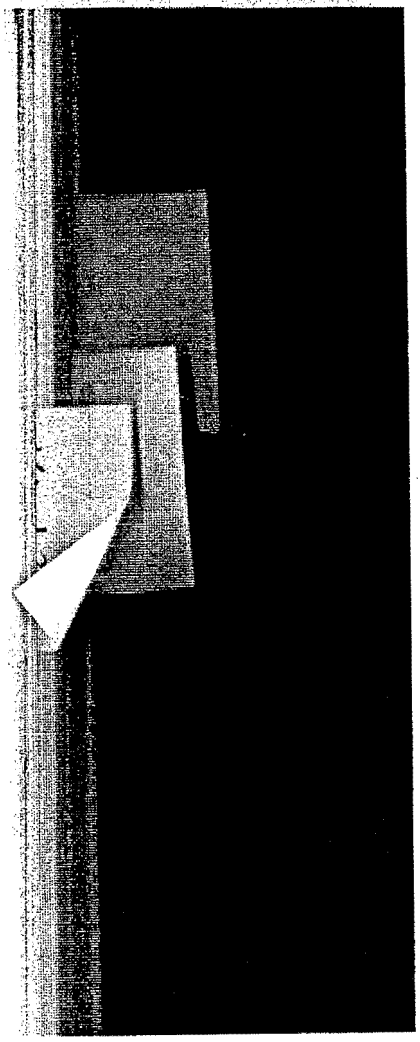
Commencing at the source of the main branch of the Red Deer River in Alberta, thence due west to the central range of the Rocky Mountains, thence northwesterly along the said range to the point where it intersects the 60th parallel of north latitude, thence east along said parallel to the point where it intersects Hay River, thence northeasterly down said river to the south shore of Great Slave Lake, thence along the said shore northeasterly (and including such rights to the islands in said lakes as the Indians mentioned in the treaty may possess), and thence easterly and northeasterly along the south shores of Christie's Bay and McLeod's Bay to old Fort Reliance near the mouth of Lockhart's River, thence southeasterly in a straight line to and including Black Lake, thence southwesterly up the stream from Cree Lake, thence including said lake southwesterly along the height of land between the Athabasca and Churchill Rivers to where it intersects the northern boundary of Treaty Six, and along the said boundary easterly, northerly and southwesterly, to the place of commencement.

AND ALSO the said Indian rights, titles and privileges whatsoever to all other lands wherever situated in the Northwest Territories, British Columbia, or in any other portion of the Dominion of Canada.

TO HAVE AND TO HOLD the same to Her Majesty the Queen and Her successors for ever.

And Her Majesty the Queen HEREBY AGREES with the said Indians that they shall have right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.

And Her Majesty the Queen hereby agrees and undertakes to lay aside reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each



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Indian, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council of Canada, the selection of such reserves, and lands in severalty, to be made in the manner following, namely, the Superintendent General of Indian Affairs shall depute and send a suitable person to determine and set apart such reserves and lands, after consulting with the Indians concerned as to the locality which may be found suitable and open for selection.

Provided, however, that Her Majesty reserves the right to deal with any settlers within the bounds of any lands reserved for any band as She may see fit; and also that the aforesaid reserves of land, or any interest therein, may be sold or otherwise disposed of by Her Majesty's Government for the use and benefit of the said Indians entitled thereto, with their *consent* first had and obtained.

It is further agreed between Her Majesty and Her said Indian subjects that such portions of the reserves and lands above indicated as may at any time be required for public works, buildings, railways, or roads of whatsoever nature may be appropriated for that purpose by Her Majesty's Government of the Dominion of Canada, due compensation being made to the Indians for the value of any improvements thereon, and an equivalent in land, money or other consideration for the area of the reserve so appropriated.

And with a view to show the satisfaction of Her Majesty with the behaviour and good conduct of Her Indians, and in extinguishment of all their past claims, She hereby, through Her Commissioners, agrees to make each Chief a present of thirty-two dollars in cash, to each Headman twenty-two dollars, and to every other Indian of whatever age, of the families represented at the time and place of payment, twelve dollars.

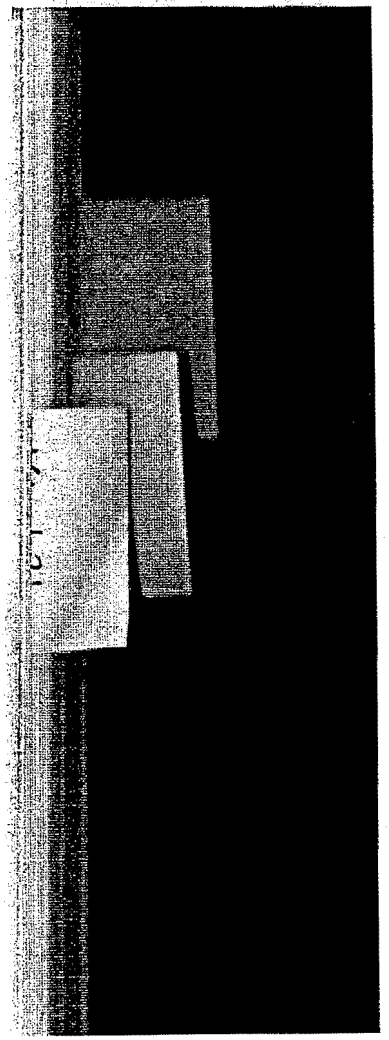
Her Majesty also agrees that next year, and annually afterwards for ever, She will cause to be paid to the said Indians in cash, at suitable places and dates, of which the said Indians shall be duly notified, to each Chief twenty-five dollars, each Headman, not to exceed four to a large Band, and two to a small Band, fifteen dollars, and to every other Indian, of whatever age, five dollars, the same, unless there be some exceptional reason, to be paid only to heads of families for those belonging thereto.

FURTHER, Her Majesty agrees that each Chief, after signing the treaty, shall receive a silver medal and a suitable flag, and next year, and every third year thereafter, each Chief and Headman shall receive a suitable suit of clothing.

FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty's Government of Canada may seem advisable.

FURTHER, Her Majesty agrees to supply each Chief of a Band that selects a reserve, for the use of that Band, ten axes, five hand-saws, five augers, one grindstone, and the necessary files and whetstones.

FURTHER, Her Majesty agrees that each Band that elects to take a reserve and cultivate the soil, shall, as soon as convenient after such reserve is set aside and settled upon, and the Band has signified its choice and is prepared to break up the soil, receive two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing-machine and one reaper for the use of his Band when it is ready for them; for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing-machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given one for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

And the undersigned Cree, Beaver, Chipewyan and other Indian Chiefs and Headmen, on their own behalf and on behalf of all the Indians whom they represent, DO HEREBY SOLEMNLY PROMISE and engage to strictly observe this Treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen.

THEY PROMISE AND ENGAGE that they will, in all respects, obey and abide by the law; that they will maintain peace between each other, and between themselves and other tribes of Indians, and between themselves and others of Her Majesty's subjects, whether Indians, half-breeds or whites, this year inhabiting and hereafter to inhabit any part of the said ceded territory; and that they will not molest the person or property of any inhabitant of such ceded tract, or of any other district or country, or interfere with or trouble any person passing or traveling through the said tract or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice and punishment any Indian offending against the stipulations of this Treaty or infringing the law in force in the country so ceded.

TREATY 8 NEGOTIATIONS

LESSER SLAVE LAKE

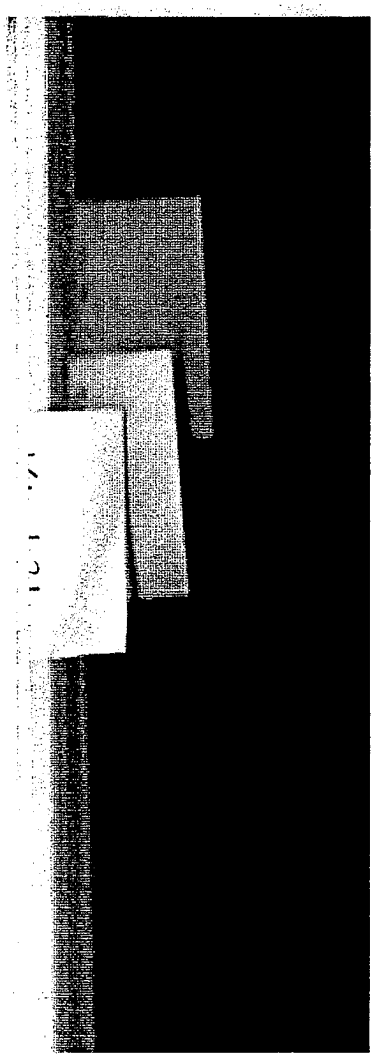
The Treaty party arrived at Lesser Slave Lake on June 20, 1899, and Treaty 8 was signed first by the Indians at that post on June 21, 1899. The adhesion of this band was considered of great importance, because once the Treaty was signed there, other bands would easily follow. It is not clear from the reports of the Treaty negotiations how well the terms of the Treaty were explained to the Indians, nor how much they understood. Treaty Commissioner Laird gave as one reason for the Treaty that, "the Queen wants all the whites, half-breeds and Indians to be at peace with one another, and to shake hands when they meet."[7] Many prominent Indians took part in negotiations, among them Chief Keenooshayo and Councillor Moostoos. Lacombe was called upon to talk to the Indians:

> Father Lacombe spoke at some length in Cree and advised them to take treaty.... After the Father sat down Commissioner Laird asked them, if they were satisfied, to stand up. A native named Jerou jumped to his feet before the interpreter had finished speaking and threatened to club any man who failed to stand up. They all arose amid much laughter."[8]

James K. Cornwall,* otherwise known as Peace River Jim, left a signed affidavit of his recollections of treaty negotiations at Lesser Slave Lake:

1. I was present when Treaty 8 was made at Lesser Slave Lake and Peace River Crossing.
2. The treaty, as presented by the Commissioners to the Indians for their approval and signatures, was apparently prepared elsewhere, as it did not contain many things that they held to be of vital importance to their future existence as hunters and trappers and fishermen, free from the competition of white man. They refused to sign the Treaty as read to them by the Chief Commissioner.
3. Long discussions took place between the Commissioners and the Indian Chiefs and headmen, with many prominent men of the various bands taking part. The discussion went on for days, the Commissioners had unfavorably impressed the Indians, due to their lack of knowledge of the bush Indians' mode of life, by quoting Indian conditions on the Prairie.
   Chief Moostoos (the Buffalo) disposed of the argument by telling the Chief Commissioner that "a Plains Indian turned loose in the bush would get lost and starve to death."
4. As the Commissioner's instructions from Ottawa required the Treaty to be signed first at Lesser Slave Lake before proceeding North, and as the white population living in the Indian Territory had been requested by the Government, prior to the coming of the Commission, to be prepared to deal with them as such, the whites had done everything in their power to assist the Commissioners, by using every honorable influence that was possible.

*Cornwall has been characterized as "the greatest steamboat man," successfully promoting the development of northern Alberta and the Peace River country. He was involved in all aspects of transportation, from building steamships and pioneering new routes, to promoting railway companies.



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5. The Commissioners finally decided, after going into the whole matter, that what the Indians suggested was only fair and right but that they had no authority to write it into the Treaty. They felt sure the Government on behalf of the Crown and the Great White Mother would include their request and they made the following promises to the Indians:
   a Nothing would be allowed to interfere with their way of making a living, as they were accustomed to and as their forefathers had done.
   b The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, and every effort would be made to improve their living conditions.
   c They were guaranteed protection 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 living and maintain their existence.
6. Much stress was laid on one point by the Indians, as follows: They would not sign under any circumstances, unless their right to hunt, trap and fish was guaranteed and it must be understood that these rights they would never surrender.
7. It was only after the Royal Commission had recognized that the demands of the Indians were legitimate, and had solemnly promised that such demands would be granted by the Crown, also, after the Hudson's Bay Company Officials and Free Traders, and the Missionaries, with their Bishops, who had the full confidence of the Indians, had given their word that they could rely fully on the promises made in the name of QUEEN VICTORIA, that the Indians accepted and signed the Treaty, which was to last as long as the grass grew, the river ran, and the sun shone – to an Indian this means FOREVER."[9]

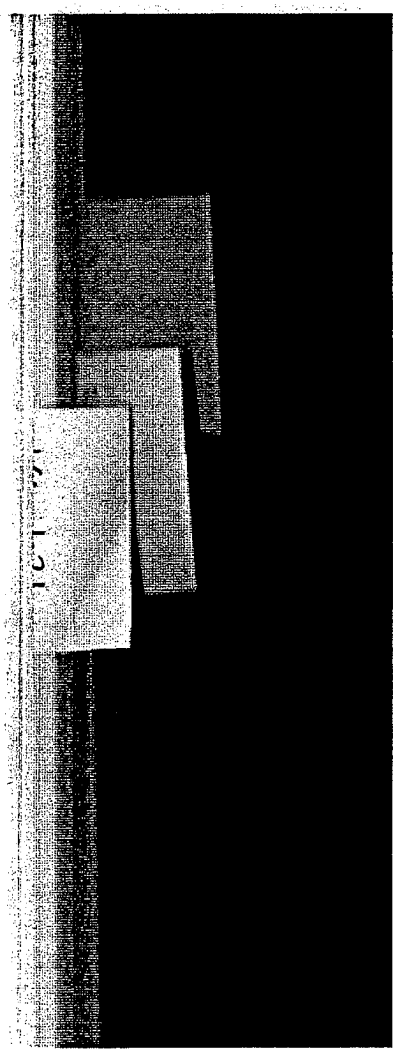
Cornwall did not limit his comments on Treaty 8 to this affidavit. He wrote many memos and letters to the Department of Indian Affairs and to other officials. He became one of the most valiant fighters in support of the specific promises made by the Commissioners to the Indians at the time of the Treaty. His efforts, along with those of other witnesses to the signing, will be discussed in later chapters.

HALFBREED COMMISSION

The half-breeds at Lesser Slave Lake made the task of the scrip Commission a difficult one. They objected to the kind of scrip that was offered: non-transferable for themselves and non-negotiable for their children until they reach legal age. In previous land settlements on the prairies, speculators had bought half-breed scrip at unbelievably low prices. To protect the Metis against such abuse, the Government had issued non-transferable scrip for the 1899 negotiations. At Lesser Slave Lake, Lacombe eloquently urged the Metis to safeguard their own and their children's interests by accepting this scrip. But the Metis were adamant and demanded scrip made out to the bearer. If the Commissioners could not agree to their demand, they refused any further negotiations. This decision was undoubtedly influenced by unprecedented amounts of cash brought into the country by itinerant traders and scrip "hunters", who followed the Government Commission. Already some resentful Metis and unscrupulous traders, not fancying tighter Government control in the District, had spread false rumours and set some Indians against the Treaty.

The members of both Commissions held a meeting among themselves and agreed they would have to meet the Metis' demands for transferable scrip. This move was upheld by Lacombe who explained why he had changed his position:

> Referring to the meeting of the Half-breeds today at which I acted as intermediary and adviser, after careful consideration of what was urged as to the form of scrip, I have come to the conclusion that very much trouble will arise if the parents be not able to make use of their children's scrip for their benefit during their minority. As you have no doubt observed, the Half-breeds here have evinced more intelligence and industry than did the Half-breeds to whom scrip was issued in 1870 and 1885, and although I came here strongly impressed with the desirability of doing everything possible to prevent the parents from using the scrip of their children and from freely disposing of their own, the conditions here have led me to the conclusion that action in that direction will not result in any benefit to the Half-breeds here but to their disadvantage, for they are determined to make prompt use of their scrip and that of their children. I



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find that the Half-breeds here, when they heard that scrip was to be issued, counted upon turning it into money for investment in cattle for themselves and their children. Very, very few, if any of them, will take land scrip, and I am convinced that none of those who take money scrip will use it in direct payment for land, and the result of the impediment to free disposition will therefore be the depreciation of the scrip. They are bound to dispose of it and it is in their interest that they should be in a position to get the best return possible for it. The dissatisfaction with the form of certificate is so great and so widespread that I fear if the Commissioners have to persist in using it the dissatisfaction will spread in advance of the Indian Commission and make it very difficult, if not impossible, to further extend the treaty which I am so anxious to have all the Indians enter into. In the interest of the Half-breeds, and in the public interest, I would therefore advise that if it be in the power of the Commissioners, they should take upon themselves to amend the scrips as to meet the wishes of the Half-breeds.[100]

Printed scrips were corrected and made payable to the bearer. The three Anglican ministers in Lesser Slave Lake at the time, congratulated the Half-Breed Commission for having "adopted the wisest course open to you."[101] Whether the Half-Breed Commission had reluctantly yielded to pressure, or really believed its own arguments, the decision cost the Metis dearly. Scrip buyers made an easy fortune. A total of 1,195 money scrips at $240 each, and forty-eight land scrips for 240 acres of land were issued throughout the Treaty 8 area. Over half went to Metis at Lesser Slave Lake. The Metis at Fort Smith could not be reached by the Commission and received their scrips only in November. Perhaps they were spared the gouging which went on at all the other posts that summer. For $75 cash, two Winnipeg bankers, Alloway and Champion bought the first scrip issued to the Metis at Lesser Slave Lake.[102]

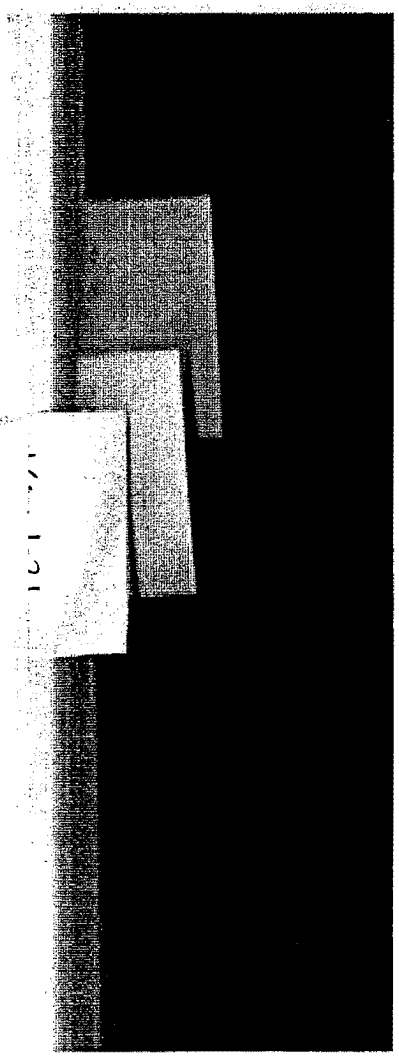
> The highest price paid for scrip was at the Landing [Peace River Landing]. There the competition was very keen and up to $130 was paid for a $240 scrip. The lowest price was at Vermilion and Wolverine Point, on Peace River. There the price was as low as $70. C. Alloway of Winnipeg followed the Commission throughout, buying scrip. R. Secord also bought on Upper Peace River, the Athabasca and Wapiscow. But on the Lower Peace Alloway had the market to himself.[103]

The Government had dealt with the Metis. Their account was settled and the books closed.

FORT CHIPEWYAN

The Treaty Commission had suffered such a delay that its members wondered if they could complete their work that summer. Once the Treaty had been signed at Lesser Slave Lake, "not having had any trouble or controversy with the Indians, the Commissioners were able to divide sometimes into three parties and pay treaty at three different places at once."[104] McKenna's party arrived at Fort Chipewyan on July 13, 1899. An account of the event is found in the diary of the Catholic mission:

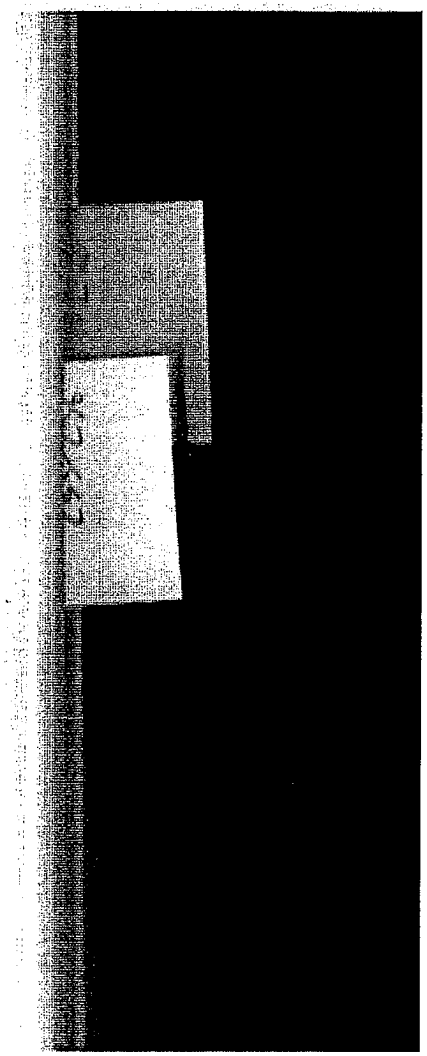
> July 13 – Two members of the Commission ... landed here at noon and called a meeting of all the Indians for 3 P.M. The meeting took place in the Fort's [Hudson's Bay Company's] yard. All the heads of families were present. Noticing that the missionaries were absent from the gathering, Mr. McKenna wrote and invited them to be present at the discussions, and all the Fathers went there.
>
> The Commissioner explained the Government's views and the advantages it offered to the people. The Chief of the Crees spoke up and expressed the conditions on which he would accept the Government's proposals:
>
> 1. Complete freedom to fish,
> 2. Complete freedom to hunt,
> 3. Complete freedom to trap.
> 4. As himself and his people are Catholics, he wants their children to be educated in Catholic schools.
>
> In his turn, the Chipewyan spokesman set the same conditions as the first speaker. The Commissioner acknowledged all the requests which both had voiced.
>
> Mr. Driver, in charge of the Fort, interpreted for the Crees, and Mr. Pierre Mercredi, his assistant, interpreted for the Chipewyans.



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

Chapter III

The Years between the Treaties
1900–1920



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

INTRODUCTION

Difficulties arising from Treaty 8 were soon experienced by both the Indians and the Government. Although these were not acute in the early years, the limitations of the Treaty were soon evident, as economic, social and political changes reached the North. These same changes would, in turn, determine the time and terms of Treaty 11.

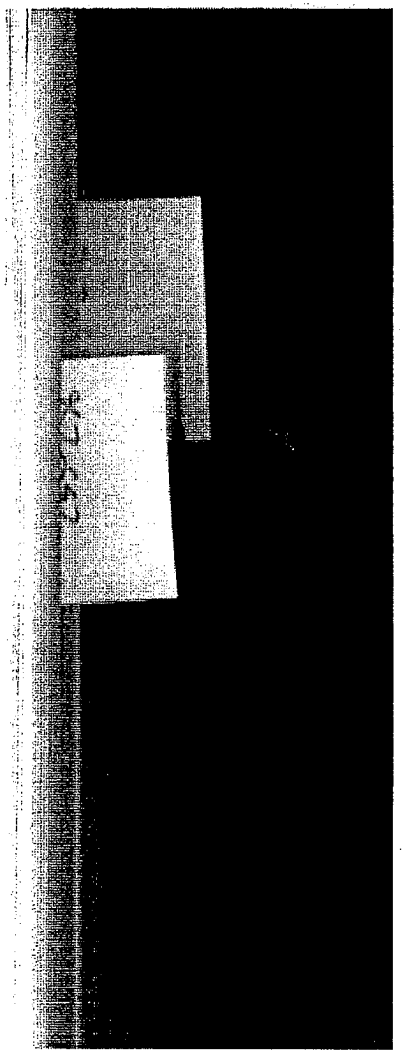
After the gold rush had passed through the Athabasca-Mackenzie District, some white trappers and free traders moved into the country. This new breed broke the monopoly of the Hudson's Bay Company and altered the nature of the fur trade. Fierce competition for furs caused intensive and reckless trapping in some areas. Speculation and high prices encouraged unscrupulous trading practices. Northern game and fur became increasingly scarce as the Government was unable or unwilling to protect the Indian people and their economy.

A few Canadians looking for farmland headed north to the Peace River District, after reading Government pamphlets extolling *Canada's Fertile Northland* (1907), *The Great Mackenzie Basin* (1910), and the *Unexploited West* (1914). The direct result of this influx of settlers seeking land title was the curtailment of the Indian's right to move freely. The Government survey of Treaty and Non-Treaty land forebode little benefit for the Indians. By 1912 the boundaries of the North West Territories were permanently fixed.

Some adventurers, trappers, prospectors, traders, and scientists penetrated the more remote country north and east of Great Bear Lake. Among these D'Arcy Arden, John Hornby, George Douglas, Vilhjalmur Stefansson, William Boland are still remembered.

With the creation of the Province of Alberta in 1905, new impetus was given to developing "Edmonton's hinterland." A former Edmonton politician, Frank Oliver, was named Federal Minister of the Interior and Superintendent General of Indian Affairs. Railway companies were encouraged to extend their operations from Edmonton to the North and Northwest.

With this increase of population and commercial operations, the North West Mounted Police extended its activity. This served to augment Government authority in the Treaty 8 area, leading gradually to tighter control and administration. Over the years, proposals were made



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

to Ottawa to extend Treaty 8 to the Indians north of Great Slave Lake, who could also benefit from Government relief. Many officials opposed this on the grounds that no profitable use could be made of the land. Delay followed delay. Later, when the discovery of oil outside of the Treaty 8 area made it highly desirable to "extinguish the Indian title," a new treaty was needed: Treaty 11.

FOLLOWING TREATY 8

VIEWS BY INDIANS

> Treaty day used to be a big day for the people.... A long time ago in every settlement where the Treaty was paid it was a big day and everyone used to have lots of fun, good dance that night, or next night. When you think about the Treaty now, it's like putting a plug of chewing tobacco in your mouth and chewing it, and spitting it, that's just the way the Treaty is today.[1]

Every summer, representatives of the Department of Indian Affairs visited all the main trading posts for the distribution of annuities, groceries, ammunition, and fishnets. They listened to complaints, and advised the Indians that their problems would be referred to the Government in Ottawa. Usually, a doctor and a few members of the NWMP accompanied the Treaty party and helped the Indians in any way they could. Treaty meetings became the highlight of summer gatherings, before the Indians left for winter hunting grounds.

Treaty Commissioner Macrae did not return after the trip in 1900. Henry Anthony Conroy replaced him as Pay Officer in 1901. As a young clerk, he had accompanied the original Treaty party in 1899. He was appointed Inspector for Treaty 8 on April 1, 1902,[2] and made the annual visit until his death in 1922. He was named Treaty Commissioner for Treaty 11 in 1921. Johnny Jean Marie Beaulieu recalls that during the first years payments were quite uneventful:

> The second year [1901] they paid treaty it was like the first, the same guy, nothing was changed. He [Conroy] asked the Indians: "How you making out last winter? That's the law.... You can hunt anywhere, and we won't tell you anything what to do!" It wasn't until later that anything came [Game Laws]. The way the Indian Agent told the people, it wasn't a problem until the fifth time the treaty is coming in."[3]

Frank Norn remembers that the only new discussions in 1901 were about home brew.[4] Susie Abel went again to Fort Resolution in 1901 and noticed that the annuity had been reduced:

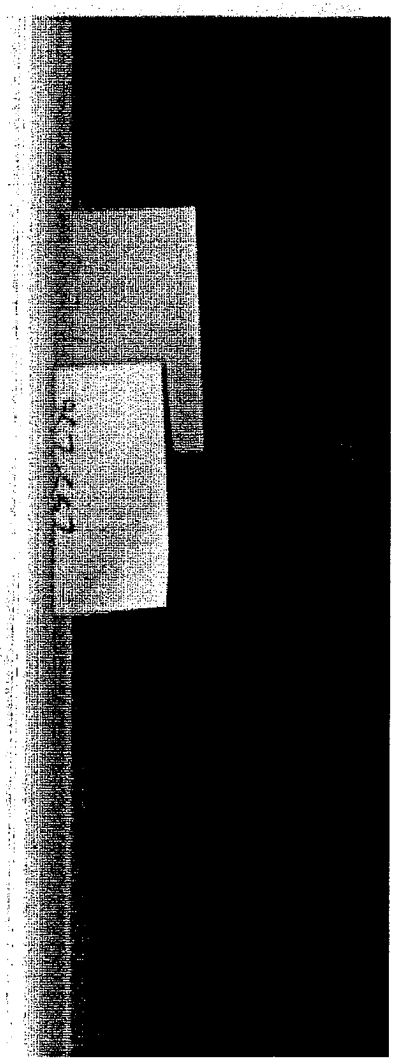
> The Agent told us: "Everyone gets $5 from now on. The $7 [remaining from the original $12 given at the first treaty] we are going to put aside as treaty rations ... for fishnets, flour, all kinds of ammunition, groceries, whatever you need.... Every summer we're going to pay treaty and at the same time we're going to bring all this stuff for you to issue among yourselves."[5]

Initial excitement and novelty soon gave way to disillusionment when it became clear that rations and money were the only return the Indians could expect on Government promises.

VIEWS BY MISSIONARIES

Missionaries began to see the effects of Treaty 8 on their work as well as on the Indians. Richard Young, Bishop of the Anglican Athabasca Diocese made this analysis:

> It will be followed by an increase of traders and other white men in the country. In the first instance, this will be attended with a good deal of concurrent evil. It will also tend to draw the Indians from their occupation as hunters and trappers, and unavoidably cause a considerable amount of unsettlement. On the other hand, it is a necessary step in the opening-out and development of the country. It anticipates the certain occupation of the country by miners, settlers, etc., with some amount of order and government. It will restrain the Indians from superstitious panics and bloodshed. ... It will preserve them from the periodical starvations that have again and again decimated, if not worse, whole camps. It will eventuate in more settled habits of life, in their taking up farming, and receiving educational



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

advantages for their children. The future of the Indian, under a just and kind Government, is not extinction; rather it is by degrees absorption – the addition of one element in the mixture of races that is going to make up the future population of Western Canada.[6]

Serious consequences for mission schools followed Treaty 8. The Department of Indian Affairs granted to the mission schools $72 annually for each Indian child whose parents had signed the Treaty. For Metis children, whose parents had chosen scrip, there was no payment. Rev. George Holmes, Anglican minister at Lesser Slave Lake, assessed the situation thus:

> I am sorry to say that the result of the Treaty here does not brighten our future prospects.... The Commissioners were empowered to treat all as Indians who were willing to accept Treaty; but to our great disappointment, and the severe loss of the Schools, only a small minority accepted it, the rest all choosing "Scrip" instead. They regarded the term "Indian Treaty" as much below their dignity, though they saw that the Treaty would be of the most practical and lasting benefit, both to themselves and their children. Pride of origin and not the future welfare of their families, decided their choice.... After selling their scrip they [the Metis] are responsible for the support and education of their children, and can claim nothing more from Government than white settlers....[7]

Bishop Grouard wrote to the Mother General of the Grey Nuns on September 1, 1899:

> The Government made treaty with the Indians of the Athabasca [District] and promised them schools of their own denominations. I asked that the Holy Angels Residence [Fort Chipewyan] be officially recognized as a Boarding School for 100 Indian children. At least some assistance will be given, I hope, and the scope of the good work will increase....[8]

The Fort Providence school could not receive Government assistance as it was "out of the country united to Canada by the last Treaty," and Grouard considered, at one point, transferring half of its staff to Hay

River, within the Treaty boundary, where a new school would be built.[9] On September 24, 1901, a disillusioned Bishop wrote to the Prime Minister: "Treaty promises are far from being fulfilled.... The Indians, as well as myself, have some right to be treated with a little more generos-

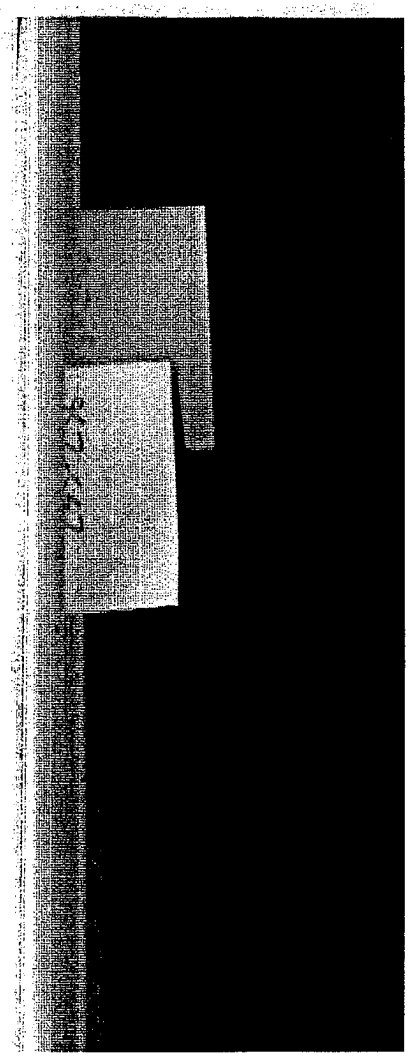
VIEWS BY OUTSIDERS

A few white travellers to the North in the early 1900s, wrote accounts of their visits to several posts during Treaty days. Their passing glance at an unfamiliar ceremony left some of them puzzled by its significance. David T. Hanbury arrived at Fort Resolution on July 7, 1901:

> There we found a large encampment of Indians – Dog Ribs, Yellow Knives, and Slave Indians. They assemble here annually at this season to await the arrival of the Indian Commissioner and receive their treaty money and allowance. The Yellow Knives and Dog Ribs have only recently "accepted treaty," i.e., have renounced all claim to exclusive ownership of the district, and placed themselves on the same footing as white men with respect to land and game, receiving in return five dollars per head and allowances of flour, bacon, tea, tobacco, and ammunition. What advantage the Government expects from this convention is not clear, for it is unlikely that white men will ever settle in this region.[11]

Elihu Stewart visited Fort Resolution in 1906. He was quite impressed by the "hundred or more Indian lodges" of the Chipewyan and Slavey Indians assembled there "for the payment of 'treaty,' as they call it, that is to say, the Federal Government's grant to Indian tribes."[12] Ernest Thompson Seton travelled through Fort Smith and Fort Resolution in 1907. His impression was that the Indians had "surrendered their lands to the Government," but were not confined to reserves, having the freedom "to hunt as their fathers did." However, he was deeply touched by this complaint of Pierre Squirrel, chief at Fort Smith:

> You see how unhappy we are, how miserable and sick. When I made this treaty with your government, I stipulated that we should have



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people. That's how the Indians felt. So they just kept asking the White people what the money was for. They said "You just can't give us the money for nothing. It must mean something.... " The White people kept bugging the people for treaty. They said "You've got to take treaty." The people said no. So everyone went home. The next day, it was the same thing again. They talked about taking the Treaty all day. They tried to force the people to take the Treaty. The people didn't want it....

Commissioner Conroy promised the people that this was their land. "You can do whatever you want," he said. "We are not going to stop you, just do what you were doing before. And also the birds and ducks and things like that, just continue on hunting as you used to before." This was the promise he made to the people ... that we could go hunting and fishing, do whatever we wanted, that's the promise they gave. They talked about hunting moose and caribou, birds, anything. "Nothing will change," they said, "everything will be free to you people as it has been in the past. And you people can hunt all you want, do what you want to do and have free lands like you used to. Do whatever you want." The people just kept asking about hunting things, like birds and moose and also trapping. Conroy promised the people that they could do as they had done, nothing would change. Chief Wright kept asking them about a dozen times about the hunting and trapping. They said nothing would change. The Indians could keep on hunting like they used to. Nobody would bother them at all. That was the promise they gave to the people when they took the treaty. The people asked them about land and game, moose, trapping and stuff. They all said "Yes, yes." They never turned the people down at the time. That's why they took the Treaty – because they promised free land, freedom of hunting and everything.... "You can keep on hunting and fishing and trapping. It will be just as you did before. Nothing will change." But yet the people didn't agree with what the Government said. "All we want," said the Commissioner, "is just that you take the Treaty money." But the people said no.

So on the third day the Bishop said that the White people were not lying. "They would keep their promise. They are telling you the truth." So the bishop started helping the Treaty party. In them days people were a hundred percent Catholic [80% to 90%]. So they began to talk amongst themselves. The Bishop was just like a God man, "so he must be telling the truth," they said. The Bishop said that the people in the Government don't lie. He said that they would be honest about the promises they gave the people. He said that they should take it. So they decided that God was not lying. He told the people that they should take the Treaty, so they figured that he was God and that God wouldn't lie.

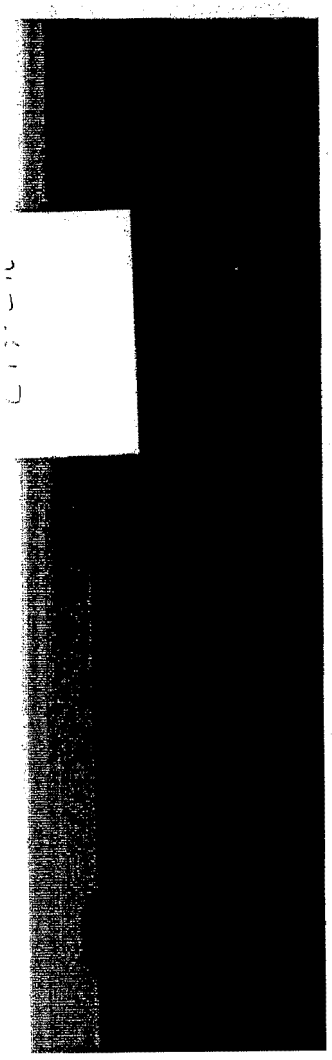
Even though the Bishop said that they should take the Treaty, the people themselves did not want to take it yet. They talked amongst themselves until they got everything settled. That's when they finally got a treaty. They decided to take the Treaty on the third day. They talked amongst themselves and then they signed the Treaty. The White people were not talking about any lands, so they all made an agreement, and they all signed their names, the Commissioner and Albert Wright and all the others.

Then the Treaty party, Commissioner Conroy or whoever it was, said "as long as the Mackenzie River flows, and as long as the sun always comes around the same direction every day, we will never break our promise." The people and the Bishop said the same thing, so the people thought that it was impossible that this would happen – the river would never reverse and go back up-river, and the sun would never go reverse. This was impossible, so they must be true. That's why we took the Treaty.

The narrators would have the negotiations last three days. This seems unlikely since the Treaty was signed on July 15, just two days after it was signed at Fort Wrigley. There is no record of arrival time at Fort Norman, but it could not have been earlier than the 14th.

FORT GOOD HOPE

After leaving Fort Norman the Treaty party would pass Discovery Well on the journey downstream. There is no record of a stop-over there, but it is very likely that the *Hudson* put into shore. The oil strike on this spot in 1920 had set into motion the forces which culminated in this voyage of the Treaty Commission down the Mackenzie. The arrival at Fort Good Hope, 130 miles downstream from the oil field was recorded in the



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Catholic Mission Diary by Alexis Robin, OMI: July 19, 1921: "Bishop Breynat, Father Trocellier, and the Treaty Party arrive."*

There was no further entry to describe the negotiations, but fifty years later Father Robin could remember what had happened. He had been with the Indians since 1912 and knew them well:

> Quite a few people were out in the bush, mostly the Eastern and Colville Lake bands. Before leaving the village they gave me their names and said: "If all the other people accept the treaty, we'll accept it also." Prior to Treaty day, some people said they did not want to receive Treaty. I told them: "You might just as well accept it, and bargain hard to obtain more than what is offered."
>
> Before 1921, there was no chief; the H.B.C. manager told the Treaty Commissioner that Tseleie would be a good chief. I also think he was the best man for chief.
>
> I did not attend the discussions, which lasted only 2 or 3 hours. Bishop Breynat did not do much about the Treaty. He was at the Mission building with Father Trocellier who arrived at Fort Good Hope that day. We were talking together when someone came and told Bishop Breynat to come and witness the treaty signatures.
>
> The policeman did not know how to write the Indians' names and he spelled them all wrong. Some Indians signed the Treaty only the following year.
>
> In the following years, all the people accepted the treaty money and they always had a big feast."

Testimony by Indian people brings out many of the same details and adds others.*

Louis Caesar: During the first treaty we heard that we were supposed to pick a chief, so we picked Tseleie.

Louis Boucane: The chief did not want treaty but they kept talking to him until he got tired of it and said yes. There were only two of them but they kept bugging the people.... They asked the chief for two weeks....

Louis Caesar: The Government party [was] in Good Hope ... about half a day, not very long.

Gregory Shae: The whites asked us if we wanted reserves.... But we told them that it would be kind of crazy to own little pieces of land. Because if the animals and furs disappear from that little piece of land what would the owner eat. We told them that we would rather hunt and trap all together....

Louis Caesar: If the people were to own small pieces of land and if the animals never come there, they would have to move onto someone else's territory and there would be fighting and arguing. The chief said: No. The people wanted to go where they wished when they wished.... The treaty party continued to make promises to the people that the government would help them if they needed it.... They said that they will give us $10 each for the first year and then they will keep adding on $5 for each person every year. Like the second year we will each get $15.... Then the third year $20. Then the fourth year $25, and so on.... We agreed to the treaty because of these promises, and in those days nobody lies....

Gabriel Kakfwi: The old Bishop was there too. He talked to the people about how good the treaty was.... You see, the people believed everything the Bishop said because bishops and priests are not supposed to lie. So they believed him....

Louis Caesar: Bishop Breynat wasn't present. After the treaty, the government built a two-storey log house for the chief. They said that they were going to send food and rations for the upstairs part. They said that they were going to do this whenever it was empty. The chief moved in the house with his family and waited for the food and rations that were for his people. He waited until he died....

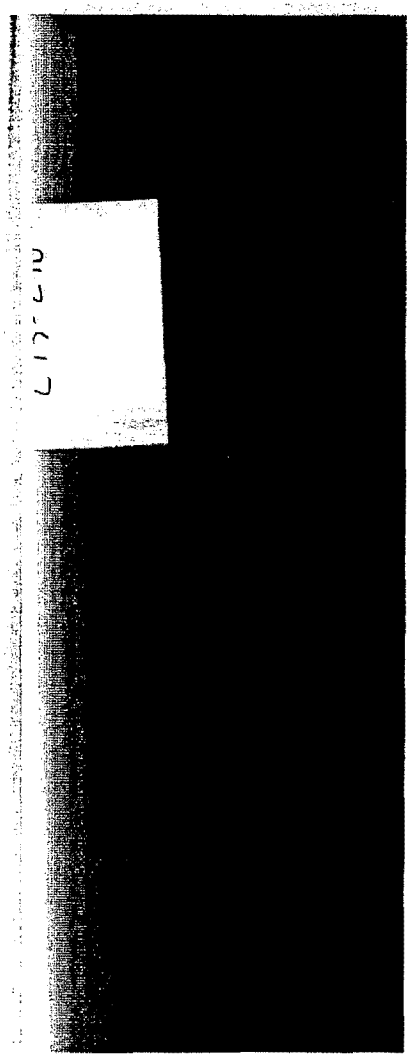
The Treaty was signed on July 21, two days after the arrival of the Treaty Commission. One hundred and thirty-four Indians adhered to the Treaty, which was signed by the following:

H. A. Conroy
Simeon [Tseleie]
Francois Nategal

and witnessed by:

Bishop Breynat
W. V. Bruce, Inspector RCMP

*Louis Boucane, born in 1905, was interviewed by Gerald Sutton of Yellowknife in July, 1971. Louis Caesar, born in 1902, Gabriel Kakfwi, born in 1885, and Gregory Shae, born in 1896, were all interviewed by Bernard Masuzumi of Fort Good Hope in January, 1972. Louis Caesar testified also in front of Mr. Justice William G. Morrow, at Fort Good Hope on July 18, 1973.



Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

F. H. Bacon
J. H. Brashar, Corporal RCMP[100]

Louis Caesar recalls the celebration which followed yearly Treaty D

> On treaty day, long ago, the government gave us the food for the feast after giving out the treaty money. They gave us rice, bacon and dried fruit for the feast. And after the feast there was drum dancing, square dancing and hand games. Everybody was there. We had fun.

The Treaty Party did not leave until three days later. Father Robin m this brief entry in his diary:

> July 24, 1921: The Bishop and the Treaty Party departed for Arctic Red River. All the people present in the village accepted the treaty, and are quite happy, although all said they would not accept it.[101]

ARCTIC RED RIVER

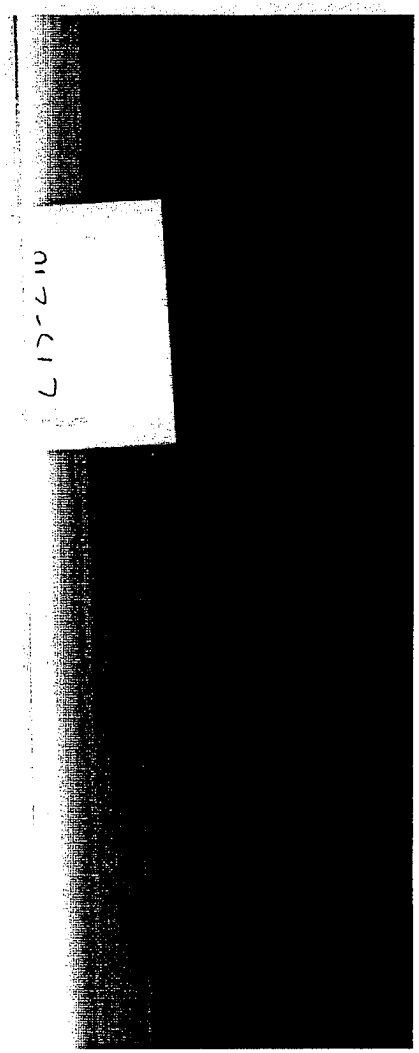
The Treaty party crossed the Arctic Circle about twenty miles below Fo Good Hope. Two hundred and ten miles further downstream it land at Arctic Red River, "on July 26, 1921, at 1:00 P.M.,"[102] after a journe of twenty-four hours. This was Kutchin, or Loucheux territory, and 17 Indians were on hand for the negotiations. Other than the day and tim of arrival no further information on the Treaty is found in the Catholi Mission diary. What is known about events at Arctic Red River comes from the recollections of Native people who were there:*

> *Amos Niditche:* I remember when I was young everybody was talking about the treaty money.... But everybody in our country at that time had lots of money because we had lots of furs and hunting was good and nobody was in need of money and about then this whiteman came in and he was a big

*Julienne Andrew, born 1887, and Amos Niditche, born 1907, interviewed by Edward Nazon of Arctic Red River on April 23, 1973; William Firth of Fort McPherson was interpreter for the 1921 Treaty party at Arctic Red River, he was interviewed in 1966 by Les A. Wilderspin, assistant Indian Agent at Fort McPherson; William Norman, born 1900, testified in front of Mr. Justice William Morrow, at Arctic Red River on July 25, 1973.

> ...of some sort. He came and said: "I'm here to give you some money. But nobody knew what he was talking about ... and the people asked lots of questions.... He sounded very truthful. He said "I am giving you this money because in the future there will be lots of white people in your country and you will be here, and you will be remembered as the treaty people," and he put on the table $1000 and they got one man who was named as a treaty man.
>
> After, he said this: "For the future even if there are lots of whitemen, remember you are all Treaty Indians, you make your living here, you will have someone to look after you always; and remember the whiteman will never be your boss." The Indian then took the money because they thought it was explained. All people then agreed and said "Yes," and they made two bosses [Indian chiefs] because if there are lots of whitemen in the future these bosses will be speaking for you.
>
> *Julienne André:* They [the Indians] said, "This is our land, we were born here, it is our land and no one will take it from us." This white man [Conroy] and a Hudson Bay Clerk [Parsons?] told us ... this land is your land as long as you live and no one will take it from you. The people said, "Are you sure no one will take this land?' and the white people said, "Yes, we will not take your land."
>
> *William Norman:* [Conroy] said to pass this Treaty, Treaty is not for the white people to bother you for anything, they won't bother your fishing wherever you fish, and things like that: and another thing, everything what you kill in the summer, whatever or wherever you hunt and you kill anything, it is free ... all the Indians agreed to it and said it is O.K., and now we are going to pass a Treaty, he says. Then each person got twelve dollars.
>
> *William Firth:* After three days of negotiations the people of Arctic Red River were still not willing to sign the treaty and it was only after the arrival of Bishop Breynat that they finally consented. The Bishop spoke to them in French, which was translated by the resident priest, advising them to accept the terms offered, as the Government could take the land anyway and was only trying to help them by promising schools, medical aid and assistance in times of emergency.[103]

Treaty negotiations did not take three days. They were finished in half a day, and the Treaty was signed on July 26, the day of arrival. The following persons attached their signatures to the Treaty:



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hundreds of lawyers discussing for fifty years, leaving them in disagreement on the meaning of some of its clauses. Nor did the Indians get all of Conroy's attention. He was also Half-breed Commissioner and responsible for taking evidence from the Metis regarding their claims to scrip. Conroy left more written documents on transactions with the Metis than he did on Treaty negotiations with the Indians.[154]

Suspicion, apprehension, and reluctance characterized the manner in which most Indians approached the Treaty negotiations. Some had sworn that they would never accept Treaty money. Many sensed that they were on the threshold of an unknown future, and they were afraid. But in the end they all took the money. They understood from Conroy that whether they took treaty or not, they were subject to the laws of the Dominion. In fact, the Government had already imposed Canadian laws on the Mackenzie District. They had nothing to gain by refusing. Nevertheless, the Indians did not accept the Treaty in toto, as it was offered. They tried to secure for themselves some benefits which were not included in the original text prepared in Ottawa. They tried to bargain within the narrow limits allowed them. Later, when Government promises were not kept, some attempted to refuse their Treaty money, but learned that the Treaty was not renegotiable. Whether they accepted or refused the annuity, Treaty regulations were still valid; they could never turn back.

When the Indians agreed to sign Treaty 11, they were promising their friendship. For over a hundred years the Northern Indians had been able to help newcomers to their country. They welcomed and assisted the white man and trained him to survive and adjust to northern conditions. By 1920 neither the Indians nor their assistance were needed. Rather, the Indians had to depend on the white man for some of their needs. They saw the white man's treaty as his way of offering them his help and friendship. They were willing to share their land with him in the manner prescribed by their tradition and culture. The two races would live side by side in the North, embarking on a common future. This concept of a Treaty was not unique to the Indian people. It had been expressed in 1880 by Alexander Morris, who represented the Government of Canada on early Treaty Commissions:

I see the Queen's Councillors taking the Indian by the hand saying we are brothers, we will lift you up, we will teach you, if you will learn, the cunning of the white man. All along that road I see Indians gathering. I see gardens growing and houses building; I see them receiving money from the Queen's Commissioners to purchase clothing for their children; at the same time I see them enjoying their hunting and fishing as before, I see them retaining their own mode of living with the Queen's gift in addition.[155]

The ear of the Queen's Government will always be open to hear the complaints of the Indian people.[156]

Let us have a wise and paternal Government faithfully carrying out the provisions of our treaties, and doing its utmost to help and elevate the Indian population, who have been cast upon our care, and we will have peace, progress, and concord among them in the North West; and instead of the Indian melting away, as one of them in older Canada tersely puts it, "as snow before the sun," we will see our Indian population loyal subjects of the Crown, happy, prosperous and self-sustaining, and Canada will be enable to feel, that in a truly patriotic spirit, our country had done its duty by the red man of the North West and thereby to herself. So may it be.[157]

In spite of these noble sentiments, official documents show that the Government in 1921 viewed Treaty 11 as a mere formality. Nor is there evidence that the Government ever developed a clear policy of fulfilling its obligations to the Indian people. For their part, the Indians never fully realized the extent of their participation in the Treaty: what they were expected to give and what they were entitled to receive.

LAND TITLE

Most official documents indicate that Treaty 11 was a cession of land. The Indians of the Mackenzie District contest this interpretation. They do not believe that their fathers ever intended to surrender the land to the Government. They have never understood that Indian title to the land was extinguished by Treaty 11.

If Conroy asked the Indians to surrender their rights to the land, it is possible and probable that they did not understand him. Historians and

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anthropologists agree that the European concept of "land ownership" was unknown to the Indians of the Mackenzie District in 1921. This is still the case today, as was evident among the witnesses appearing before Mr. Justice Morrow in 1973. During the court hearing the terms "land," "land ownership," "land use," and "use of natural resources" were frequently used interchangeably. None of these had any relation to what the Indian people understood by the term "Treaty." In giving testimony some witnesses spoke in their own Indian languages: Chipewyan, Slavey, Dogrib, and Hares. These all have a common origin, though spoken by tribes living a thousand miles apart. Over the years words have been coined to describe the new tools, foods, political and social practices introduced by the white man. Although there is a large collection of words used for "trade," "exchange," "agreement," "negotiations," no one tribe selected any of these to express its understanding of "treaty" or concepts related to it.

	"Treaty" and	"Indian Agent"
Chipewyan	Tsamba Nalye	Tsamba Nale
Slavey	Samba Naye	Samba Nale
Hare	Sampa Naye	Sampa Nalle
	Sampa Raye	Sampa Raile
Dogrib	Samba Nazja	Samba Nalle

"Treaty" is literally translated by "money is distributed"; "Indian Agent" by "the one distributing money." July is "the month when money is given," and the "first Treaty" is "the first time money was given." People express their thoughts with language. They communicate their interpretation of life in words which describe their understanding of it. "Money is distributed" clearly shows what significance the "Treaty" had for the Mackenzie Indians.

> In order that the white people won't overcrowd your land, we are going to give you some money.[158]
>
> You really mean it, by giving us this money, the white people will not crowd our land?[159]
>
> The chief said: "Why give me this money?" and the government man said: "We are giving you this to protect you...."[160]

> If they [the Indians] took the money, they [the Government] would help the Indian people.[161]
>
> Now we are going to pass a Treaty, he [Conroy] says. Then each person got twelve dollars.[162]

It is evident that in 1921 no clear and definite statement was made of the purpose and consequences of Treaty 11, either by the Treaty commission or by the Indians. This fact must detract from the value of documents which claim to extinguish Indian title. Clermont Bourget, M.D., Indian Agent at Fort Resolution from 1923 to 1935, describes the Mackenzie "land surrender":

> Treaties between Government and Indians, on the prairies and later on in the northwest, aimed at preventing troubles and wars between whites and Indians.
>
> The Government could have simply taken the proper land for settlement but it would have angered the Indians to see the Whites come and colonize these lands. They preferred to sign "treaty" with the Indian bands it acknowledged to be owners, but without a legal title, and first inhabitants of these regions.
>
> By this treaty, the Government asked the Indians to accept the White people as their neighbours and not to bother them. Through this bargain, the Government, so to say, bought the country.[163]

In 1959 the Canadian Government established the Nelson Commission to investigate the unfulfilled provisions of Treaties 8 and 11. The five members of the Commission were evidently surprised to discover that the Indian people's ideas on land ownership had not evolved since 1921.

> It should be noted that although the Treaties 8 and 11 were signed sixty and thirty-eight years ago respectively, very little change has been effected in the traditional mode of life of the Indians in the Mackenzie District. Very few of the adults had received an elementary education and consequently were not able to appreciate the legal implications of the treaties. Indeed, some bands expressed the view that since they had the right to hunt, fish, and trap over all of the land in the Northwest Territories, the land belonged to the

Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

Indians. The Commission found it impossible to make the Indians understand that it is possible to separate mineral rights from actual ownership of land....[164]

Most of the Indian witnesses in Mr. Justice Morrow's court were asked this question: In your opinion what did you or your forefathers give up surrender to the Government in return for the $5 annuity and other treaty gifts?

We thought the Government was going to keep us like his sons, that is why he is passing the five dollars to us, like to his sons or children.[165]

What we heard was that the exchange was to be peace prevailing among each other.[166]

No one mentioned land or title.

TREATY PROMISES

The Language used in Treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense.... How the words of the treaty were understood by these unlettered people, rather than their critical meaning, should form the rule of construction.[167]

Shorn of its legalese, Treaty 11 has little of substance to offer the Indian people. There are a few specifics: an annuity, yearly rations, "once and for all, one grindstone, necessary tiles, and whetstones to each band." Were these latter expected to last as long as the sun shines and the river flows? Clauses dealing with reserves, education and medical care were cautiously vague. Any benefit from these would not come without a struggle.

Item: While it is a fact that the Indian people resisted a reserve system fearing they would be confined to a small piece of land, nevertheless, they would welcome settlement of their land claims. To date, there has been

[illegible] reserved for the Indian people of the Treaty 11 area. In sharp contrast [illegible] the Government's concessions in two famous land settlements. [illegible] the Hudson's Bay Company surrendered its trading monopoly [illegible] Rupert's Land and the Unorganized Territories for £300,000. It was [illegible] to claim and select 1/20th part of the land, anywhere within [illegible] fertile belt, retaining all rights to that land. The Canadian Pacific [illegible] Company received land grants of approximately 25 million [illegible], as well as generous tax exemptions.

Item: Education will be offered "in such manner as the Government may from time to time deem advisable," reads the Treaty text. The school system operating [illegible] the Mackenzie had been organized by the Catholic and Anglican clergy [illegible] more than fifty years before the Treaty. It continued for more than [illegible] years after, without any noticeable benefit to the Indians resulting [illegible] the Treaty promise. The Federal Government had accepted responsibility for education and it was not meeting it. During the year 1936, the [illegible] expenditures of the Department of Indian Affairs for the education [illegible] adults and children in the Northwest Territories, (3,854 persons) was [illegible] $37,865.16. In 1944, the budget had slipped to $37,566.00.[168]

Item: The Indians had asked for "more provision for medical attendance at each post," for they understood the need for medicines to combat the unfamiliar diseases which were invading their territory. Commissioner Conroy explained: "It was impossible for the Government to furnish regular medical attention ... supplies were left at each point for the sick and destitute."[169] Until 1950, the missions carried the full burden of providing medical care to the Northern Indians, receiving only minimal assistance from the Government. The failure of the Government over so many years, to take every means possible to alleviate the sickness and suffering resulting from disease and epidemics, remains a national dishonour. In 1936 the expenditures of the Department of Indian Affairs for medical services to the 3,854 Indians of the Northwest Territories, in an area of half a million square miles, was $43,819. In 1944, it was reduced to $36,838.[170]

Upon hearing that "... as long as the sun shines and the rivers flow the Government will do this and that for you," an old Indian answered: "Wait and see 'as long as the rivers flow,' you are more like little creeks which will dry up in a few years."[171]

Fumoleau, Rene. As Long As This Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. Toronto: McClelland and Stewart Ltd., 1975.

The Spirit of the Alberta Indian Treaties

edited by
Richard Price



Pica Pica Press

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Foreword

The University of Alberta Press has decided to publish a new edi
The Spirit of the Alberta Indian Treaties. The rationale for this decisi
essentially two-fold: a continuing demand for the book, and its uniqu
blending the oral tradition of Indian Elders with documentary sources.
follows is a short elaboration of this rationale and a few thoughts on
directions for treaty and aboriginal rights research.

As the availability of copies of the last edition began to dry u
Indian Association of Alberta continued to receive requests for the boo
a variety of sources, most notably from professors of History and
Studies in western Canadian Universities. The book is regarded as ha
continuing value in the teaching of university courses.

Secondly, in the last decade Native Studies has evolved as a disc
and more native studies research has been done in a variety of
disciplines. In some of this research, the lasting impact and importance
oral traditions have come more strongly to the foreground. Scholar
increasingly recognized the value of the oral history traditions of indig
peoples (Foster, Stonechild, Thornton, Trigger, Vansina).

In a parallel development, native communities themselves have be
undertake more of their own research, and there is a definite thrust to r
Indian elders and preserve for future generations their memories and wi
In the broader society, these developments are echoed in numerous
community histories, as well as in popular histories such as those of
Broadfoot. Thus, oral history traditions, although they date back at le
pre-biblical times, have received greater recognition and acceptance
past decade. This augurs well for the future of native studies research.

Hence, it is our desire to make available again this pioneering
history work, influenced by Indian cultural values and articulating distil
Indian perspectives on treaties 6, 7, and 8. Moreover, the essential thr
our research remains relevant and intact, namely that:

> Indian peoples and governments have conflicting perceptions of these Indian treatie
> not only are these perspectives at the root of many contemporary Indian-governme
> problems and misunderstandings, but their basis resides in the Indian trea
> negotiations of the last century.

Other events since the original publication have added to the b
relevance, but also brought new challenges. The Constitution Act of
recognizes and affirms "The existing aboriginal and treaty rights c
aboriginal peoples of Canada. . . ." Moreover, a series of First Mini
constitutional conferences have been held to discuss the definitions of
rights. As many have noted, vast gulfs of understanding and differenc
position have characterized the constitutional discussions to date. Witl
book being more widely available, the process of building mut

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commissioner agreed that a treaty should be made and Cabinet approval was granted on 27 June 1898.

Aside from conflicts between miners en route to the Yukon and the Indian people, the government was also concerned that the gold rush would open other areas of the North to both mining and agriculture. Throughout the 1890s, the Department of Interior had been discouraging settlement of the Peace River district, but it was apparent that the gold rush was forcing a change in that policy. In 1900, the deputy minister of Indian Affairs gave a detailed explanation of why Treaty Eight had been signed:

> Although there was no immediate prospect of any such invasion by settlement as threatened the fertile belt in Manitoba and the Northwest Territories and dictated the formation of treaties with the original owners of the soil, none the less occasional squatters had found their way at any rate into the Peace River district.
>
> While under ordinary circumstances the prospect of any considerable influx might have remained indefinitely remote, the discovery of gold in the Klondyke region quickly changed the aspect of the situation. Parties of white men in quest of a road to the gold fields began to traverse the country, and there was not only the possibility ahead of such travel being greatly increased, but that the district itself would soon become the field of prospectors who might at any time make some discovery which would be followed by a rush of miners to the spot. In any case the knowledge of the country obtained and diffused, if only by people passing through it, could hardly fail to attract attention to it as a field for settlement. For the successful pursuance of that humane and generous policy which has always characterized the Dominion in its dealings with the aboriginal inhabitants, it is of vital importance to gain their confidence at the outset, for the Indian character is such that, if suspicion or distrust once be aroused, the task of eradication is extremely difficult. For these reasons it was considered that the time was ripe for entering into treaty relations with the Indians of the district, and so setting at rest the feeling of uneasiness which was beginning to take hold of them, and laying the foundation for permanent, friendly and profitable relations between the races.[77]

There was still some scepticism about agriculture being viable, especially without railways, but the gold rush brought a number of adventurers who were unwilling to await government approval to pioneer. Any widespread settlement prior to treaty probably would have created many administrative and legal problems because the Dominion Lands Act of 1872 did not apply to territory where the Indian title had not been extinguished.[78] The longer the treaty was delayed, the more squatters' claims there would have been to deal with when the land did come under the act.

PRELUDE TO THE TREATY

The federal government had good reason to postpone the negotiation of treaties in the North until the actual settlement of particular areas or major

[77] Fumoleau, *Land Shall Last*, pp. 49-50.

[78] Paulette et al., Supreme Court of the Northwest Territories (1973), "Caveator's Brief," p. 151.

development of natural resources seemed imminent. The treaties with the Prairie Indians had proven to be more costly than anticipated, and at the same time, far from successful in their aim of providing the Indians with the means to adapt to an agricultural economy. There were fears that a northern treaty might encourage Indians to abandon the difficult life of hunters and trappers in favour of dependence on government provisions.

Pre-treaty correspondence of the Department of Indian Affairs reflects a strong emphasis on the need for peace and friendship between the native people and settlers and miners. The Order in Council setting up the commission for Treaty Eight reflects this concern:

> On a report dated 30th November, 1898, from the Superintendent General of Indian Affairs . . . it was set forth that the commissioner of the North West Mounted Police had pointed out the desirability of steps being taken for the making of a treaty with the Indians occupying the proposed line of route from Edmonton to Pelly River; that he had intimated that these Indians, as well as the Beaver Indians of the Peace and Nelson Rivers, and the Sicamas and Nihamas Indians, were inclined to be turbulent and were liable to give trouble to isolated parties of miners or traders who might be regarded by the Indians as interfering with their vested rights; and that he had stated that the situation was made more difficult by the presence of numerous travellers who had come into the country and were scattered at various points between Lesser Slave Lake and Peace River.[79]

When it became apparent that the treaty could not be signed in 1898 as planned, but would have to wait until the summer of 1899, the government distributed public notices throughout the proposed treaty area, setting the dates for the meetings in the following year. This notice included the phrase, "...it is deemed advisable to include within the said treaty the extinguishment of their title to the lands. . . ."[80] Missionaries and members of the North West Mounted Police distributed the notice and answered questions to the best of their ability. As a result of their discussions with the Indians, missionaries began to report to the government that the Indians were inclined to refuse treaty and to oppose settlement, due to their fear that they would lose their hunting, fishing, and trapping rights.[81]

Part of the government's response to this resistance was to persuade Father Lacombe and other missionaries to help in the negotiations. The assistance they gave in persuading the Indians to accept the treaty is discussed in a later section of this chapter.

In addition to seeking Lacombe's aid, the government also saw the need for giving the Indians some assurances that they would not be greatly affected by the treaty. On 25 January 1899, in reply to a missionary who had been

[79] Canada, Department of Indian Affairs and Northern Development, *Treaty No. 8, Made June 21, 1899 and Adhesions, Reports, Etc.* (Ottawa: Queen's Printer, 1966), p. 3.

[80] Public notice, June 1898, Record Group 10, Public Archives of Canada, Ottawa, 3848; 75236-1.

[81] Fumoleau, *Land Shall Last*, pp. 65-66.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

unable to answer certain questions from the Indians, the superintendent general of Indian Affairs, Clifford Sifton, wrote:

> The game and fishery laws will, of course, apply to the country; but as the manner and extent of their enforcement must necessarily depend upon conditions of settlement, etc., there is not likely to be any marked change on account of the making of treaty. There will be reserves set aside for the Indians and in doing so everything possible will be done to meet their wishes as to the selection of localities. There is no general prohibition in consequence of the treaty of the freedom of the Indian in roaming and hunting over the country. Of course when settlement advances there will be the restriction which necessarily follows, and it is to meet such contingencies that reserves are set aside.[82]

Sifton was indicating that the Indians of Treaty Eight would be subject to the same legal restrictions as Indians of previous treaties, but that the effect of these restrictions would be minimal, due to less white settlement. In reply to another inquiry, David Laird, lieutenant governor of the Territories and Treaty Eight commissioner, also indicated that restrictions would be necessary, not so much as a result of settlement as for conservation for the Indians' benefit:

> You may explain to them that the Queen or Great Mother while promising by her Commissioners to give them Reserves, which they can call their own, and upon which whitemen will not be allowed to settle without payment and the consent of the Indians before a Government officer, yet the Indians will be allowed to hunt and fish all over the country as they do now, subject to such laws as may be made for the protection of game and fish in the breeding season; and also so long as the Indians do not molest or interfere with settlers, miners or travellers. These restrictions and laws however are not peculiar to Treaty Indians; whitemen, half-breeds and Indians who do not take Treaty, will not be allowed by the Great Mother to disturb or hurt any of her children whatever be their colour. It should likewise be remembered that laws for preventing game from being destroyed in the breeding season are rather for the benefit of the Indians than of the whitemen, as the whitemen live more on farm products than on game.[83]

During this period between the summer of 1898, when the treaty notice came out, and the following summer, when the treaty was made, the Indians made it quite clear (through missionaries, traders, and policemen who acted as intermediaries) that they would not favour a treaty unless they were assured that their way of life would not be restricted. The government strove to correct the "misleading reports" that were circulating to the effect that if Indians took treaty they would lose their hunting, fishing, and trapping rights.

It would appear that at least one of the commissioners, J.A. McKenna, was still worried that opposition to reserves and the fear of losing their

[82] Sifton to Rev. Charles R. Weaver, 25 January 1899, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1

[83] Laird to W.H. Routledge, 3 February 1899, ibid.

hunting grounds could lead the Indians to reject the treaty. In a long memo of 17 April 1899 to the superintendent general, he made a final effort to have the reserve system scrapped on the grounds that Indians of the North lived as individuals and their hunting grounds would not be required for settlement:

> From the information which has come to hand it would appear that the Indians who we are to meet fear the making of a treaty will lead to their being grouped on reserves. Of course, grouping is not now contemplated; but there is the view that reserves for future use should be provided for in the treaty. I do not think this is necessary . . . it would appear that the Indians there act rather as individuals than as a nation. . . . They are adverse to living on reserves; and as that country is not one that will be settled extensively for agricultural purposes it is questionable whether it would be good policy to even suggest grouping them in the future. The reserve idea is inconsistent with the life of a hunter, and is only applicable to an agricultural country.[84]

This statement is significant not only in showing the origins of the "reserves in severalty" policy, but also in demonstrating that the government expected that the Indians would continue to make their living on the "unoccupied land" of the North. In the same memo, McKenna went so far as to suggest that less compensation was required for these lands than for previous treaty lands because "there is no urgent public need of its acquirement." He also proposed that annuities be abolished for this treaty.

What McKenna wanted was a "slimmed down" version of the usual treaty. The Indians would be giving up less, although their title would still be extinguished, and therefore the government should not have to assume the same responsibilities as in previous treaties.

This proposal appears to have been partially accepted by Sifton. In a letter of 12 May 1899 to Laird, McKenna, and Ross, he stated the government's position:

> The Government has considered the policy to be adopted and has concluded that it is best to proceed upon the usual lines of providing for the payment of annuities to the Indians, and money will be provided so as to enable the first payment of the annuity to be made as well as the gratuity. It is, of course, understood that an additional payment will be made to the Chiefs and headmen.
>
> As to reserves, it has been thought that the conditions of the North country may make it more desirable to depart from the old system, and if the Indians are agreeable to provide land in severalty for them to the extent of 160 acres to each, the land to be conveyed with a proviso as to non-alienation without the consent of the Governor General in Council. Of course, if the Indians prefer Reserves you are at liberty to undertake to set them aside. The terms of the treaty are left to your discretion with this stipulation that obligations to be assumed under it shall not be in excess of those assumed in treaties covering the North West Territories.[85]

[84] McKenna to superintendent general, 17 April 1899, ibid.

[85] Sifton to Laird, McKenna, and Ross, 12 May 1899, ibid.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

Evidence of the Indians' reluctance to sign a treaty at least made the government aware of the difficulties that would be encountered in attempting to apply the standard "Prairie" treaty to the North. However, due to the department's lack of knowledge of the northern Indians or the extent of claims they were likely to put forward,[86] Sifton was content merely to propose the new policy of reserves in severalty and to leave the other terms of the treaty to the discretion of the commissioners, rather than attempt to formulate a radically different sort of treaty for the area prior to negotiations. In his analysis of these instructions from Sifton, Fumoleau has suggested that the discretionary powers meant only that Indians may be led to accept cheaper conditions than previously.[87] However, this directive to minimize obligations, if possible, appears to have been based on the assumption that the Indians of Treaty Eight were not being required to give up the use of most of their land as the Indians of previous treaties had been required to do.

The considerations that went into defining the boundaries of Treaty Eight were primarily: (1) insuring the inclusion of areas likely to be opened up by miners or settlers, or to be passed through by large numbers of miners and settlers; (2) minimizing expenses and obligations of the government; and (3) restricting the area to that which might be reached in one summer by the commissioners.

For these reasons, large areas of the present Northwest Territories (up to 63° latitude) which had been included in maps of the proposed treaty of 1891 were omitted in 1899, except for the area south of Great Slave Lake, which was the site of considerable mining interest. All of British Columbia lying east of the Rocky Mountains was added to the earlier proposal because it was on the route to the Klondyke, and the mountains were a natural dividing line between Indian bands.[88]

It is interesting to note that all maps and descriptions of the treaty area in the 1899 as well as in the 1891 proposals included the portion of the Rocky Mountains lying to the west of Treaty Six and stretching as far south as the northern boundary of Treaty Seven.[89] However, in the various discussions, there does not appear to have been any mention of why this area was included in Treaty Eight.

The public notice sent out in 1898 indicated that Fort Smith would be the most northerly meeting point for the negotiations. However, in May of 1899, Sifton informed the commissioner that "in view of the reported mining development in the Great Slave Lake region it is important that the treaty should be extended to embrace that country if at all possible." It was left to

[86] Sifton to Governor-General, 18 June 1898, ibid.

[87] Fumoleau, *Land Shall Last*, p. 62.

[88] A more detailed discussion of these points may be found in ibid., pp. 58-60.

[89] Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1

the commission finally to decide on the treaty area,[90] and it was not until after their first meeting at Lesser Slave Lake that it was decided to make "adhesions" at all of the other points rather than to negotiate several treaties.[91]

Finally, it was also decided that because many "half-breeds" lived a very similar life to that of the Indians and would desire to be treated as Indians, the commission would be empowered to offer the treaty to such half-breeds.[92] Delegated with this discretionary power over the terms and the area of the treaty, and carrying the knowledge that the Indians were reluctant to sign treaty, the commissioners opened negotiations with the Indians on 20 June 1899 at Lesser Slave Lake.

THE TREATY AT LESSER SLAVE LAKE

The Treaty Eight Commission was to travel throughout northern Alberta with the Half-breed Commission, which had been given a mandate to offer "scrip" in the form of land grants to Métis settlers after the treaty negotiations had been completed in each area. The first treaty negotiations were scheduled for 8 June near the present site of Grouard on Lesser Slave Lake. Due to bad weather conditions and problems in transportation, they did not arrive until 19 June, eleven days late. However, Commissioner Ross, who had arrived on about 6 June, assured the native people that the other commissioners and Father Lacombe were on their way. In the intervening days, Ross visited the assembled Indians to explain the purpose of the treaty,[93] and asked them to elect a chief and headmen to speak for them.[94] Kinosayoo was chosen chief and the four headmen were Moostoos, Felix Giroux, Weecheewaysis, and Charles Neesuetasis. Aside from these five from the Lesser Slave Lake area, one headman from Sturgeon Lake, "Captain," attended as an observer and signed the treaty, although his band was not present and did not sign an adhesion until the following summer.

Once the commissioners had arrived, the first meeting was arranged for the following day, 20 June. Charles Mair, secretary of the Half-breed

[90] Order in Council 1703, 27 June 1898, ibid., reads in part: "The Minister also considers that, as to the territory to be ceded, the Commissioners will likewise have to be given discretionary power, for its extent will depend upon the conditions which are found to exist as a consequence of the inroads of white population; but he is of the opinion that the territory to be treated for may in a general way be restricted to the provisional district of Athabasca, and such of the country adjacent thereto as the Commissioners may deem it expedient to include within the treaty."

[91] Canada, *Treaty No. 8*, pp. 6-7.

[92] Order in Council 1703, 27 June 1898.

[93] Canada, *Treaty No. 8*, p.5.

[94] See *Edmonton Bulletin*, 10 July 1899, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1; and Emile Jean-Baptiste Marie Grouard, *Souvenirs de mes soixante ans d'apostolat dans l'Athabasca-Mackenzie* (Lyons-Paris: Librairie catholique, 1923), p. 368. Grouard's account states that the Indians selected their leaders between the first and second meeting. Mair's account agrees with that of the *Edmonton Bulletin*.

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Reprinted from Charles Mair, *Through the Mackenzie Basin: A Narrative of the Athabasca and Peace River Expedition of 1899* (Toronto: W. Briggs, 1908)

Kinosayoo at Treaty Eight negotiations, Lesser Slave Lake Settlement

Commission, made brief notes on the discussions and later published these as part of a book on the treaty expeditions.[95] A correspondent for the *Edmonton Bulletin* also wrote several articles on the meetings.[96] One of the earliest missionaries of the area, Bishop Grouard, also included brief references to the meetings in a book on his life in the North.[97] In addition to these incomplete records of the proceedings, there are several reports by the commissioners which do not attempt to reconstruct the dialogue, but do provide summaries of the agreements as they saw them. Other eyewitnesses signed affidavits concerning the meetings when a controversy arose over the treaty provisions in 1937.

However, all of these archival sources record the negotiations from the point of view of government officials, missionaries, traders, and other non-Indians, and in many cases clearly reflect the interests of the author. In order to balance this perspective with an Indian view of the treaty, we must rely upon oral evidence given by Indian elders in recent years. A few of these elders were eyewitnesses to the negotiations, and many others have received stories of the negotiations from their parents and grandparents who were direct participants.

The *Edmonton Bulletin* described the setting of the first meeting as follows:

> After the detachment of police had gone through their little manoevers they lined up in front of their large tent where the commision sat, presented arms and retired. The chief and his band then came forward and sat down in no particular rotation, but as indifferently as possible with this exception, the chief and councilmen to the front and minor lights to the rear. They were given a short spell to look the "great chiefs" over, which they did, and when their gaze wandered away to the hills. . . . Commissioner Laird addressed them. He said among other things, that as "they were here for a peaceful meeting a piece of tobacco would be given each for a friendly smoke." The T & B was passed around and after they had all filled up their pipes the commissioner proceeded.[98]

William Okeymaw, an 87-year-old Cree from Sucker Creek tells us how the same scene appeared to him, a young boy at the time:

> I was about twelve years old. We travelled by foot and by boat. We crossed the river here in a boat, then we walked the rest of the way. When we arrived, the commissioners were already prepared. Alongside them were about twenty-two North West Mounted Police. I was frightened because I was only a child. I even held my dad's hand I was so scared. A long memory is one thing I have. I can recall many things of long ago. I can recall a huge tent at the time with many people all around it. They were from different places far and near, but they had travelled for that special

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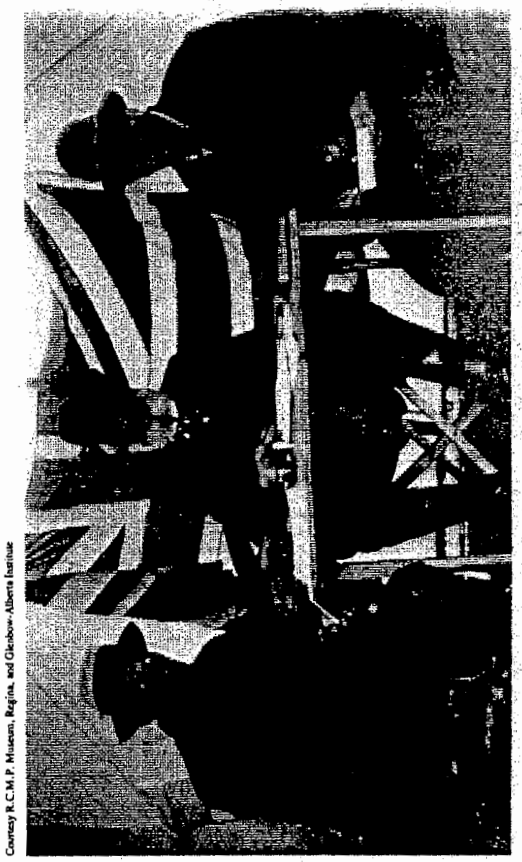
[95] Mair, *Through the Mackenzie Basin*.

[96] Two of these articles may be found in Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1.

[97] Grouard, *Soixante ans d'apostolat*, pp. 357-74.

[98] *Edmonton Bulletin*, 10 July 1899, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1.

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Courtesy R.C.M.P. Museum, Regina, and Glenbow-Alberta Institute

Treaty Eight Commissioners

Left to Right: Harrison Young, secretary; David Laird, commissioner; Pierre d'Eschambault, interpreter

day, the treaty. They discussed it for three days to find out how it would work best, how the Indian would make his living when he accepted treaty.[99]

The commissioners appointed Albert Tate and Samuel Cunningham as interpreters and told the meeting that Cunningham would represent the Indians and that the two men would check each others' work.[100] Also present were three Catholic missionaries (Father Lacombe, Bishop Grouard, and Father Falher) and three Anglican missionaries.

Laird, after introducing the members of his commission, spoke for about an hour. Mair gives the most complete account of his opening speeeh:

> I have to say, on behalf of the Queen and the Government of Canada, that we have come to make you an offer. We have made treaties in former years with all the Indians of the prairie, and from there to Lake Superior. As white people are coming into your country, we have thought it well to tell you what is required of you. The Queen wants all white, half-breeds and Indians to be at peace with one another, and to shake hands when they meet. The Queen's laws must be obeyed all over the country, both by the whites and the Indians. It is not alone that we wish to prevent Indians from molesting the whites, it is also to prevent the whites from molesting or doing harm to the Indians. The Queen's soldiers are just as much for the protection of the Indians as for the white man.
>
> The Commissioners made an appointment to meet you at a certain time, but on account of bad weather on river and lake, we are late, which we are sorry for, but are glad to meet so many of you here today.
>
> We understand stories have been told you, that if you made a treaty with us you would become servants and slaves; but we wish you to understand that such is not the case, but that you will be just as free after signing a treaty as you are now. The treaty is a free offer; take it or not, just as you please. If you refuse it there is no harm done; we will not be bad friends on that account. One thing Indians must understand, that if they do not make a treaty they must obey the laws of the land—that will be just the same whether you make a treaty or not; the laws must be obeyed. The Queen's Government wishes to give the Indians here the same terms as it has given all the Indians all over the country, from the prairies to Lake Superior. Indians in other places, who took treaty years ago, are now better off than they were before. They grow grain and raise cattle like the white people. Their children have learned to read and write.
>
> Now, I will give you an outline of the terms we offer you. If you agree, to take treaty, every one this year gets a present of $12.00. A family of five, man, wife and three children, will thus get $60.00; a family of eight, $96.00; and after this year, and for every year afterwards, $5.00 for each person forever. To such chiefs as you may select, and that the Government approves of, we will give $25.00 each year, and the counsellors $15.00 each. The chiefs also get a silver medal and a flag, such as you see now at our tent, right now as soon as the treaty is signed. Next year, as soon as we know how many chiefs there are, and every three years thereafter, each chief will get a suit of clothes, and every counsellor a suit, only not quite so good as that of the chief. Then, as the white men are coming in and settling in the country, and as the Queen wishes the Indians to have lands of their own, we will give one square mile, or 640 acres, to each family of five; but there will be no compulsion to force Indians to

[99] See chapter five, "Interviews with Elders," William Okeymaw, Sucker Creek Reserve, 27 March 1973.
[100] See footnote 98.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

go into a reserve. He who does not wish to go into a band can get 160 acres of land for himself, and the same for each member of his family. These reserves are holdings you can select when you please, subject to the approval of the Government, for you might select lands which might interfere with the rights or lands of settlers. The Government must be sure that the land which you select it in the right place. Then, again, as some of you may want to sow grain or potatoes, the Government will give you ploughs or harrows, hoes, etc., to enable you to do so, and every spring will furnish you with provisions to enable you to work and put in your crop. Again, if you do not wish to grow grain, but want to raise cattle, the Government will give you bulls and cows so that you may raise stock. If you do not wish to grow grain or raise cattle, the Government will furnish you with ammunition for your hunt, and with twine to catch fish. The Government will also provide schools to teach your children to read and write, and do other things like white men and their children. Schools will be established where there is a sufficient number of children. The Government will give the chiefs axes and tools to make houses to live in and be comfortable. Indians have been told that if they make a treaty they will not be allowed to hunt and fish as they do now. This is not true. Indians who take treaty will be just as free to hunt and fish all over as they now are.

In return for this the Government expects that the Indians will not interfere with or molest any miner, traveller or settler.

We expect you to be good friends with everyone, and shake hands with all you meet. If any whites molest you in any way, shoot your dogs or horses, or do you any harm, you have only to report the matter to the police, and they will see that justice is done to you. There may be some things we have not mentioned, but these can be mentioned later on. Commissioners Walker and Cote are here for the half-breeds, who later on, if treaty is made with you, will take down the names of half-breed and their children, and find out if they are entitled to scrip. The reason the Government does this is because the half-breeds have Indian blood in their veins, and have claims on that account. The government does not make treaty with them, as they live as whitemen do, so it gives them scrip to settle their claims, at once and forever. Half-breeds living like Indians have the chance to take the treaty instead, if they wish to do so. They have their choice, but only after the treaty is signed. If there is no treaty made, scrip cannot be given. After the treaty is signed, the Commissioners will take up half-breed claims.[101]

Laird concluded by briefly outlining the Métis scrip provisions and by indicating that at the end of the meeting everyone would get flour, bacon, tea, and tobacco as a free gift from the Queen whether a treaty was made or not. He summed up the governments's position: " . . . the Queen owns the country, but is willing to acknowledge the Indian's claims, and offers them terms as an offset to all of them"; and then he asked the Indians to speak.[102]

The Indians were hesitant about the terms set forth by Laird. Kinosayoo began:

> You say we are brothers. I cannot understand how we are so. I live differently from you. I can only understand that Indians will benefit in a very small degree from your offer. You have told us you come in the Queen's name. We surely have also a right to

[101] Mair, *Through the Mackenzie Basin*, pp. 56-59.
[102] Ibid., p. 59.

> say a little as far as that goes. [Here he paused to get an explanation of the provision of clothes every three years, then continued.] Do you not allow the Indians to make their own conditions, so that they may benefit as much as possible? Why I say this is that we to-day make arrangements that are to last as long as the sun shines and the water runs. Up to the present I have earned my own living and worked in my own way for the Queen. It is good. The Indian loves this way of living and his free life. When I understand you thoroughly I will know better what I shall do. Up to the present I have never seen the time when I could not work for the Queen, and also make my own living. I will consider carefully what you have said.[103]

Moostoos followed with a brief, favourable speech:

> Often before now I have said I would carefully consider what you might say. You have called us brothers. Truly I am the younger, you the elder brother. Being the younger, if the younger asks the elder for something, he will grant his request the same as our mother the Queen. I am glad to hear what you have to say. Our country is getting broken up. I see the white man coming in, and I want to be friends. I see what he does, but it is best that we should be friends. I will not speak any more. There are many people here who may wish to speak.[104]

Others indicated that they were also hesitant and wanted more time to discuss the proposal:

> Wahpeehayo [White Partridge]: I stand behind this man's back [pointing to Kinosayoo]. I want to tell the Commissioners there are two ways, the long and the short. I want to take the way that will last longest.[105]

The Captain, an old man from Sturgeon Lake, then indicated that, although he did not have his family with him, he would accept the government's offer on behalf of all the people in his part of the country:

> I am old now. It is indirectly through the Queen that we have lived. She has supplied in a manner the sale shops through which we have lived. Others may think I am foolish for speaking as I do now. Let them think as they like. I accept. When I was young I was an able man and made my living independently. But now I am old and feeble and not able to do much.[106]

Commissioner Ross then rose to answer some of the points raised:

> Kinosayoo has said that he cannot see how it will benefit you to take treaty. As all the rights you now have will not be interfered with, therefore anything you get in addition must be clear gain. The whiteman is bound to come in and open up the country, and we come before him to explain the relations that must exist between you, and thus prevent any trouble. You say you have heard what the Commissioners have said, and how you wish to live. We believe that men who have lived without help heretofore can do it better when the country is opened up. Any fur they catch is worth more. That

[103] Ibid., pp. 59-60.
[104] Ibid., p. 60. The *Edmonton Bulletin* report attributes the quoted speech to Wahpeehayo rather than Moostoos, and records that he went on to ask for hay grounds for his cattle and a pair of boots like Commissioner McKenna's.
[105] Ibid.
[106] Ibid., p. 61

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

Courtesy Provincial Archives of Alberta, E. Brown Collection



Moostoos

comes about from competition. You will notice that it takes more boats to bring in goods to buy your furs than it did formerly. We think that as the rivers and lakes of this country will be the principal highways, good boatmen, like yourselves, cannot fail to make a good living, and profit from the increase in traffic. We are much pleased that you have some cattle. It will be the duty of the Commissioners to recommend the Government, through the Superintendent-General of Indian Affairs, to give you cattle of a better breed. You say that you consider that you have a right to say something about the terms we offer you. We offer you certain terms, but you are not forced to take them. You ask if Indians are not allowed to make a bargain. You must understand there are always two to a bargain. We are glad you understand the treaty is forever. If the Indians do as they are asked we shall certainly keep all our promises. We are glad to know that you have got on without any one's help, but you must know times are hard, and furs scarcer than they used to be. Indians are fond of a free life, and we do not wish to interfere with it. When reserves are offered you there is no intention to make you live on them if you do not want to, but, in years to come, you may change your minds, and want these lands to live on. The half-breeds of Athabasca are being more liberally dealt with than in any other part of Canada. We hope you will discuss our offer and arrive at a decision as soon as possible. Others are now waiting for our arrival, and you, by deciding quickly, will assist us to get to them.[107]

This picture of a post-treaty life in which Indians would remain free and independent, but with government assistance to fall back on and the prospect of greater opportunities in the fur trade, seems to have been responsible for removing many of the Indians' doubts. Wehtigo, followed by several others, made short speeches accepting the treaty.[108]

Kinosayoo asked for and received assurances that the treaty would be good forever and that the government would be "willing to give means to instruct children as long as the sun shines and water runs, so that our children will grow up ever increasing in knowledge."[109]

Father Lacombe then spoke in Cree, urging the Indians to accept the treaty. He emphasized his knowledge of treaty benefits that had accrued to the Prairie Indians to the south and insisted that he would have no part in a treaty which was not in the Indians' best interests. "Your forest and river life will not be changed by the Treaty, and you will have your annuities, as well, year by year, as long as the sun shines and the earth remains. Therefore I finish my speaking by saying, Accept."[110]

Laird then asked people to indicate acceptance by standing, but before the interpreter had even finished explaining this, a native named "Jerou" (possibly Giroux) jumped up and threatened to club any man who failed to stand up. Everyone arose amid laughter and the meeting adjourned for the day.[111]

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[107] Ibid., pp. 61-62.
[108] See footnote 98.
[109] Mair, *Through the Mackenzie Basin*, p. 62.
[110] Ibid., p. 63.
[111] See footnote 98.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

That evening, the commission met to draw up the treaty document to be presented to the Indians the next day. It seems plausible that the wording of this draft was based on the wording of Treaty Seven (1877), which was the last previous Indian treaty and which Laird had been involved in negotiating. However, there are several differences between the written terms of Treaty Seven and Treaty Eight, and these differences appear to reflect, in part, a recognition that the Indians of the North might wish to continue traditional economic activities, such as hunting, fishing, and trapping, and to resist being restricted to reserve land.

Whereas Treaty Seven refers to the protection of the Indians' "vocations of hunting" and other Prairie treaties refer to "hunting and fishing," Treaty Eight refers to the

> *right to pursue their usual vocations of hunting, trapping and fishing* throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.[112]

And whereas previous treaties had provided reserves of one square mile for every family of five, Treaty Eight provided:

> reserves for such bands as desire reserves, the same not to exceed in all one square mile for each family of five for such number of families as may elect to reside on reserves, or in that proportion for larger or smaller families; and for such families or individual Indians as may prefer to live apart from band reserves, Her Majesty undertakes to provide land in severalty to the extent of 160 acres to each Indian.[113]

In the field of education, both Treaty Seven and Treaty Eight committed the government to pay the salaries of such teachers of Indian children as the government may deem advisable. However, unlike Treaty Seven, Treaty Eight does not require that a band take up reserve land before this provision is implemented. The official report of the commissioners indicates that over and above this clause of the treaty, certain verbal assurances of education rights were necessary:

> As to education, the Indians were assured that there was no need of any special stipulation, as it was the policy of the Government to provide in every part of the country, as far as circumstances would permit, for the education of Indian children, and that the law, which was as strong as a treaty, provided for non-interference with the religion of the Indians in schools maintained or assisted by the Government.[114]

Treaty Eight provided the same tools for each band as Treaty Seven, provided that the band took a reserve. The provisions for stock and implements were similar, although not identical for the two treaties. Treaty

[112] Canada, *Treaty No. 8*, p. 12.
[113] Ibid., pp. 12-13.
[114] Ibid., p. 6.

Eight provided that each band that selected a reserve and cultivated the soil would receive:

> . . . two hoes, one spade, one scythe and two hay forks for every family so settled, and for every three families one plough and one harrow, and to the Chief, for the use of his Band, two horses or a yoke of oxen, and for each Band potatoes, barley, oats and wheat (if such seed be suited to the locality of the reserve), to plant the land actually broken up, and provisions for one month in the spring for several years while planting such seeds; and to every family one cow, and every Chief one bull, and one mowing machine and one reaper for the use of his Band when it is ready for them: for such families as prefer to raise stock instead of cultivating the soil, every family of five persons, two cows, and every Chief two bulls and two mowing machines when ready for their use, and a like proportion for smaller or larger families. The aforesaid articles, machines and cattle to be given once for all for the encouragement of agriculture and stock raising; and for such Bands as prefer to continue hunting and fishing, as much ammunition and twine for making nets annually as will amount in value to one dollar per head of the families so engaged in hunting and fishing.[115]

It is worth noting that Treaty Seven, foreseeing that ammunition might in the future become comparatively unnecessary, provided that ammunition money could be used for other purposes. By contrast, in referring to the choice between farming implements, stock, and hunting and fishing provisions, the Treaty Eight commissioners concluded that farming by Indians was not likely, stock raising would likely be restricted to the Lesser Slave Lake and Peace River areas, and

> in the main the demand will be for ammunition and twine, as the great majority of the Indians will continue to hunt and fish for a livelihood . . . . it is safe to say that so long as the fur-bearing animals remain, the great bulk of the Indians will continue to hunt and to trap.[116]

Treaty Eight, like Treaty Seven, neglected to mention any provision for medicine and medical services. Nor did the written terms of Treaty Eight give any indication that the government would take over other social services previously provided by the Hudson's Bay Company and missionaries. However, again the report of the commissioners indicates that they made significant verbal commitments in these areas.

The second day of the negotiations (21 June 1899) at Lesser Slave Lake began with Laird reading the treaty which had been drafted the previous evening. Although the meeting the previous day apparently had concluded with a consensus on the terms of the treaty, once this document was read aloud, a number of Indians, particularly some of the young ones,[117] raised further objections and reservations about the terms. According to Mair's

[115] Ibid., pp. 13-14.
[116] Ibid., p. 7.
[117] David Laird to superintendent general, 23 June 1899, Record Group 10, Public Archives of Canada, Ottawa, 3848: 75236-1.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

account, Kinosayoo and Moostoos assented to the terms, but the dissent among others appeared to present a serious threat to the signing of the treaty and was only overcome by a lengthy discussion.[118] Little of this discussion was recorded, but the report of the commissioners refers to some of the major concerns of the Indian people and the promises that were made to overcome them:

> Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it .... the Indians were generally averse to being placed on reserves. It would have been impossible to have made a treaty if we had not assured them that there was no intention of confining them to reserves. We had to very clearly explain to them that the provisions for reserves and allotments of land were made for their protection, and to secure to them in perpetuity a fair portion of the land ceded, in the event of settlement advancing.[119]

Whatever the government's intentions might have been in giving these assurances, the Indians saw them as guarantees of freedom to hunt, fish, and trap throughout the area—an assurance that they would be able to continue their way of making a living if they chose.

Interviews with Indian elders in the Lesser Slave Lake area indicate that this understanding of the treaty as a guarantee of their traditional livelihood is still very strong and widespread. Some have understood the treaty as leaving the Indians with ownership of wildlife:

> He [the King] made a promise to the Indian when he first gave them reserves: "as long as I live, I will look after you, my people, in this manner, and better if you respect me. I will look after your children and your wild game. Game will not be bought. Share with one another equally, carefully, totally. When we have this, we will vote, then the Indian will own what game he chooses for his consumption and use." This is what was decided about the moose. Moose is our main source of livelihood on this earth. Not like the white man, the King; he lived mainly on bread, he said. But the Indian lived on fish, ducks, anything. The King asked the Indian what he wanted for a livelihood. The Indian chose hunting and fishing not to be limited. As long as he lived.[120]

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[118] Mair, *Through the Mackenzie Basin*, p. 64.

[119] Canada, *Treaty No. 8*, pp. 6-7.

[120] T.A.R.R. Interview with Elders Program, interview with Samuel Giroux, location and date not recorded.

Frank Cardinal, sixty-eight years old, was told many stories of the treaty by his father and grandfather, who were both present at the Lesser Slave Lake negotiations, and has a similar understanding:

> The way I see things, when an Indian chose his wild game, he was not to make hay to feed them, to fatten them. He was not to provide shelter for them from the cold. The Indian chose live animals. White man will govern his domestic animals. . . . These are the white man's responsibilities, but the wild animal belongs to the Indian.[121]

In 1937, several people signed affidavits concerning Treaty Eight, including James K. Cornwall ("Peace River Jim") who, in the late nineteenth century and the first half of this century, was responsible for many of the transportation enterprises that opened the North. Cornwall shared the Indian elders' view of the treaty as guaranteeing to the Indians some sort of primary rights over fish and wildlife:

> 1. I was present when Treaty 8 was made at Lesser Slave Lake and Peace River Crossing.
>
> 2. The treaty, as presented by the Commissioners to the Indians for their approval and signatures, was apparently prepared elsewhere, as it did not contain many things that they held to be of vital importance to their future existence as hunters and trappers and fishermen, free from the competition of white man. They refused to sign the Treaty as read to them by the Chief Commissioner.
>
> 3. Long discussions took place between the Commissioners and the Indian Chiefs and headmen, with many prominent men of the various bands taking part. The discussion went on for days, the Commissioners had unfavorably impressed the Indians, due to their lack of knowledge of the bush Indians' mode of life, by quoting Indian conditions on the Prairie. Chief Moostoos (the Buffalo) disposed of the argument by telling the Chief Commissioner that "a Plains Indian turned loose in the bush would get lost and starve to death."
>
> 4. As the Commission's instructions from Ottawa required the Treaty to be signed first at Lesser Slave Lake before proceeding North, and as the white population living in the Indian Territory had been requested by the Government, prior to the coming of the Commission, to be prepared to deal with them as such, the whites had done everything in their power to assist the Commissioners, by using every honorable influence that was possible.
>
> 5. The Commissioners finally decided, after going into the whole matter, that what the Indians suggested was only fair and right but that they had no authority to write it into the Treaty. They felt sure the Government on behalf of the Crown and the Great White Mother would include their request and they made the following promises to the Indians:—
>
> a. Nothing would be allowed to interfere with their way of making a living, as they were accustomed to and as their forefathers had done.
>
> b. The old and destitute would always be taken care of, their future existence would be carefully studied and provided for, and every effort would be made to improve their living conditions.
>
> c. They were guaranteed protection in their way of living as hunters and trappers, from white competition; they would not be prevented from hunting and fishing as

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[121] Ibid., interview with Frank Cardinal, location and date not recorded.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

they had always done, so as to enable them to earn their living and maintain their existence.

6. Much stress was laid on one point by the Indians, as follows: They would not sign under any circumstances, unless their right to hunt, trap and fish was guaranteed and it must be understood that these rights they would never surrender.

7. It was only after the Royal Commission had recognized that the demands of the Indians were legitimate, and had solemnly promised that such demands would be granted by the Crown, also after the Hudson's Bay Company officials and Free Traders, and the Missionaries, with their Bishops, who had the full confidence of the Indians, had given their word that they could rely fully on the promises made in the name of Queen Victoria, that the Indians accepted and signed the Treaty, which was to last as long as the grass grew, the river ran, and the sun shone—to an Indian this means FOREVER.[122]

There can be little doubt that the missionaries played an important role in convincing the Indians that the treaty was in their own interests. Jean-Marie Mustus, age seventy-eight, was given this account by his grandfather Moostoos, who signed the treaty:

> Father Lacombe was also present and spoke a lot to the Indian people on how to live. My grandfather said that he took Father Lacombe's advice because he had travelled with him many times. His advice was to take the treaty because it would help him and the young generations in the future.[123]

Other elders, such as William Okeymaw, eighty-seven years old, who was present at the negotiations, question the motives of the missionaries:

> Lacombe . . . was the one who was pushing the Indians: "Take the treaty, take the treaty." But now it is obvious why he was really encouraging the Indians: there was only one church at the time at Grouard. There would also be a school; so what he had in mind was to try to make the Indians accept the money. That is the reason for his encouragement.[124]

Some written material tends to support his cynical view of the role of the missionaries. Bishop Grouard, in his own account of the negotiations, indicated that he was very uneasy about the treaty until the Indians indicated that if given a choice as to the denomination of their schools, they would choose Roman Catholic. Grouard then no longer feared to encourage the Indians to accept the treaty.[125] This is not to suggest that the missionaries sought personal gains or advantages in the treaty, but they saw it as a source of assistance to foster their education system, and were concerned about its possible effects on the zealous interdenominational competition for the allegiance of the Indian people.

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[122] Fumoleau, *Land Shall Last*, pp. 74-75.

[123] See chapter five, "Interviews with Elders," interview with Jean-Marie Mustus, Jousard, Alta., 26 March 1975.

[124] See footnote 99.

[125] Grouard, *Soixante ans d'apostolat*, p. 370.

However, the missionaries believed that they were also serving the Indians' interests by promoting the treaty. Father René Fumoleau, who has done considerable research on Treaty Eight, notes that some of the missionaries who participated in the negotiations later felt that they had been "used" by the government. One such indication is contained in a letter written by Constant Falher, O.M.I. (who was present at the negotiations at Lesser Slave and Wabasca) to Bishop Breynat:

> If in 1899 we had not prepared the Lesser Slave Lake people to accept a treaty with the Government; if Bishop Grouard had not advised the chiefs to sign the treaty, telling them there was nothing which was not to their advantage; the treaty would still be waiting to be signed today. When Bishop Grouard sent me to Wabasca (at the request of Mr. Laird) to prepare the people and calm them, (it was then said that they were more or less in a state of revolt) I carried with me the government promises and I was very surprised when later on I was shown the document supposedly signed by the Indian Chiefs at Grouard . . . and thereabouts. So many important things are missing . . . but we do remember these things, and we suffer.[126]

At the end of the second day of negotiations at Lesser Slave Lake, the treaty was signed by the three commissioners and six Indian leaders. Although the treaty is marked with "X" marks for the signatures of the Indians, the *Edmonton Bulletin* reported that the Indians merely touched the pen.[127] On the third day, the treaty money was distributed and the Half-breed Commission began its meetings.

THE TREATY ADHESIONS

Having dealt with the Indians of Lesser Slave Lake, it still remained for the commission to obtain the adhesions of all other bands in the proposed treaty area. The Indians of each local area undoubtedly considered these local meetings to be just as important, if not more so, than the Lesser Slave Lake meeting. However, the treaty commissioners expected that, once it had been learned that the Lesser Slave Lake treaty had been signed, there would be less difficulty in obtaining the adhesions of the others. For this reason, they left us little written record of the other nine meetings in 1899 and four meetings in 1900 that took place from Fort St. John to Fond du Lac and from Fort Resolution to Wabasca. The following account, therefore, contains only a bare outline of these meetings.

Because they were considerably behind schedule after the Lesser Slave Lake meetings, the commissioners decided to divide the treaty party in two in order to try to reach all the designated points before the end of the summer. Even so, they had to leave four of the locations for the following summer:

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[126] Fumoleau, *Land Shall Last*, p. 67.

[127] See footnote 98.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

had been to take adhesions at Fort St. John and Fort Resolution, because the 1899 expedition had not reached these distant points. However, the Crees of Sturgeon Lake and the Slaveys of Upper Hay River met him and asked to be included. Because they were obviously entitled, Macrae drew up adhesions for them.[145]

Macrae's report on the 1900 expedition indicates that he encountered the same concerns among the Indians as in 1899:

> As was reported by your commissioners last year, there is little disposition on the part of most of the northern Indians to settle down upon land or to ask to have reserves set apart. Dealing, under your instructions, with demands for land, two small provisional reserves were laid out at Lesser Slave Lake for Kinoosayo's band, and fifteen or sixteen applications were registered for land in severalty by Indians who have already, to some extent, taken to agriculture.
>
> It appears that this disinclination to adopt agriculture as a means of livelihood is not unwisely entertained, for the more congenial occupations of hunting and fishing are still open, and agriculture is not only arduous to those untrained to it, but in many districts it as yet remains untried. A consequence of this preference of old pursuits is that the government will not be called upon for years to make those expenditures which are entailed by the treaty when the Indians take to soil for subsistence.[146]

Macrae also reported that the Indians who had been present at the 1899 meeting requested extended explanations of the terms for those who had not understood. Not surprisingly, the hurried 1899 trip had left something less than a clear understanding in its wake.

A medical doctor accompanied Macrae, and his services were appreciated by the Indians.[147]

Macrae recognized that, even with this trip in 1900, the task of taking all Indians into treaty was incomplete. There still remained a number of Indians (Macrae estimated over five hundred) who lived at points distant from those visited and who had not been given the option of taking treaty or scrip. Notwithstanding this, Macrae concluded that "the Indian title . . . may be fairly regarded as extinguished."[148]

INDIAN PERCEPTIONS OF THE TREATY

In the preceding sections, we have assembled available archival evidence on the historical background to Treaty Eight and the negotiations themselves. Where appropriate, brief reference has been made to the oral tradition of Indian communities, which has transmitted an understanding of the spirit and terms of Treaty Eight to the Indian elders of today. The present section will look more closely at the views of the Indian elders, and will

[145] Canada, *Treaty No. 8*, p. 20.
[146] Ibid., p. 21.
[147] Ibid.
[148] Ibid.

attempt to explain divergence within the oral tradition, as well as between the archival evidence and the oral tradition. Our aim is to determine how the Indian people might have understood Treaty Eight in 1899. This is not to assume that the Indian understanding of recent years will be identical to that of 1899, but that the testimony of today's elders constitutes an essential source of evidence on the treaties.

Of all the subjects discussed by the elders in these interviews, hunting, fishing, and trapping rights emerge as the most significant. Overwhelmingly, the elders of the Treaty Eight area believed that the treaty promised that there would be no restriction on their right to hunt, fish, and trap. The most common responses were either a simple statement to the effect that they were guaranteed that there would be no restrictions, or that they would be allowed to continue their "livelihood." Any requirements, such as hunting or fishing licences, are seen as a violation of treaty rights.

Melanie Hamelin, seventy years old, heard from her grandfather that "there would not be any restrictions on the pursuit of their livelihood. There would not be any restrictions on their hunting or the animals they killed."[149]

Isador Willier, who was over one hundred years old when interviewed, said that the Indians were told that

> . . . The way you have been struggling for a livelihood—no one will ever stop that form of livelihood. If you should take treaty, this is the way you will make your livelihood. Moose, cariboo, and any other wild bush animals, no one will ever stop you from obtaining these animals anywhere . . . . You will always make your livelihood that way. If you should take treaty, . . . nothing will stop you from fishing and duck hunting . . . .[150]

Several interviews conceived these rights to mean that Indians would retain ownership of all fish and wildlife. A few interviews mention the limitation that Indians would not be able to hunt on the white man's land or to shoot at his farm animals or buildings.

Unfortunately, the interviews did not dwell on the distinction between commercial and non-commercial hunting, fishing, and trapping. However, the frequent reference to the right to continue their "livelihood" would suggest that the Indians understood that they would be able to pursue these activities on a commercial basis, as they had before the treaty. A few interviews imply that Indians can hunt only to supply family needs, but this may be a reflection of current legal realities rather than treaty promises.

On the basis of oral and archival evidence, it would seem that the treaty would not have been signed if the Indians had not been given assurances that they would be as free to hunt, fish, and trap after the treaty as before. They

[149] T.A.R.R. Interview with Elders Program, interview with Melanie Hamelin, location and date not recorded.
[150] Ibid., interview with Isadore Willier, location not recorded, 18 November 1972.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

were given assurances that the government was interested only in conserving wildlife for their benefit. Some evidence, not entirely conclusive, suggests that they were promised that they would be protected from white competition. In other words, whether it took the form of ownership of wildlife or protection from white competition, these assurances constituted a recognition that hunting, fishing, and trapping as a way of life would remain an option for treaty Indians. If the treaty commissioners had looked upon these rights as mere temporary privileges pending widespread settlement or mining, they failed to make this clear in the negotiations. More likely they believed that any conflicts that might arise would be far in the future.

At the time of the negotiations, the commissioners found that the Indians' fear of losing their hunting, fishing, and trapping rights was partly overcome by reference to the provisions for ammunition and twine. The frequency with which these provisions are mentioned by the elders today is an indication of their importance. Many of the elders mention that they originally got twine with which to make nets, and one man pointed out that when the government later tried to regulate the mesh size of nets, they started issuing nets instead of thread.

Several Indian elders of that portion of the Treaty Eight area now within the Northwest Territories have testified before Justice W.G. Morrow that there was no mention of land surrender or the allotment of reserves during the treaty negotiations. The treaty was essentially a peace treaty, designed to insure peaceful relations between Indians and non-Indians.

However, most of the elders interviewed in Alberta seem to accept the land surrender as part of the treaty, although they have divergent views over the exact meaning of the surrender. Several indicate that minerals were never surrendered, that the white man only wanted enough land in depth to be able to farm. Others, while demonstrating a clear grasp of other treaty issues, admit to being in doubt about the surrender of land:

> That is something that always puzzles me when I think of it. It appears as though the commissioner wanted to claim the land, to own the land for the government. That is why they took that action. . . . At times the Indian people get angry about that. The white man never bought the land. If he had bought it, there would have been very large sums of money involved. . . .[131]

When asked whether the land was surrendered to the commissioners, Francis Bruno, sixty-five years old, responded:

> That I do not know if it was or not. I cannot answer that. But what I do understand is that we were to share the land with other people who were the white people. That was

[131] See chapter five, "Interviews with Elders," interview with Felix Gibot, Fort Chipewyan, 5 February 1974.

> the purpose of the treaty, I think, since there were going to be more white people, to share the land with them.[132]

This diversity of views on land and resource rights is not surprising, judging by the lack of attention given it during the negotiations. The archival evidence demonstrates that there was surprisingly little effort to explain the implications of the treaty phrase "the said Indians do hereby cede, release, surrender and yield up . . . all their rights, title and privileges whatsoever, to the lands," and so on. We can only speculate as to why this crucial issue of the control of land and resources was avoided, or passed over lightly, in the negotiations when it was obviously the intention of the government to extinguish aboriginal rights. It is likely that the commissioners felt that it was a mere formality from the government point of view. The government had already made some laws applicable in the area and fully intended to establish further control. From their point of view, they already owned the land; so the treaty was merely a means of extinguishing the vague aboriginal rights and placating the native people by offering the advantages of a treaty.

However, the Indian people undoubtedly held a very different view of the treaty and of land and resource tenure. Even if the commissioners had been fully aware of these different views, it is very doubtful that they could have cleared up the misunderstandings on their hurried trip through the North.

Dr. June Helm, testifying before Justice W.G. Morrow in 1973, made these comments on the difficulty of communicating the concept of land surrender:

> . . . How could anybody put in the Athapaskan language through a Metis interpreter to monolingual Athapaskan hearers the concept of relinquishing ownership of land, I don't know, of people who have never conceived of a bounded property which can be transferred from one group to another. I don't know how they would be able to comprehend the import translated from English into a language which does not have those concepts, and certainly in any sense that Anglo-Saxon jurisprudence would understand. So this is an anthropological opinion and it has continued to puzzle me how any of them could possibly have understood this. I don't think they could have. That is my judgement.[133]

This view is supported by the report of the Nelson Commission in 1959, which was set up to examine the unfulfilled provisions of Treaties Eight and Eleven, as they apply to the Indians of the Mackenzie District:

> It should be noted that although the Treaties were signed sixty and thirty-eight years ago respectively, very little change has been effected in the mode of life of the Indians of the Mackenzie District. Very few of the adults had received an elementary education and consequently were not able to appreciate the legal implications of the

[132] T.A.R.R. Interview with Elders Program, interview with Francis Bruno, location not recorded, 7 February 1974.

[133] Paulette et al, Supreme Court of Northwest Territories (1973), testimony of June Helm, pp. 33-34.

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

> Treaties. Indeed some bands expressed the view that since they had the right to hunt, fish and trap over all of the land in the Northwest Territories, the land belonged to the Indians. The Commission found it impossible to make the Indians understand that it is possible to separate mineral rights or hunting rights from actual ownership of land.[154]

The report went on to suggest that reserves were of no value to the Indian people under the circumstances in which they lived.

If the Nelson Commission had difficulty explaining "land surrender" to Athapaskans in the Mackenzie District in 1959, it is difficult to imagine that Laird and his commission would have had an easy time explaining it to Athapaskans and Crees living the same sort of life in what is now northern Alberta in 1899. But the point is that they apparently made no great effort to explain the concept, either because of a desire to avoid controversy and get the job over with, or ignorance of the basis of the Indians' misunderstanding.

Some of the Cree people in the southern part of the treaty area may have been more familiar with the treaties of the Prairies and therefore more fearful of losing their land. However, the promises that reserves were not compulsory and that they could continue to hunt, fish, and trap would have reassured them.

The Indian people in 1899 fully understood that white men would be entering their land, taking homesteads, and farming, as well as prospecting and mining. Indians were to live in peace with the newcomers and give up those areas of land required. But most of the land would remain unoccupied by whites and available to Indians for hunting, fishing, and trapping. Beyond these agreements, however, there appears to have been a "failure of the meeting of minds" with regard to the sharing of natural resources, that is, surface rights outside of agricultural areas, timber, wildlife, minerals, and water. This failure allowed both sides to look favourably upon the treaty at the time, but left a legacy of confusion and bitterness for future generations of Indians who were asked to believe that their fathers and grandfathers had "sold" the land they walked on and the lakes they fished in.

The treaty provision for reserves and lands in severalty was seen by both sides as protection for those bands living in areas likely to be settled, and as an alternative economic base for those who might wish to engage in agriculture or stock raising. Indians in more isolated areas had no interest in obtaining reserves in 1899. The archival evidence which we have reviewed indicates that the reserves were offered by the commissioners and explained at some of the treaty negotiations, but were not really discussed by the Indian people. Interviews with Indian elders indicate that the Indian people were generally unaware of the exact written terms of the treaty concerning reserve land.

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[154] Walter H. Nelson et al., "Report of the Commission Appointed to Investigate the Unfulfilled Provisions of Treaties 8 and 11 as They Apply to the Indians of the Mackenzie District 1959" (1959; reprint ed., Toronto: Indian-Eskimo Association of Canada, 1970), pp. 4-5.

In light of the comments by the commissioners to the effect that the Indians reacted negatively to the suggestions of reserves in 1899, it might seem surprising that most of the elders today have positive attitudes towards the reserves. Reserves are seen as places where Indians can make a living without interference from whites, and where Indians own everything, including mineral rights. Some elders speak of the years of frustration that they had to go through before the government granted them a reserve. However, it is likely that this change in attitude towards reserves was a result of white settlement in particular areas. As the Indians saw whites taking up land which they had traditionally occupied, they began to appreciate the security offered by the reserves. Furthermore, during periods of declining opportunities in the fur trade, an attempt at agriculture would have looked more appealing.

Several elders believe that their reserves are too small and one, William Okeymaw, insists that the treaty promised that more land would be provided if the reserves became overcrowded. None of the elders interviewed had a clear understanding of the reserve provisions of the written version of the treaty.

The written version of the treaty contains detailed promises of assistance in agriculture and stock raising, including the provision of tools, implements, seed, cattle, and provisions for one month each year, for several years while crops were being put in. In the negotiations, it may not have been explained that the allotment of cattle and implements was a "once-for-all" provision in the written document, rather than an ongoing commitment to economic development. It is clear from the interviews of elders that assistance in agriculture has always been seen as a treaty right. Many of the elders remember that promises were made concerning cattle, implements, and provisions during planting. There is no indication that the Indian people understood these promises to be on a "once-for-all" basis, but the interviews did not focus specifically on this issue. It seems that the various details of agricultural assistance were seen by the Indians as amounting to a general commitment to provide whatever assistance was necessary to help them get started in farming, if they so desired.

The right to an education was stressed in the treaty negotiations by Kinosayoo and others, and the government assured them that this would be provided for. At the time of the negotiations, the churches were expected to continue to play a major role in education in the North, and the Indians were assured that they would have complete freedom in choosing education under the religion of their choice, in government supported schools. Wally Willier, an elder from Wabasca, explains that Indians were promised "schools in the years to come. That is why we were given a choice, either to take a Catholic priest or a minister." It would seem that neither the written treaty nor the negotiations were very specific about the extent and nature of the education that Indians would be entitled to under the treaty. Similarly, Indian elders

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today see these rights in very general terms. Some elders refer to it as "learning to read," or "learning to farm," or getting "an education like the white man," which would enable them to "know the white man's way of living."

One of the clearest discrepancies between the written treaty and the Indian understanding of the treaty is in the area of health care and social services. The treaty document makes no provision for such assistance. The Indian people might have expected the government to assume rather broad obligations similar to those of the Hudson's Bay Company in this area. The report of the treaty commissioners indicates that the Indians asked for "assistance in seasons of distress," and "urged that the old and indigent who were no longer able to hunt and trap and were consequently often in distress should be cared for by the government. They requested that the medicines be furnished. At Vermilion, Chipewyan, and Smith's Lauding, an earnest appeal was made for the services of a medical man."[155] In response, the government insisted that they would not maintain Indians in idleness, but that:

> . . . the Government was always ready to give relief in cases of actual destitution, and that in seasons of distress they would without any special stipulation in the treaty receive such assistance as it was usual to give in order to prevent starvation among Indians in any part of Canada; and we stated that the attention of the Government would be called to the need of some special provision being made to assisting the old and indigent who were unable to work and dependent on charity for the means of sustaining life. We promised that supplies of medicine would be put in the charge of persons selected by the Government at different points, and would be distributed free to those of the Indians who might require them. We explained that it would be practically impossible for the Government to arrange for regular medical attendance upon Indians so widely scattered over such an extensive territory. We assured them, however, that the Government would always be ready to avail itself of any opportunity of affording medical service just as it provided that the physician attached to the Commission should give free attendance to all Indians who be might find in need of treatment as he passed through the country.[156]

The Indian people apparently understood this as a general commitment to provide health care. Today the elders say that Indians should have doctors, medicine, hospital care, and medical aid free of charge as a treaty right. What is important in the treaty is not the specific promises that were made, but the fact that the government agreed to provide health care and social services to the extent that was feasible. It was not the understanding of the Indian people that they would be restricted forever to what was available in 1899. Some of the elders specifically remember the promises of care for the aged.

Treaty Eight followed the practice of previous treaties in paying a gratuity and an annuity the first year—in this case, a seven dollars gratuity

[155] Canada, *Treaty No. 8*, p. 5.
[156] Ibid., pp. 5-6.

and a five dollars annuity per person. In subsequent years, of course, only the annuity was paid. Perhaps the nature of these payments was not made clear, because today many elders are puzzled by the fact that their payments were cut back from twelve to five dollars after the first year, and some see it as a trick to get the treaty signed, by offering large initial payments.

Clearly, to the Indian people the treaty was much more complex than a surrender of land in exchange for annuities and certain social services. It was, rather, an agreement on how the natural resources would be shared between the Indians, the Métis, and the non-native newcomers. Furthermore, it was an agreement on the extent to which Indian people would receive benefits of the non-native society with whom they were to share the land.

A review of the written terms of Treaty Eight and the available evidence of the context and content of the negotiations must lead to the conclusion that an agreement was only made possible by the existence of a large measure of trust between the parties and by the absence of reasonable alternatives to such an agreement. The treaty was not so much a precise legal definition of Indian rights under Canadian law as a compact or set of fundamental principles that would form the basis for all future relations between the Indian prople and the government.

For the Indian people, the assurances of the government's good intentions and its commitment to justice were of great significance, particularly when such assurances were given by those whom they had come to rely upon to bridge the enormous cultural gap between themselves and the white society—the missionaries and fur traders who lived in their country. Having had an example of the effects of an uncontrolled and lawless frontier expansion in the gold rush phenomenon, the Indians would have been well disposed to believe that a force strong enough to bring order and justice to such an environment was potentially an ally. Where the effects of white settlers and travellers had been less obvious, as perhaps was the case at Fond du Lac, the treaty may have appeared to have been more like an ultimatum, offering few benefits beyond a small quantity of money and rations.

Despite their previous ignorance of the North and the living conditions of northern Indians, the treaty commissioners had been impressed with the fact that the way of life there was radically different from that on the Prairies and would require substantially different government policy from that applied to the Prairie Indians. However, with the treaty successfully negotiated, the affairs of these Indians would now come under the jurisdiction of a small and distant federal bureaucracy, and for many years to come, a very small field staff.

Undoubtedly, the civil servants responsible for administering Indian policy assumed that substantial intervention in the affairs of northern Indians was neither required by the extent of social change in the area nor demanded by the Indians. The intrusion by miners, settlers, trappers, and others was still not on a large enough scale to require more than an affirmation of the

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government's intentions to apply the laws of the land to native and non-native alike. The condition of the native population only required that the government assume greater responsibility for their health, education, and welfare. Hunting, fishing, and trapping would continue to be the basis for the native economy for the foreseeable future, and the adoption of agriculture or other economic alternatives would not require the government's urgent attention as it had immediately following the Prairie treaties. Even the expense of reserve surveys could be spread out over many years as there were few areas of the North under immediate pressures of settlement.

Although the difficulty of drawing the attention of this distant bureaucracy to the problems of the northern Indians would become a serious detriment to the prospects of their economic and social progress, of equal significance was the growing political power of the settlers of the Prairies. This new power was represented by the movement towards increased legislative autonomy, which culminated in the establishment of the Provinces of Alberta and Saskatchewan in 1905, and the relinquishment of control over natural resources by the federal government in 1930. Increasingly, the treaty rights of Indians would be in direct conflict with the efforts of settlers, primarily through their provincial governments, to exploit the natural resources of the area. Under such circumstances, the unique conditions of northern Indians would receive little attention.

Part Two

Alberta Interpretations of the Treaties

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

TREATY EIGHT



Photograph by Richard L. Lightning

Name: Jean-Marie Mustus
Date: 26 March 1975
Location: Joussard, Alberta
Interviewer: Richard Lightning
Translator: Richard Lightning

Lightning: Can you give me your name, your age?

Mustus: I am known as Jean-Marie Mustus.

Lightning: What is your present age?

Mustus: I am seventy-eight years old.

Lightning: Where were you born?

Mustus: I was born here at Sucker Creek.

Lightning: Did you always make your home within this area?

Mustus: Yes, I have always lived here at Sucker Creek. There is also another reserve, Driftpile, where I spent some time. My children attended school here (Joussard); so I am back again. At times, I go back to the reserve, but I never receive any assistance from there; so I am back here again.

Lightning: Are you a treaty Indian?

Mustus: Yes, I receive treaty money.

Lightning: You are also related to this man Mustus. He was the one who signed the treaty and also he was chief when the treaty was made.

Mustus: Yes, he was my grandfather. He was the one who sold the land here at first. He sold it on this side of Grouard.

Lightning: Do you know of any story related to that sale of land?

Mustus: He used to tell me stories about it. He said it was very difficult during those years—the only foresight he had was to the end of his extended arm. He also said that he did not read, and there was no one to give him advice as to what he should do.

"It was difficult for me to communicate. I always had to have an interpreter; that is the only way I could do it. As the promises were made, there were many I overlooked and did not accept. I was very cautious as I began to understand what he was talking about. It was only after I was certain of what he was promising me and of what he was planning to do that I shook hands with him. What he said was written on a piece of hide, and he made reference to the sun and the water. That is when I shook his hand. They tried to make changes, but I would not let them."

But since my grandfather died, changes have been taking place regarding the land. They received many things; they received hay meadows for raising cattle and also food. They got hay mowers and everything else. When the Indians became familiar with agriculture, they were given plows to grow better crops. But they did not do the work.

Lightning: Was he alone when he negotiated with the commissioners?

Mustus: There were two of them, he and his younger brother. His name was Kinosayoo. The Métis had a spokesman as well. He went with Kinosayoo while they were having discussions about what terms they would agree upon. There was also a priest. His name was Father Lacombe. He discussed everything with the people. I have not seen him. He was before my time. He used to live around here. In the town of St. Albert, there is a house there with different things in it; he made that house.

Lightning: What was the name of the Métis fellow whom you mentioned earlier?

Mustus: His name was Ferguson.

Lightning: Was he the interpreter?

Mustus: He was the spokesman for the Métis people. He spoke on their behalf as to how they would go about taking scrip. He told them what to do, as he also spoke Cree. My grandfather was related to him also. When the time came for the Métis to receive the papers (scrip), everybody in a family received them, including the children and grandparents. My grandfather figured that the Métis did not receive treaty money, which is why they were allotted colonies.

Lightning: Was it Ferguson who helped the Métis regarding land?

Mustus: Yes, but it was understood that they were not giving up their way of life. They lived in the same manner as the Indians. They took scrip, but they would continue to live with and as the Indians. After the scrip, they were the same as the treaty Indians, because they hunted as well as the Indians; they hunted wherever they wished. They shot ducks and other animals. I guess they paid two dollars for a licence.

Today it is easier for the young people to get land; there are two colonies around here and there are two others up north; there is another one at Peace River.

The treaty Indians were given reserves and surveying was carried out. This particular reserve of Sucker Creek contains a lot of water. Sucker Creek has a total of 55,000 acres, and Driftpile contains 65,000 acres. The reserves are adjacent to the lake and the water takes a large portion of the reserve. The reserve was 25 miles in length when it was given and each band chose to have

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12 miles apiece. The Driftpile reserve is quite large, and so is Sucker Creek, but they have a lot of water. A large part of the 55,000 acres is not good for cultivation; so they will not have any use for it.

Lightning: When the treaty was first discussed with the Indians, did they understand what they were agreeing to? Did they understand properly?

Mustus: Gradually, they began to understand—that is what my grandfather said. When the white man arrived in the area, he, too, was travelling on foot. He made friends with the Indian; he cut hay for his animals on Indian reserves. It is from that time that the Indian taught himself different things. This is a long time ago that I am talking about. The white man also faced hardships in those years when the treaty was first signed. At times he had to butcher cattle for food, although everything was low priced. The farming was really in bad shape. If the grain was of poor quality, he received ten cents a bushel. If a bag of potatoes was good, you would pay fifty cents per bag. Finally it went up to one dollar.

Lightning: Do you know how much land was given up or sold to the white man?

Mustus: The amount of land they gave up was written down on paper. I am wondering whether it was one foot underground or more. It was written down, but I do not know where the paper could be found.

Lightning: And you do not know how much was to be used?

Mustus: No, I do not know, but whatever they selected for themselves they kept; the rest was taken. I do not recall my grandfather telling me about the depth underground.

Lightning: Did he ever tell you anything about underground minerals or oil?

Mustus: Yes, these things were mentioned, as was the timber within the reserve; the Indians had a right to anything underground.

Lightning: Was that the agreement they made?

Mustus: Yes, it was the agreement.

Lightning: Do you recall or know anything about the Indian way of life before the treaty period?

Mustus: The main source of livelihood was from the bush or from the lakes. When the Indians were in the bush, they made *tipi* shelters of wood. They hunted and in the fall prepared food for winter. There was no other place to go, there was a Hudson's Bay Company store here, but the supplies were limited. The Indians used to kill moose for the Hudson's Bay Company storekeeper, and he would look after the crippled or sick Indians. He also cared for the young people who were not able to help themselves; he gave them rations. He did help them a great deal. That is how the Indians lived. The did not have horses, but they used dogs. After that time, people came back to this area. In the spring they took their furs to Edmonton. Later on, according to my grandfather, they travelled in a two wheel cart. They travelled as far as Washington via the Saskatchewan river. They would return

with supplies on the boat; these supplies were to provide for many people. That is how the people of long ago made their living.

Lightning: Did the Indians ever experience hunger?

Mustus: Many times they were in desperate need. They had no other place to go, and there was only the one store in Edmonton. I saw it myself in 1912. The train was already in service. There were only three or four stores; today there must be many more.

Lightning: Were there any buffalo around here during that period?

Mustus: My grandfather told me that there were buffalo around here. We heard stories of buffalo around Grouard and also in the High Prairie area. They were plentiful in these areas. But it was not too long before most of them were killed off. They also were at East Prairie. Buffalo bones and skulls were found around here; the Indians would place them between the spruce trees; I saw them myself; They are bleached almost white by now. Someone must have killed the buffalo or they may have died of starvation. This area where the buffalo roamed was all prairie. About fifteen years ago, you would travel with a wagon through that area. Today you would not do that. There are trees and shrubs all over the place; there are cutlines—that is where the exploration crews come in handy.

Lightning: Did the Indian people want to give up their land?

Mustus: They were asked about it. The treaty took place at Hobbema, I think, with old man Ermineskin signing. After they made treaty, they then came here and asked if they could make treaty with the people. It was a long time before the people agreed. They did not come here and make the treaty right away; it took a few days. Finally they signed. There were reserves all over the place after that.

Lightning: Before your grandfather signed the treaty, had he ever heard of Indians making treaty elsewhere?

Mustus: He could have, because there were treaties made already, like the one I mentioned earlier that took place at Hobbema. Then there was no treaty until they arrived here and began the discussions and meetings. They were all together, including the half-breeds. Father Lacombe was also present and spoke a lot to the Indian people on how to live. My grandfather said that he took Father Lacombe's advice because he had travelled with him many times. His advice was to take the treaty because it would help him and the young generations in the future. "If you do not accept treaty, it will not be long until you will not be able to make a living. If you choose a reserve, you will have a better chance of living longer." So my grandfather took land right up to Grouard for a reserve. They fished in the lake and killed ducks, and no one bothered them. But after my grandfather died, other chiefs lost these things that were promised at the signing of the treaty. That agreement must still be kept in Ottawa today.

Lightning: Did the Indians receive fish nets?

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Mustus: Yes, they used to get fish nets; as I said before, they did get much assistance. They were issued with food, nets, black powder, and ammunition. They then received rifle shells. They used to get plenty of supplies.

Lightning: Do they still get these supplies today?

Mustus: They get some at times; but I do not.

Lightning: How come you do not make your home on the reserve?

Mustus: There is no place there for me to live. The far end is not good. They cannot grow anything there. I could only live along the highway because I cannot work at farming, I am too old.

Lightning: Have the Indians around here lost any of their trap lines?

Mustus: I do not know. Some of them have given them up. As for myself, I pay ten dollars for my own permit, but it does not tell me to what I am restricted when trapping. I told the warden that I should be informed of what I could trap because I would not be able to sell the furs; but he told me that it was my trap line and that I could kill whatever I wanted.

Lightning: Did you hear of what was promised in education and medical care for the Indians?

Mustus: We do not pay for medicines in the hospital. My grandfather told me that hospitalization was not to be paid by Indians, nor were taxes, including land taxes. The children still do not pay for education and hospitalization. The only thing we pay in taxes is on food, but the Indians should not mind that because the women receive a family allowance and the old people receive a pension.

Lightning: In your own mind, did your grandfather do the right thing when he gave up the land?

Mustus: I do not know, but I think he did the right thing. He was not really restricted to anything. He was promised that he could use a hay meadow fifteen miles from Sucker Creek. He was given that agreement on paper. I do not know how he lost it. He also could go to East Prairie to put up hay. It was all prairie at that time, but of course today it is different. He was treated fairly in everything. He could kill anything, hunt ducks, and fish. He was not restricted.

Lightning: But was this not the way of life before?

Mustus: Yes, that is how they lived, and the Métis also. But now they are separated—the Indian on one side and the Métis on the other. There were some white people there also, and some of them married Indian women. The women did not lose their rights, but those people are all dead now. The husband was allowed to put his crop within the reserve, and he could also put up hay on the reserve. But today this is not allowed.

Lightning: When were the changes made?

Mustus: I do not know, but that was my grandfather's idea. He even allowed the white man to bring two bottles of booze so the people could have a social drink. He allowed that much.

Lightning: During the time of the treaty, did the Indians realize the value of money, and did they know what it was?

Mustus: No, my grandfather said they did not know of money, they did not know of coins. There used to be paper money, but the five cent piece was made of silver. All that I have told you happened long ago. The Hudson's Bay Company helped the poor with meat. If the people had not received assistance, they would have had no place to go; they would have starved to death.

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Name: William Okeymaw
Date: 27 March 1975
Location: Sucker Creek Reserve
Interviewer: Richard Lightning
Translator: Richard Lightning



Photograph by Richard L. Lightning

Lightning: Can you give me your name, age, and place of birth?

Okeymaw: According to my mother, my birthday was two days ago (March 25). I think I am now eighty-seven years old. There are signs that I am definitely getting older, and that I will not be good for anything. We used to live close to Sucker Creek, towards Joussard. I think I was born around there, because I can recall my childhood days there until just prior to treaty, when we moved to this area. The knowledge I have about the treaty is what I am about to relate to you.

I was about twelve years old. We travelled by foot and by boat. We crossed the river here in a boat, then we walked the rest of the way. When we arrived, the commissioners were already prepared. Alongside them were about twenty-two North West Mounted Police. I was frightened because I was only a child. I even held my dad's hand I was so scared. A long memory is one thing I have. I can recall many things of long ago. I can recall a huge tent at the time with many people all around it. They were from different places far and near, but they had travelled for that special day, the treaty. They discussed it for three days to find out how it would work best, how the Indian would make his living when he accepted treaty. There were many things promised that we did not see; we saw only a few, such as the rations, and very little of those. The promises made to us are missing. In my situation and at my age, I am becoming concerned. A person who has a family and growing children should be able to get an extension to the reserve. This applies to the whole band, in case they become farmers, raise livestock, or undertake any other way of living or occupation. They should be able to show something by which they make their living. I am not talking about the way of

life nowadays. We are overcrowded on the reserves, and we are being crowded by white people who are very close to the reserves. It would be very nice if something could be done about it. It appears that in the past the Indians were looked after. It was stated that the Indian agent would look after the people if they became destitute. I am not saying we are in that state at the present time, but something should be worked out because our reserve has potential for making money. The Indian people are not looked after well enough, not as compared to the Métis people. The Métis receive a good share of assistance when they are old; not so for the treaty Indians; in fact they get less. With a family, the little assistance the Indian receives is not enough, especially now with everything getting so expensive.

I do not know why they forgot the promises that they made to us. They have forgotten about them in Ottawa. We wonder about these things. The government people were very persuasive, and the promises sounded so realistic. That is the reason our chief signed the treaty and accepted a reserve. I was there listening at the time. If the Indian had anything of value on the reserve, it was his; the commissioners only requested six inches of the surface of the ground. All the treaty Indians in the northern and eastern part of Canada should be entitled to resources discovered underground; that should still be in effect. Even today the people expect these things because they are not being properly looked after. The timber was not sold, yet I see twenty trucks a day hauling logs from many different places. During the time of the negotiations, nothing was asked about timber; so why is it they are taking the timber? It would have been better for the Indians to make use of it.

The Indian people still have other promises coming to them. The government still owes them a lot and they should get more help. We cannot say how long this earth will last. The commissioner said: "This will be in effect as long as the sun shines and the rivers flow." He used these two oaths in sincerity. Today the river still flows, and when we get up each morning, we see the sun. I heard of many things that time that the people could depend upon in the future to make a living. The white man was receiving assistance. He could settle any place; he would get help from the government. Whose money is it they are using? Maybe it belongs to the Indians. The Indian who made his own living prior to giving up his land should also get some type of help. He is entitled to it more than anybody else. The chief would not have consented to the treaty if he had known his people were being tricked. The Indian people were not like that. They would not have said something and not done it. They did not lie to one another or cheat. I have not seen any of that, and I am an old man. Many times I have seen people who lost something, and whoever found it would hang it up. The Indians thought a great deal of one another, and they always shook hands.

Today they greet one another like the white man, and very little of the native language is spoken. I do not speak English, and my grandchildren confuse me with English. This makes me feel badly. It was better the way it

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

was long ago when we cared more for each other. Even the commissioner shook hands with the people as they entered his tent. It would have been nice if he had accepted the Indian people like that all the time. There is still a great deal missing, and today we are experiencing difficulty. We will never stop thinking of our land because it had so much to offer. Today the white man takes the most out of our land to make his living. Why is it that we have to pay for trap lines? Indians have to pay to build a cabin on their line. Also, it was not mentioned that we had to pay for a licence to fish for a living in order to feed our children. We were not desperate. There was plenty of food around. I was hunting ducks long ago; I came upon an old man who had his *tipi* close to the lake; he just sat in the doorway of his *tipi* pulling in the fish. I am just relating how plentiful the food supply was long ago. There were also all kinds of game animals, but now there is an overpopulation of white man. It was not difficult to hunt big game and feed my children many years ago.

Today the game is scarce, and animals are shot from the roadside when they come out. Even the white men are doing that—they are the people who will kill off the big game. If the people who make the laws do not make changes, we will be in worse condition than we are now. It will be especially bad for the older people. Long ago a person of my age could make his living with two traps, but now the animals are becoming very scarce. If somehow this could be stopped, it would be much better. Today the young people get all the trap lines and there are none left for us older people. It has been about twenty years since I had a trap line, and I can say I am one of the people who has spent much time making a living in the bush; today this is not so.

Lightning: Did the Indian people want a treaty when it was first introduced to them?

Okeymaw: The commissioners were very persistent. They worked on the Indians for three days. They were talked into taking the treaty by the promises that they would not pay for anything and that they would travel any place free of charge "as long as the sun shines." We still often fall into traps, and we were promised that we would not have to fear anything. If many of these false statements had been revealed to the Indians, chances are that they would not have signed the treaty.

Lightning: Did they know what they were doing when negotiating with the commissioners?

Okeymaw: That is one thing I do not know. It appeared that Albert Tate, a Métis, was fluent in English. He was an interpreter at the treaty. He also spoke fluent Cree.

Lightning: Was he from around here?

Okeymaw: He was here for a long time; I think he grew up somewhere in the St. Albert area, but he was with us for a long time, and he stayed for awhile after the treaty, until his father died.

Lightning: Did the missionaries in any way help the Indians, or did they influence them in the wrong way?

Okeymaw: My way of thinking is that perhaps the missionaries were detrimental to the Indians. One priest thought he was the leader, placing himself in front of anybody else. I forget his name, but he still stands in St. Albert in the form of a cement block. I think his name is Lacombe; he was the one who was pushing the Indians: "Take the treaty, take the treaty." But now it is obvious why he was really encouraging the Indians: there was only one church at the time at Grouard. There would also be a school; so what he had in mind was to try to make the Indians accept the money. That is the reason for his encouragement. The people often said that he was doing us wrong.

There was a minister across the lake from here at Buffalo Bay—his name was Holmes—but he did not say very much. He tried to keep in touch with the Indians; he did not keep them away. His intention was to teach some of the treaty Indians; he taught some Métis children, and they were taught well. He even gave clothes to the Indians. I myself never did hear the priest ask any Indian to come into his house or offer him tea, but the minister did. They were responsible for messing up everything, and I have heard older people say the same thing. We felt he was a father to us, but on the other hand that was not so. Maybe if we had worked together, I would not be talking the way I am today. Maybe what I am saying sounds derogatory, but that is not my intention.

Lightning: In 1942 many treaty Indians were removed from the treaty Indian register. Do you have any knowledge of what happened there?

Okeymaw: I can only comment on one case, that of one of my mother's relatives. The husband of this family was working, hauling supplies from Athabasca. While he was away, it came time for the people who took scrip to leave the reserve, and the wife was approached. When that happened, the man still held his treaty rights. His two sons had to be taken off treaty. One was raised here. He was treaty once. His name is Henry Prince. He lives in the north. He is now getting old and he regretted losing his treaty rights. His older brother, Richard Prince, also lost his treaty status. As I was a councillor, I spoke up; I questioned why they could not be put back on treaty, because the mother was placed on treaty again. There is another man, Robert Walker, and several others. We never found out why this happened.

Lightning: Who was the man removing names from the treaty list?

Okeymaw: I do not remember his name, but Richard Prince would know. He would remember, and he also speaks good English.

Lightning: Do you recall any of the agents' names?

Okeymaw: There was one agent here for a long time. His name was Laird. He married a woman from here. Two of his children are still alive. The next one was Leroux, a Frenchman. The other one was M.F. Lapp, but he went to Edmonton.

Lightning: Did they get along well with the Indians?

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Okeymaw: The first one, Mr. Laird, was very friendly and got along well with the Indians. He took into consideration what the Indian requested, but during that time everything was different, such as trapping, which was restricted. The Frenchman was very strict; he was the agent at Driftpile. The other one was fairly docile.

Lightning: Were there any buffalo around here long ago?

Okeymaw: Yes, there were many. That is why they called that place Buffalo Bay. I will tell you a story now about what happened. There were two people who left the Alexander Reserve or someplace close by the reserve. They made a boat from trees at St. Albert and made their way north and finally came upon the Lesser Slave River. They came ashore at the place that is now Grouard. They heard a rumbling noise, and upon investigation, they discovered a large herd of buffalo over the hill—we often find bones and skulls. On their way back, they stopped at an island on Slave Lake and found some people there. These people did not have any rifles; so they had no trouble capturing them. That is where Slave Lake got its name. Some of these people were killed there and the rest of them fled north to Great Slave Lake. I forget all their names, but one was Sewapegaham.

Lightning: How did the buffalo disappear?

Okeymaw: I think they left here and went up north to Fort Chipewyan and other areas.

Lightning: When the signing of the treaty took place, did the Indian know of money? Had he used it before?

Okeymaw: No, they were not familiar with it. I once travelled north with my father and my uncle Mustus, who was the headman, and we came across a road-building gang. This was before the treaty. They were white men. That is when I saw them trading. They gave us some money and told us we could trade it at the store. There was another case where a white man wanted a pair of moccasins; the old lady was not convinced that she was paid. She said, "What am I going to do with this piece of paper. I want to get paid." So from these experiences, I would say that they did not know money. Even during the treaty, the Indians were asking what it was they were receiving. It was Albert Tate, the Métis, who knew money. Albert Tate knew money because he had worked in the store. From that time on, the Indians became familiar with money.

Lightning: How did the Hudson's Bay Company people get along with the Indians?

Okeymaw: They must have gotten along well together because the Hudson's Bay Company manager did not hesitate when he sold a rifle to an Indian. The Indian stacked pelts from the floor until they measured up to the tip of the rifle barrel. That was his payment. You could say that the Indian was cheated because the pelts were valuable. If they were not, he would not have taken them.

Name: Felix Gibot
Date: 5 February 1974
Location: Fort Chipewyan
Interviewer: Richard Lightning
Translator: Richard Lightning

Lightning: What is your name?

Gibot: My name is Felix Gibot.

Lightning: How old are you?

Gibot: Nearly eighty years old.

Lightning: Are you a band member of some reserve? Are you a treaty Indian?

Gibot: I am a treaty Indian.

Lightning: Do you make your home here at Fort Chipewyan?

Gibot: I was raised at Moose Island; that is where our land was. My grandfather lived there until he was very old. My father lived there until he, too, was very old; My dad told us to bury him there when he died; so that is where he is buried.

Lightning: You say you had land there? Was that land given to you as a reserve then?

Gibot: That is where the Wood Buffalo officials allotted land to us when they first made a park out of our land. There were twenty of us when that land was first allotted to us. Our home still stands there. My older brother is there, and also some other people are still there.

Lightning: Do the people still live there?

Gibot: At the present time, my son traps there; when the men trap, they camp over there. We are being looked after here.

Lightning: Nobody stays out there permanently?

Gibot: During the summer, we stay out there. We never leave it because that is our land.

Lightning: Do you remember the size of your land?

Gibot: It was twenty-five miles in one direction and fourteen miles along the river.

Lightning: Do you recall anyone being a chief there?

Gibot: The fellow who was the owner was my younger brother, Alex Gibot. He is dead now. When he died, we were called by the park officials to find out who would be headman of that reserve. Ben Houle, who lives here, is the present headman of our reserve. Ever since that land was allotted to us, it has not had a bad name or reputation. It is probably the only one, even today, that has not got a bad name.

Lightning: Could you tell me what you remember of the time of the treaty?

Gibot: I will tell you the story from the time of the treaty until today. I did not hear it and I did not read it; I saw it take place myself. What I am

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

saying is the truth. During a time when we were in the bush, word got around that we were all invited. We were not aware what it was for. Everybody arrived here at Fort Chipewyan. Everybody arrived here for a meeting and to listen to the commissioner. "I was sent here by the government to read this document to you. Stories have reached the government that Indians have been dying of starvation in the bush. The government would like to take control of the Indian people and care for them. The government does not want to see you living in poverty in the bush. This is the reason I am here."

It was then that a man who was in charge of trappers was made chief. He, too, had something to say to the commissioner. He told the commissioner that he was getting on in age, and according to what the commissioner had said, he would become the chief.

"I am greatly impressed by what you have just told us, that the government is to care for us. It will be like a log that has started from the middle of the lake. With a breeze behind it, the log will eventually make its way to the shore. This is how I can foresee the laws of the white man in the future. I will not see them myself, but the people who will be alive in the future will see this taking place."

"Yes," said the commissioner, whose name was Carr.

Pierre Mercredi was the interpreter at the time, and also a priest was there. His picture is still here today. It was those two people who were the interpreters. The Indians were told that they would receive everything all the time, in perpetuity, as long as the river flowed and the sun shone. "You will never be mistreated and these provisions will never be taken away." There is one more thing that the commissioner told the Indians.

"When you are in the bush, if you see a white man who needs help, take him and bring him to some settlement. You will not get paid for it. On the other hand, if a white man finds an Indian in trouble, he, too, should help him. You will have to get along as one. You should not make enemies amongst Indians and white men. This goes for the Cree, white men, and Chipewyan. You should not hate each other, but be willing to help one another."

"I am really impressed with what you are telling me, but even in twenty years time, everything will be different."

The commissioner said that this was not so because it was the Queen's word that he was conveying. "It is this document that says it. She will be caring for you. You will no longer live in poverty. There is no reason you should not like it."

"I am really impressed with what you are saying, and would be very happy if this were to actually happen. But I will not see that day."

The following day, there was another meeting. The same promises were reiterated.

"You have worked on me for two days, and now on the third day, I will talk to you. What you are saying is that the promises are being made in good faith. My people will now be cared for by the government; but I will tell you one thing. I do not want my people to be sent away from our land; I want them to stay here at Fort Chipewyan. It is large enough that there is room for everybody."

"This land now belongs to you; you can keep it. No land will be restricted for you. You can make your living the way it suits you best."

"Yes."

That is when they put the coat on the Indian, and he was officially made chief. He indicated that since he was now chief, he did not want the commissioners to say no to anything he requested. "When you make promises to me and I say yes, I have given you my word to last forever. If I agree to anything, that is my final word and I expect the same from you. I want the promise you have made fulfilled."

"On this trip, I am representing the government. As long as the sun shines and the river flows, your requests for anything will never be turned down."

"I will not see any of this, but my people will see it if they are alive. There will be constant changes taking place in the future. As these children grow up, they will see the changes. Myself, I will not live very long, because I am an old man. I do not want any of you here to forget these promises that have been made."

He also told the commissioner that they would get along with the white man as long as they lived, and that he hoped the white man would do the same: "I will think of him as my younger brother when I see him."

He said the same thing to his people: "If you see a white man in need, help him. If you are kind to him, he, too, will be kind to you. He will not force you into anything if you have respect for him. It will not be like being forced into the water."

Today as I am growing old, I see the people being cared for: houses are built for them, food is given to them, wood is given to them. This is what the commissioner must have been referring to when he was talking. This is the way I am beginning to see it today.

Yes, white trappers were all over the place, and we were on very friendly terms with them. I went trapping with them many times. They enjoyed having me along. I would guide them and show them how to trap. They were very thankful for that as they took their pelts home. This is my story. While we made our home in Wood Buffalo Park, I never heard any gossip from the Métis people or the white man, not once. I, myself, as an individual old man, do not want to be on bad terms with the white man. What I am saying now was not written on paper. I saw it myself and heard people tell of it at the beginning as it was promised to us. I am telling it now exactly as the promises were made.

Lightning: What was the man's name who was made chief?

Gibot: Justin Martin was his name. That was the very first chief.

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Lightning: At present you are living here, yet you were allotted land at the other place. How did the people get to this place?

Gibot: That came about on account of the school. We were never here; we were always in the bush making a living. There was never anybody here in this part of the country. The children used to attend the mission. They would be left there as boarders. Then the school was built, and after that all of the people stayed here. They left their homes in the bush where they had previously made their living. They now make their homes within reach of the school. That is also the reason we are here. But at least we still have our house on our land. It is very good land, and also good for farming; we do not want to leave it. There is no reason why one would not like it; there are no rocks on it. The land was meant for farming and we planted potatoes; it yielded good crops. But when the school was started here, we also made our homes here. We go to stay there during the summer. My brother goes there with his family, and I also go there. They still trap on that land.

Lightning: Does that land still belong to your family?

Gibot: Yes, it is still ours. There were many of us, but now many of the people are dead, especially the older people. There are only two of us left, my older brother and myself.

Lightning: Were the Crees always living close to the Chipewyan people? How did they originally get together?

Gibot: The Chipewyan people had land here originally; they had land here even before I was born. The Crees were always on friendly terms with the Chipewyan. All the elders are now dead. When we were youngsters and growing up, we were always friends with the Chipewyan, and we are still friends today.

Lightning: When were the treaties brought to their attention?

Gibot: The promises made to them were identical to ours regarding the land.

Lightning: The commisoner dealt with the Chipewyan at the same time?

Gibot: Yes, when the treaty was signed, there were Chipewyans already living here, but the Cree were dealt with first. We were the first to receive the money; we were paid fifteen dollars; they received the same amount. The following day, they officially appointed a Chipewyan chief. His name was Alexander Laviolette; he was the first chief for the Chipewyan band. They were promised exactly the same as we were. Nothing was different.

Lightning: Were there many people during the signing of the treaty?

Gibot: Yes, there were many people during that time, and many Métis people were there as observers when the treaties were made.

Lightning: Did the interpreter speak Cree and English fluently?

Gibot: Yes, he could understand the Cree language clearly. He was a Métis. His name was Pierre Mercredi. There was a priest, too. His picture is still here. The priest who is here now would know his name.

Lightning: Was there any mention of water, as it is plentiful around here? Did you find out if you could fish in the lakes?

Gibot: The commissioner said, "The Indian, Métis, and Chipewyan can fish in this lake as long as they are alive, and they will make a living out of it." That was a sincere promise.

Lightning: Do you recall any time when the people were not allowed to fish or were discouraged from fishing?

Gibot: Later on a licence was required, and even today one must have a licence to fish. Today, they do not allow fishing nearby; they have to go far out on the lake. If someone is fishing around here without a licence, the fish warden will confiscate the net.

Lightning: You claim that the land you mentioned before was yours. It was allotted to you. When the commissioner came here to make treaty, were his intentions to sign treaty on a friendly basis or was it to acquire the land?

Gibot: That is something that always puzzles me when I think of it. It appears as though he wanted to claim the land, to own the land for the government. That is why they took that action. This is what I think, anyway. How do you people think about this?

Lightning: Some of our elders seem to have doubts about what took place.

Gibot: At times, the Indian people get angry about that. The white man never bought the land. If he had bought it, there would have been large sums of money involved in order for him to claim the land. That is what some of the Indian people say, and as a result, they become angry.

Lightning: Did the Indians of long ago ever imagine or think that anything valuable would be found underground?

Gibot: You mean the elders of long ago? No, they never mentioned anything about *money* [gold or minerals] to be found underground or even petroleum to be found below the surface. I never heard my grandfather, although he was intelligent, mention anything. Even after my grandfather died, I never heard anything mentioned.

Lightning: They never told stories of the commissioner discussing these things?

Gibot: No, the commissioner never mentioned them. The only thing he mentioned was how the people would be cared for by the government as promised in the treaty. That is all that was mentioned.

Lightning: Were your father and grandfather here when the commissioner first arrived?

Gibot: When the commissioner first arrived, many were alive then.

Lightning: You remember it also?

Gibot: Yes, it is just like today as I am talking here. I never forgot any of the promises that were made to the chief.

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Lightning: The Indians in Treaty Six are basically living in farming areas, and when they signed treaty, they were promised implements, so that they could make a living in farming.

Gibot: It was the same here. Yes, it was the same here. My father and uncle received implements. My uncle was Thomas Gibot. My dad was Albert Gibot. They were using farming implements from the government. That is the reason they were in agriculture. But it was the school that made it difficult. All the treaty Indians who stayed in the bush worked in agriculture, and they were proficient at it. When they started to move here, they lost it all. Today some of them do not even have a dog or a trap. There are many here and it is only the school that keeps them here.

Chapter Six

The Saulteaux and the Numbered Treaties: An Aboriginal Rights Position?

by
J.E. Foster

The concept of aboriginal rights has attracted the attention of Indians and non-Indians alike in the Canadian West. For its proponents, the concept substantiates claims of injustice made by Indians against the federal government and the white community. Further, should the dominant community and the government accept the validity of the concept, the way would be clear to end existing injustices, and to renew or to create the basis for a vital and just relationship between the Indian and white communities. Unfortunately for the supporters of aboriginal rights, the concept has as many opponents as proponents. For many Western Canadians, the apparent self-serving nature of the concept in the hands of Indian leaders renders it suspect. For others, there is a negative, emotional response to what appears to be the "brown aristocrat" who in Euro-Canadian eyes stands to receive much, but give little, should the concept be accepted.[1] In legal circles, where a significant element of the serious discussion has centred, aboriginal rights as "personal and usufructory rights" to the land appear valid.[2] Yet these same rights as "vested rights" may better serve the interests of Indians and non-Indians alike, as vested rights do not suffer to the same extent the taint of the "aristocrat," and at the same time, perhaps reflect more clearly the Canadian historical experience.[3]

Fundamental to any discussion on aboriginal rights would appear to be the assumption of aboriginal sovereignty and ownership of land. Such an

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[1] Douglas Fisher, "Let's Re-assess Native Programs," *Edmonton Journal*, 4 December 1974; see also reply by George Manuel, "Special Rights for Indians?—Yes," *Edmonton Journal*, 6 January 1975; and Douglas Fisher, "Is the Patience of Job Enough?" *Edmonton Journal*, 9 May 1975.

[2] Peter A. Cumming and Neil H. MicKenberg, eds., *Native Rights in Canada* (Toronto: General Publishing Co., 1972), p. 53.

[3] L.C. Green, "Aboriginal Rights or Vested Rights?" *Chitty's Law Journal* 22 (1975).

Daniel, Richard. "The Spirit and Terms of Treaty Eight." The Spirit of the Alberta Indian Treaties. Ed. Richard Price. Montreal: Institute for Research on Public Policy, 1979.

CHAPTER TWO

The "Original Affluent Society"



Birch Bark container
Originally these containers were used as cook pots by placing hot stones inside with the meats and liquids. More recently these containers would be used for berry picking and gathering medicines, mosses and eggs.

The Etthen eldeli Dene (Chipewyan) people's livelihood during aboriginal times and well into the fur trade era was based on caribou harvesting. We know this from traditional stories passed down by Elders and observations recorded in the diaries of early explorers and fur traders.

Hudson's Bay Company explorer Samuel Hearne's descriptions of the Chipewyan people, based on his observations during the time he spent with them in the 1770s, suggest the Chipewyan had attained both security and comfort in their caribou-based livelihood. "...the real wants of these people are few, and easily supplied: a hatchet, an ice-chisel, a file, and a knife, are all that is required to enable them, with a little industry, to procure a comfortable livelihood," Hearne wrote. He also noted that the Chipewyan "...live generally in a state of plenty, without trouble of risk; and consequently must be the most happy, and in truth, the most independent also."

Indeed, by some measures the Etthen eldeli Dene during aboriginal times could well have been included among the groups that anthropologist Marshall Sahlins described in his groundbreaking paper "The Original Affluent Society." Sahlins debunked the common anthropological view that hunter-gatherer societies led dismal lives of hardship characterized by an "incessant quest for food." He argued that many traditional societies enjoyed a relative abundance of food and a certain material comfort. "When you come to examine it the original affluent society was none other than the hunter's – in which all the people's material wants were easily satisfied," he wrote. Canadian historian Arthur J. Ray would include in this category of affluent societies the "caribou eaters," the "parkland bison hunters," and the "bison-moose hunters" of the boreal forest.

CHAPTER TWO

The "Original Affluent Society"

Pre-contact Lands of the Etthen eldeli Dene

The pre-contact lands of the Etthen eldeli Dene, or "caribou eaters," was bounded by the limits of the caribou migration to the south and the Yellowknife and Inuit peoples to the north.



Chipewyan Traditional Lands in Aboriginal Times



Caribou Eaters
The Chipewyan people were known as "caribou eaters." Their livelihood was based upon the caribou providing meat, clothing, shelter, tools, thread, milk and many other products.

Land without boundaries

While we know the Chipewyan were "caribou eaters," it is difficult to determine the range of the lands they occupied before the arrival of the Europeans and during the early years of the fur trade. Anthropologists have created conflicting theories of aboriginal land occupancy based upon different interpretations of the journals of early traders and explorers. However, many of those journals are not very reliable for this purpose because the Europeans often confused different Aboriginal groups and called them by similar names. For example, the early fur traders at Hudson Bay called the Dene people the "Northern Indians" and the Cree, the "Southern Indians." They knew little about the land in the interior or about the Aboriginal peoples and were unable to accurately identify the traditional areas of the various Aboriginal groups.

Although Alexander Mackenzie recorded that he encountered Beaver peoples – like the Chipewyan, an Athapaskan-speaking group – after passing the Methye Portage north of Lac La Loche around 1789, some anthropologists question his accuracy. They maintain that the Cree had occupied the area around Lake Athabasca and the Athabasca River since aboriginal times. Others argue that the Chipewyan occupied the area below Lake Athabasca and were pushed to the north (and the Beaver to the west) as the Cree expanded their territories during the early fur trade. Some European observers noted that the Chipewyan were unfamiliar with certain techniques of stretching furs and other skills associated with the boreal forest, yet they appeared to be familiar with many other aspects of life in the boreal forest. Based on what is known through traditional and recorded knowledge, it appears that the Cree and the Chipewyan were familiar with much of the same territories, even in very early times.

In any event, it is not appropriate to try to assign boundaries to various groups, because aboriginal land use was not limited by the European concept of "ownership." Different peoples may have occupied the same lands at different times or in different seasons. Land use studies show that traditional lands of Aboriginal peoples tend to overlap, especially where there are language or cultural relationships between the groups. Overlapping is also common where the traditional areas are very large and sparsely populated. The Etthen eldeli Dene lands in aboriginal times were among the largest and the least intensely populated of any northern group.

CHAPTER TWO

The "Original Affluent Society"

The best way to determine the original lands occupied by the Etthen eldeli Dene peoples is to look at barren land caribou migration patterns, because the Etthen eldeli Dene's early territory was likely associated with the range of the caribou. There are anthropologists who believe this traditional area did not extend below Lake Athabasca, but they tend to base their theories on observations of modern-day caribou migration patterns. However, in aboriginal times the populations of the barren land caribou were likely larger than they are now. Traditional knowledge suggests that with the larger populations of earlier times, the caribou would have ranged farther south and west – in some cases well into the boreal forest. This means the Etthen eldeli Dene traditional area is likely to have extended well below Lake Athabasca and to the headwaters of the Churchill River system. Indeed, ACFN Elders Alec Bruno, Charlie Voyageur and Rene Bruno say that in the early part of the 20th century the caribou would cross Lake Athabasca and winter below the lake in areas of northern Alberta and Saskatchewan. ACFN Elders have noted that after the early 1950s, the caribou stopped migrating south of Lake Athabasca in large numbers as a result of the devastating forest fires in the area that destroyed their food supplies. Even though the lichen has grown back, the caribou have not migrated back through this old route.

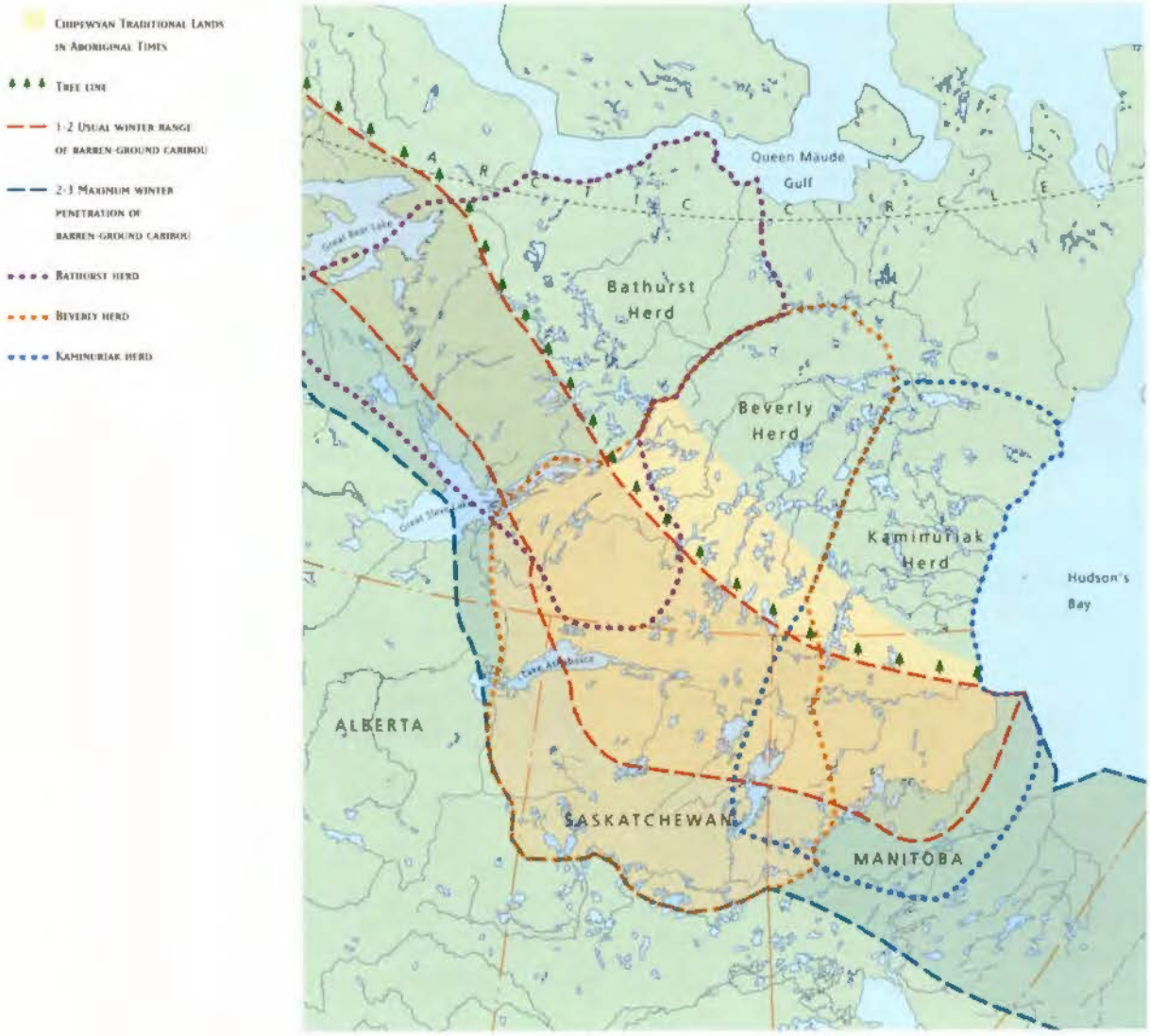


The Great Bounty of the Caribou (Etthen)

Before the arrival of the European fur traders, caribou provided the Etthen eldeli Dene peoples with almost all the basics of a relatively affluent lifestyle. The Etthen eldeli Dene hunted caribou to supply their needs for tools, clothing and shelter in addition to food for themselves and their dogs. Nothing went to waste. Bone and antler were fashioned into spear points, fish hooks, and a variety of other tools. Hides were used to make lodging, carriers and clothing. Rawhide, gut and sinew were put to use for lacing, snowshoe netting, gill nets, caribou snares, and many other necessities of life. Anthropologist J.G.E. Smith estimated that 20 caribou might have provided the necessary domestic annual needs of one person.

Chipewyan Traditional Lands and Caribou Migration

The pre-contact territory of the Chipewyan people was directly related to the migration of the caribou herds. The range of caribou migration likely provides reasonable limits to the normal Chipewyan hunting and gathering territory.



CHAPTER TWO

The "Original Affluent Society"

A sharing society

In aboriginal times the Etthen eldeli Dene had to travel great distances to follow the migrations of the caribou herds. As a result, they occupied a large traditional area with one of the lowest human population densities in the world – an average of one person per 150 square kilometres. They also had to travel light, relying on traditional knowledge and relatively simple tools to survive.

The Etthen eldeli Dene developed a culture and an economic system that reflected their dependence on caribou and enhanced their ability to survive. This system was based on cooperation and sharing – both of food and of information about the location of caribou herds. For example, ethnographic studies suggest Etthen eldeli Dene men were required to marry women as distantly related from them as possible. This kinship system, known as "marrying out," helped ensure that word would spread rapidly along the tree line when the caribou herds crossed. According to the Elders, marrying out is still common among the Chipewyan.

Etthen eldeli Dene social structure was based on the family unit. Etthen eldeli Dene families organized themselves into hunting units that varied in size and makeup according to their economic purpose. A typical hunting unit would centre around a husband and wife and their relatives, possibly including brothers and their wives, or children and their spouses. Two or more families might share a hunting camp. Several hunting units might come together for a meat camp or fish camp or for a large caribou hunt.

The Etthen eldeli Dene carried out their large communal hunts in early winter and in spring during the caribou migrations. To locate the herds, they would divide into smaller hunting groups and spread out across a broad potential caribou path. Etthen eldeli Dene hunters had developed a very efficient technology, called a "pound," for harvesting the largest number of animals possible during these hunts. Once they had located a caribou migration path, they would build a large fence (pound) of bushy trees with openings containing snares to trap the animals as they passed through. Since a hunting group could kill many more caribou than it required, Etthen eldeli Dene hunters distributed the meat among other hunting groups by way of the

kinship and sharing systems they had developed. During other seasons they divided into smaller hunting units to pursue smaller groups of caribou and other game.

By the time the European fur traders began arriving in western Canada in the late 17th and early 18th centuries, the Chipewyan had established the largest population and landmass of any northern group. Using caribou as their main source of food, clothing and shelter, they had an estimated population in the barren land/boreal forest region of approximately 4,000 people.





Top: Moose Hide
Chipewyan women and children are shown in front of a moose hide.
Bottom: Chipewyan Camp pre 1921
Summer hunting and gathering camp adjacent to lake.

Border Crossing Issues and the Jay Treaty

Standing Senate Committee on Aboriginal Peoples

The Honourable Lillian Eva Dyck, *Chair*

The Honourable Dennis Glen Patterson
Deputy Chair

June 2016

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42nd Parliament – 1st Session

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MEMBERS OF THE COMMITTEE

The Honourable Lillian Eva Dyck, Chair

The Honourable Dennis Glen Patterson, Deputy Chair

and

The Honourable Senators:

Lynn Beyak
Tobias C. Enverga Jr.
Sandra M. Lovelace Nicholas
Yonah Martin
Don Meredith
Wilfred P. Moore
Victor Oh
Nancy Greene Raine
Murray Sinclair
Scott Tannas

Ex-officio members of the committee:

The Honourable Peter Harder, P.C., (or Diane Bellemare) and the Honourable Claude Carignan, P.C., (or Yonah Martin)

Other Senators who have participated from time to time in the study:
The Honourable Senators Maltais, Sibbeston and Watt

Parliamentary Information and Research Service, Library of Parliament:
Brittany Collier and Alexander Lavoie, Analysts

Senate Committees Directorate:
Mark Palmer, Clerk of the Committee
Lori Meldrum, Administrative Assistant

Senate Communications Directorate:
Marcy Galipeau, Communications Officer

ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Tuesday, February 2, 2016:

The Honourable Senator Dyck moved, seconded by the Honourable Senator Day:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada; and

That the committee submit its final report no later than December 31, 2017, and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

After debate,

The question being put on the motion, it was adopted.

Charles Robert

Clerk of the Senate

BORDER CROSSING ISSUES AND THE JAY TREATY

INTRODUCTION

Since well before Confederation and the establishment of the Canada-U.S. border, First Nations in Canada have maintained close cultural and family ties with Native American communities in the United States. However the border and, more specifically, the formalities involved in crossing it make it difficult to maintain these ties. As well, for some First Nations communities straddling the Canada-U.S. border, crossing the border has become a daily activity required to go to work, school, or buy groceries. Given this context, the Standing Senate Committee on Aboriginal Peoples agreed to examine the issue of border crossings under its general order of reference, which authorizes the Committee to examine the federal government's constitutional and legal responsibilities to aboriginal peoples.

In undertaking this work, the Committee recognizes that border crossing issues are highly complex and involve issues such as citizenship, international sovereignty and security. The Standing Senate Committee on Aboriginal Peoples addressed the topic of border crossing issues and the Jay Treaty at a meeting on 17 February 2016.[1] At this meeting, the Committee heard from representatives of Indigenous and Northern Affairs Canada, the Canada Border Services Agency, the Mohawks of Akwesasne and the Assembly of First Nations. With this study, the Committee hopes to encourage the federal government and First Nations to work together to find practical solutions to the border crossing issue that will make it possible to maintain cultural and family ties between First Nations communities in Canada and Native American communities in the United States.

BORDER CROSSING AND THE JAY TREATY

Some First Nations in Canada believe they should have the right to freely cross the Canada-U.S. border. They maintain that this right was conferred on them by the 1794 Jay Treaty between Great Britain and the United States.[2]

In 1794, the United States and Great Britain signed the Treaty of Amity, Commerce, and Navigation, also known as the Jay Treaty, to resolve issues resulting from the independence of the United States in 1776. Article III of the Treaty, which appears below, stated that Great Britain and the United States would allow First Nations people to live on either side of the newly established border and to freely cross the border:

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1 *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

2 For example, see: Christopher Curtis, "Treaty sets out border trade rights". *The Gazette*, 13 April 2013, p. B4 and Steve Arstad, "Okanagan Sylilx Nation assert treaty rights to freely cross border", *Keremeos Review*, 2 June 2009, p. 26.

> "It is agreed that at all Times be free to His Majesty's Subjects, and to the Citizens of the United States, and also to the Indians dwelling on either side of said Boundary Line freely to pass and re-pass by Land, or Inland Navigation, into the respective Territories and Countries of the Two Parties on the Continent of America (the Country within the Limits of the Hudson's Bay Company only excepted) and to navigate all the Lakes, Rivers and waters thereof, and freely to carry on trade and commerce with each other […]
>
> …No Duty of Entry shall ever be levied by either Party on Peltries brought by Land, or Inland Navigation into the said Territories respectively, nor shall the Indians passing or re-passing with their own proper Goods and Effects of whatever nature, pay for the same any Import or Duty whatever. But Goods in Bales, or other large Packages unusual among the Indians shall not be considered as Goods belonging bona fide to Indians."

According to a Mohawk Council of Akwesasne representative who testified before the Committee, this confirms that the border crossing rights of First Nations peoples pre-date the establishment of the Canada-U.S. border.[3]

Nonetheless, it is important to note that, for two reasons, the Jay Treaty has no practical application in Canada today. First, the Jay Treaty was abrogated by the War of 1812 between Great Britain and the United States. Second, the Treaty has not been implemented or sanctioned by legislation in Canada. This interpretation, which has been upheld several times by Canadian courts,[4] was not disputed by those who testified before the Committee.

Consequently, currently when entering Canada, First Nations are subject to the same requirements as all other individuals.[5] Individuals may enter Canada by right to live and work if they are Canadian citizens or have Indian Status in Canada. For other individuals, including Native Americans in the United States, the right to enter Canada is not automatic.[6]

The requirements are different for First Nations entering the United States. With the appropriate documentation, First Nations who are born in Canada but who do not hold American citizenship are permitted to freely enter the United States by right for the purposes of employment, study,

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3 Rasennes Pembleton, Aboriginal Rights and Research Office, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

4 See: *Francis v. The Queen*, [1956] S.R.C. 618.

5 Lisa Janes, Regional Director General, Northern Ontario Region, Canada Border Services Agency, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

6 Lisa Janes, Regional Director General, Northern Ontario Region, Canada Border Services Agency, Proceedings of the Standing Senate Committee on Aboriginal Peoples, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

retirement, investing, and/or immigration. First Nations must prove that they have 50% Aboriginal blood quantum to enter the United States on this basis.[7]

The Committee heard that these requirements have specific repercussions for First Nations communities such as Akwesasne, who maintain close cultural and family ties on both sides of the Canada-U.S. border.

The problem for the Akwesasne Mohawk citizens was described by Grand Chief Abram Benedict this way: "entering into the United States, whether you are an American-born or Canadian-born Indian is not a problem. In reverse it is." [8]

REAL AND PRACTICAL IMPLICATIONS

Apart from the theoretical, legal and historical issues associated with the Jay Treaty, the Committee was especially struck by the challenges faced everyday by the members of the Mohawks of Akwesasne when crossing the border. Although their community straddles the Canada-U.S. border, they consider themselves to be a single community. One of the Mohawks of Akwesasne representatives explained the situation to the Committee:

> "I was born on the American side of Akwesasne. My wife was born on the Canadian side of Akwesasne. My children were born in the city of Cornwall in Ontario, but they've lived their whole lives on the American side of Akwesasne. That's common for all of our families, that interrelationships exist. That's what's unique about our community."[9]

In addition, some parts of the Canadian side of Akwesasne are surrounded by the St. Lawrence River. The only way to get from one part of Akwesasne to another, or to elsewhere in Canada, is to go into the United States and then to re-enter Canada. This presents ongoing challenges for many Akwesasne residents who are required to cross the border for daily activities such as buying groceries and going to work. Furthermore, when members of the Mohawks of Akwesasne travel to the part of Akwesasne located in Ontario, they must cross the Canada-U.S. border, pass their destination and stop at the Canada Border Services Agency point of entry in Cornwall to report. Following this process, they must backtrack to arrive at their destination.[10]

Although the residents of Akwesasne learned long ago how to live in this international environment, they are seriously inconvenienced by this situation on a daily basis. For example, Grand Chief Abraham Benedict of the Mohawk Council of Akwesasne told the Committee that wait times and

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7 *First Nations and Native Americans*, U.S. Embassy & Consulates in Canada.

8 Grand Chief Abram Benedict, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

9 James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

10 James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

reporting requirements were challenges faced by the community. Referring to the reporting requirements, Chief Benedict noted that this is "by far, the biggest inconvenience, the biggest annoyance that people feel every day."[11]

POSSIBLE SOLUTIONS EXIST

During its meeting on this issue, the Committee heard about several federal programs that have been put in place to facilitate border crossing in Canada. For example, Canpass and Nexus allow frequent, low-risk and pre-authorized travellers to expedite the process of crossing the border into the United States. The Committee also heard about a Canadian Border Services Agency (CBSA) project in Quebec that allows travellers to call in to report when the border crossing is closed for the day.[12] The Committee heard that options such as video reporting are not available at the Akwesasne border crossings.[13]

To facilitate border crossings for Akwesasne residents , the Committee heard that CBSA employees at the Cornwall crossing receive cultural awareness training and are provided with information about the community. As well, CBSA employs an Aboriginal liaison officer to work directly with the community to address challenges as they arise.[14] Additionally, the *Akwesasne Residents Remission Order*[15] is a regulation providing that duties are not, with some exceptions, payable on goods imported into Canada by a resident of Akwesasne for personal use; for sale by the owner of a community store to Akwesasne residents; or for use by the Mohawk Council of Akwesasne in connection with educational, hospital or social services.

In Akwesasne, not all community members are able to enter Canada by right to work and live, as many are Native Americans who do not have Canadian citizenship and are not Status Indians in Canada.[16] The Mohawk Council of Akwesasne suggested that issuing a secure identification card for all their community members, whether they live in the Canadian or Americanareas of their nation, could address some of the border crossing challenges experienced by their community.[17]

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11 Grand Chief Abram Benedict, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

12 James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

13 James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

14 Lisa Janes, Regional Director General, Northern Ontario Region, Canada Border Services Agency, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

15 *Akwesasne Residents Remission Order*, SOR/91-412

16 Grand Chief Abram Benedict, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

17 James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

Despite these efforts to facilitate border crossings, the Committee believes that challenges remain for First Nations communities such as the Mohawks of Akwesasne. As a result, the Committee believes that the federal government must give this issue further attention and work to address the concerns of First Nations communities across Canada who straddle or are located in close proximity to the Canada-United States border.

An overarching request from the Mohawk of Akwesasne is the creation and admissibility of a secure ID card that would facilitate border crossing for their members within their territory. As Mr. Ransom suggested, "We have the ability for all three Mohawk governments to work together. You can produce one secure ID card for all of us, but each one can put its own logo on it so that it allows them to self-identify as a member of the American side or the Canadian side or the traditional government in Akwesasne." Mr. Ransom explained to the Committee that tribes in the United States can produce their own secure identification cards that are compliant with the requirements of the Western Hemisphere Travel Initiative (WHTI). The WHTI is a plan to implement the requirement for all travellers entering the United States to show a passport or other acceptable document indicating an individual's identity and citizenship.[18] If entering the United States via land and sea, Canadian and U.S. citizens can present an enhanced driver's license as a form of acceptable identification. Mr. Ransom confirmed that if a secure identification card was created for the Mohawks of Akwesasne, it would have to be compliant with WHTI requirements and would have the same security features as an enhanced drivers licence. The Mohawk of Akwesasne have already contracted Siemens to produce the card, and have a prototype available.[19] Unfortunately, they have found some difficulty in getting the Government of Canada to become partners in this solution.

Repeated attempts were also made by the Mohawk of Akwesasne to propose solutions to the Government of Canada. As Grand Chief Abram Benedict told the committee:

> The Mohawk Council of Akwesasne has repeatedly proposed solutions to exercise our rights to freely move within our territories. Since 2013, we've made numerous presentations to audiences that have included Indian and Northern Affairs Canada and CBSA on potential solutions, including an alternative reporting mechanism modelled after the CANPASS system. In addition, we've had meetings with INAC, CBSA and the United States Customs and Border Protection on a secure Mohawk Council of Akwesasne identification card to facilitate easier border crossing.
>
> We invited INAC to join us in Washington, D.C., for a meeting in 2014 on the secure MCA identification card with Customs and Border Protection. They declined to join us. Canada has not been responsive to our attempts to find solutions; instead, they seem to find reasons

[18] U.S. Customs and Border Protection, "Western Hemisphere Travel Initiative".

[19] James W. Ransom, Director of Tehotiienawakon, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016.

for them not to work. Ironically, the U.S. Customs and Border Protection supports the creation of a Mohawk secure ID card."[20]

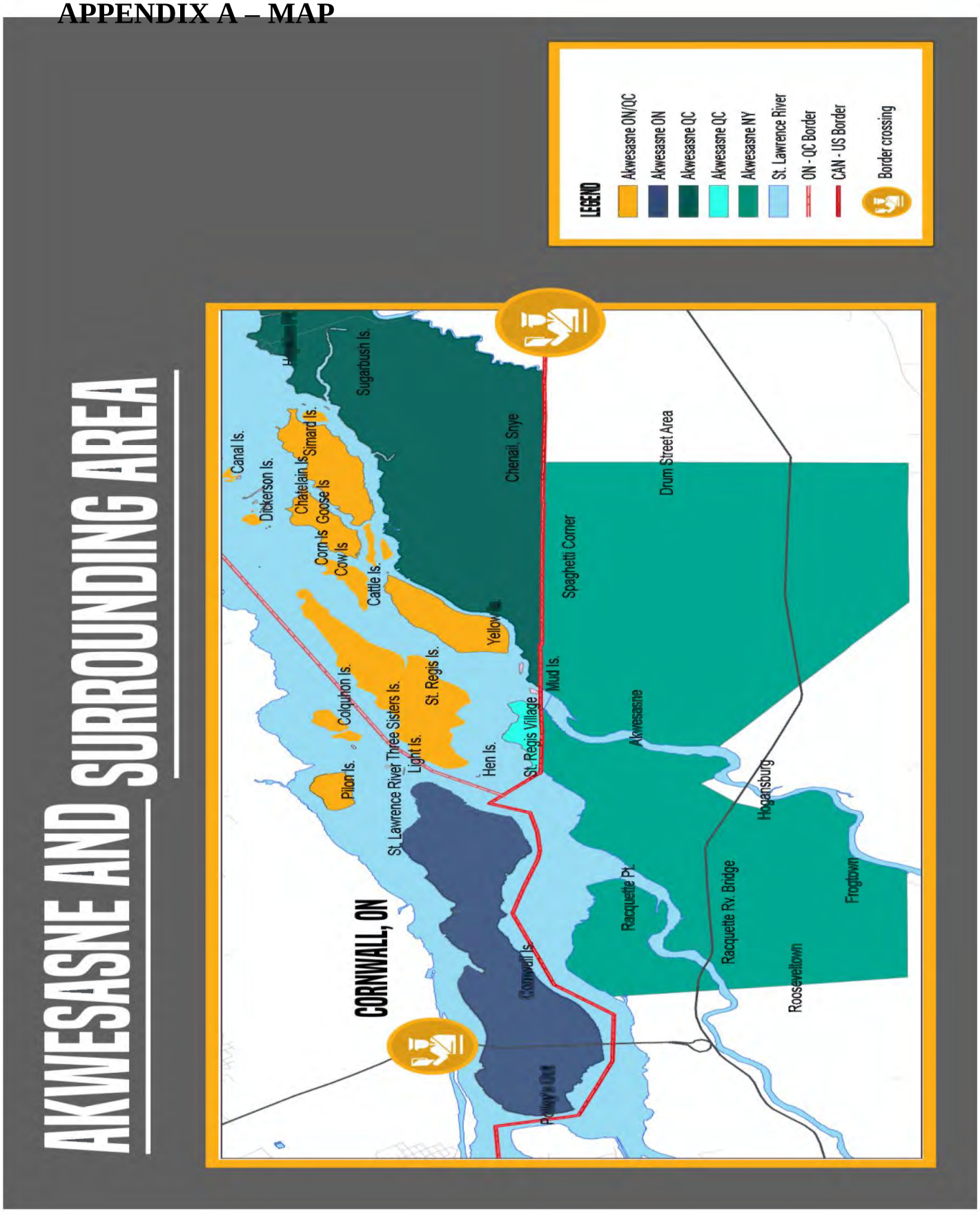
CONCLUSION AND RECOMMENDATION

The Committee acknowledges that the question of border crossings can be complex and that can involve many stakeholders and issues that go beyond the reporting requirements. Nonetheless, the Committee believes that measures must be implemented to facilitate legitimate travel for day-to-day activities by First Nations people. Further, the Committee believes based on its hearings that CBSA is focussed on maintaining the status quo, and therefore cannot reasonably be expected to initiate and lead discussions on potential solutions. For these reasons, the Committee recommends:

That by 31 December 2016, the Minister of Indigenous and Northern Affairs appoint a special representative to explore further solutions to address Canada-U.S. border crossing challenges faced by First Nations communities across Canada. Further solutions should satisfy the needs of First Nations community members and could include: secure identification cards, telephone and video reporting, and a review of admissibility requirements for Native Americans entering Canada. This special representative shall issue a report no later than 31 December 2017.

[20] Grand Chief Abram Benedict, Mohawk Council of Akwesasne, *Proceedings of the Standing Senate Committee on Aboriginal Peoples*, "Issue No. 2", 1st Session, 42nd Parliament, 17 February 2016

APPENDIX A – MAP



APPENDIX B – WITNESSES

February 17, 2016

Grand Chief Abram Benedict *(Mohawk Council of Akwesasne)*

Bill Erasmus, Regional Chief *(Assembly of First Nations)*

Claudia Ferland, Director General, Individual Affairs Branch, Resolution and Individual Affairs *(Indigenous and Northern Affairs Canada)*

Lisa Janes, Regional Director General, Northern Ontario Region *(Canada Border Services Agency)*

David Millette, Director General, Negotiations - Central, Treaties and Aboriginal Government *(Indigenous and Northern Affairs Canada)*

Rasennes Pembleton, Researcher, Aboriginal Rights and Research Office *(Mohawk Council of Akwesasne)*

James W Ransom, Director of Tehotiienawakon *(Mohawk Council of Akwesasne)*

Joe Wild, Senior Assistant Deputy Minister, Treaties and Aboriginal Government *(Indigenous and Northern Affairs Canada)*

Government of Canada Gouvernement du Canada

Report on First Nation border crossing issues

From: Fred Caron CD, QC, Minister's Special Representative

Submitted: August 31, 2017

The opinions and views set out in this independent report are those of Fred Caron, the Minister's Special Representative on border crossing issues. They are not necessarily the opinions or views of the Government of Canada.

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- Overview of mandate
- Part A: Purpose and engagement structure
  - Purpose of report
  - Approach to engagement with First Nations
  - Engagement with the Assembly of First Nations
- Part B: Approach and general observations
  - Approach to report

    - General observations
- Part C: Issues and potential solutions
    1. Lack of recognition of inherent rights
    2. Adverse impact on family and cultural connections
    3. Acceptability of identity documents at ports of entry
    4. Issues with treatment by CBSA officers
    5. Restrictions on trade and personal goods
    6. Location of Ports of Entry
    7. Akwesasne
- Part D: Process and next steps
- Annexes
    - Annex A: Summary of First Nation border crossing issues and potential solutions proposed by participants in the engagement sessions
    - Annex B: Engagement activities (January to August 2017)

Overview of mandate

In response to a recommendation from the Standing Senate Committee on Aboriginal Peoples, the Government of Canada made a commitment in November 2016 to gain a better understanding of the unique perspectives of First Nations in border communities and to explore possible solutions to the challenges that they face.

The government's commitment – made by the Minister of Indigenous and Northern Affairs, the Minister of Public Safety, and the Minister of Immigration, Citizenship and Refugees – came in response to the Standing Senate Committee's June 2016 report entitled Border Crossing Issues and the Jay Treaty (PDF only).

Appointed by the Minister of Indigenous and Northern Affairs in December 2016, my mandate as the Minister's Special Representative (MSR) on First Nation border crossing issues has been to engage with First Nations in border communities and with national First Nation organizations to:

- obtain a comprehensive picture of concerned First Nations' Canada-United States border crossing challenges
- hear about the impacts on their communities
- collect their views on potential solutions

I was given until June 1, 2017 to present the Minister with a fact-finding report on the outcome of my engagement activities with First Nations. To allow time and opportunity for additional engagement, the Minister extended the deadline for the presentation of my report to August 31, 2017.

As the government outlined in its response to the Standing Senate Committee in November 2016, my findings are to inform the work of an interdepartmental steering committee, comprised of senior officials from concerned federal departments who are responsible for developing a plan to arrive at potential solutions.

Part A: Purpose and engagement structure

Purpose of report

The purpose of this report, consistent with the mandate of the MSR described above, is to examine issues and challenges faced by First Nations in close proximity to the Canada-United States border with respect to their ability to cross that border for a variety of purposes including family and cultural connection, employment, education and trade.

Equally as important, the report lists potential solutions identified by First Nation representatives and which may be available to address these issues and challenges. Again, as per the mandate, it is meant to inform the work of senior government officials in constructing a plan to develop solutions.

All of this is based on views on issues, challenges and potential solutions expressed by First Nation representatives and individuals in engagement sessions listed in Annex B as well as in written submissions received during the course of my mandate.

In this respect I should emphasize that these views, which I have attempted to capture in Part C of this report, should not necessarily be attributed to other First Nations individuals, communities or organizations which did not participate in the engagement sessions.

I hope that I have captured the views expressed accurately, and I apologize to First Nations people that I have had the pleasure to meet with if I have not done so to their satisfaction.

In this regard, I take comfort in the fact that this report is not the last word on the subject, and that it does not foreclose the opportunity for additional input from First Nations as they work in partnership with government to develop the right solutions.

Approach to engagement with First Nations

Supporting me in my engagement activities with First Nations were officials from the national headquarters of Indigenous and Northern Affairs Canada (INAC). They worked closely with INAC regional offices and with regional First Nation organizations across the country to identify concerned First Nations and make arrangements to hold engagement sessions at which I could hear first-hand from First Nation representatives about their communities' border crossing concerns.

In organizational terms, there were a number of challenges presented by a relatively short timeframe and a number of concurrent engagement and consultation exercises underway on which First Nations' input was sought. With thanks to our First Nations partners, however, we were able to hold 20 engagement sessions on border crossing issues in eight provinces and territories across Canada, from New Brunswick to Yukon. We reached out to more than 300 First Nations and, in the end, I was able to meet in person with representatives from more than 100 First Nations as well as from more than a dozen regional and national First Nation organizations. In addition, I received a number of written submissions and communications from individuals as well as from First Nation organizations, outlining their experiences at the border as well as their views on potential solutions.

The complete list of First Nations and First Nation organizations with whom I met can be found in Annex B.

Engagement with the Assembly of First Nations

The Assembly of First Nations (AFN) has mandated a Chiefs' Committee on Border Crossing to examine these issues in order to contribute toward solutions. This committee is to report to the AFN Special Chiefs' Assembly in December 2017. The AFN has also mandated a Special Representative on Border Security and Border Crossing, former Akwesasne Grand Chief Mike Mitchell, to focus on the option of a secure border identity card which might be issued by First Nations to their membership.

With the aim of sharing information on both the MSR and AFN initiatives, I held a number of meetings with AFN representatives including the AFN Executive Committee, the AFN Chiefs' Committee on Border Crossing, and the AFN Special Representative. These meetings are also listed in Annex B.

Part B: Approach and general observations

Approach to report

It is imperative to recognize that the situation of First Nations with respect to border crossing issues is not uniform. There are very important distinctions based, among other things, on their unique histories, cultures, traditions, geographic locations, economies and demographics, as well as their relationships with governments based on treaties, alliances and other legal arrangements.

Having said this, I found, in my engagement sessions, that the issues and challenges identified by First Nations, as well as the solutions proposed, could be grouped under a series of themes which are set out in Part C.

I therefore concluded that examining these issues under these themes would be a more useful approach at this stage in supporting future work on solutions than would a verbatim report on the various engagement sessions. As work on solutions proceeds, however, the individual circumstances of First Nations referred to above will need to be taken into account.

General observations

The participation of First Nations in these engagement sessions reflected their depth of feeling about these issues as well as their desire to achieve solutions in the near term. It was obvious to me that the First Nation representatives that I met with had given serious thought to these matters based on years of experience, and came forward readily with what they considered to be viable solutions. In this respect, frustration was frequently expressed that these issues had been raised with government on many occasions over a number of decades without, in their view, much progress

having been realized. This led some participants in the engagement sessions to express concerns that this would be another report that would "sit on the shelf" without proper consideration by government and appropriate follow-up action, and hence increase, rather than reduce, current tensions. There is, therefore, an expectation on the part of First Nations that this most recent initiative of the federal government will result in meaningful progress in the short term, based on measures that First Nations will help design in partnership with government.

From the outset, the First Nations with whom I met wanted it known that they share the concern of government with respect to the protection of national security. They have the same objectives as the national government in ensuring that individuals who pose a threat to national security, or dangerous goods, do not enter their territories. They firmly believe that the types of measures that they are seeking to have put in place are fully compatible with national security objectives, and believe that increased cooperation between governments and First Nations on these border crossing issues will result in greater cooperation on national security issues.

Consistent with their different geographical, historical, cultural and other circumstances, the degree of interaction of First Nations with the Canada–US border varies across the country. It can range from situations like that of the Akwesasne First Nation, where the interaction is daily for a large percentage of their population, to the situation of First Nations who are a greater distance from the border, where that interaction may only average 2-3 times per year per individual. Not surprisingly, this degree of interaction appears to be directly related to proximity of the First Nation to the border and to the strength of family and cultural ties to US Tribes. It should also be borne in mind that there is a large and growing population of First Nations

people who now live in cities close to the border, which may afford them greater opportunities to cross the border for cultural and other purposes than if they had remained in their home First Nations communities.

In the discussions of many of the individual concerns set out in Part C below, there was a fairly common sentiment expressed by First Nations people I met with that First Nations' status was an advantage in entering the United States, but a disadvantage when re-entering Canada. Overall, the views expressed were that the border crossing experience was friendlier when entering the US and that, as a result of US recognition of the mobility provision of the Jay Treaty [1], First Nations people from Canada were not treated as immigrants for the purposes of work, school and some federal public benefits. This contrasts with the case of their Native American brothers and sisters who do not have registered Indian status in Canada and who are treated, for the purposes of admission to Canada and stays within the country, as foreign nationals (and therefore as immigrants) under Canadian immigration law. [2] Many of the First Nations people I met with consider their treatment by the US in this regard to be more consistent with their understanding of their inherent rights as First Nations.

Finally, I would note that the presence of regional Canada Border Service Agency (CBSA) supervisors at most of these sessions was helpful. They were able to provide answers to technical questions posed to them, but more importantly they were able to hear concerns directly from First Nations in a relaxed, collegial atmosphere rather than through disputes at a Port of Entry. In many cases, the sessions identified concrete follow-up actions for the CBSA to address with First Nations in attendance. I would strongly recommend that this type of informal outreach by the CBSA continue.

Part C: Issues and potential solutions

In this part of the report, I will attempt to set out the principal concerns which were raised with me during the engagement sessions, as well as the potential solutions which were proposed by First Nation representatives in each type of situation.

It must be recognized, as mentioned above, that the situation of First Nations across the country is not uniform, such that the issues and potential solutions listed represent a broad range of views and circumstances. The degree of concern respecting the issues identified and the viability of the solutions proposed may vary significantly from one First Nation to another. Nonetheless, it is my view that a consideration of these issues and solutions at a general level is a crucial first step toward an overall resolution.

While First Nations people are certainly not prohibited from crossing the border and re-entering Canada, their position is that the current array of federal laws, regulations and policies constitute a significant abrogation of their historic rights, and an obstacle to the survival of their unique cultures, the principal manifestations of which are as follows:

1. Lack of recognition of inherent rights

The fundamental belief of First Nations is that their rights with respect to circulation within the territory of North America, referred to by many as Turtle Island, derive from their inherent rights as nations which existed prior to the arrival of Europeans and the imposition of today's international borders. This, in their view, included rights to circulate for a variety of purposes including trade, cultural and subsistence directly related to the types of activities conducted for centuries prior to the assertion of sovereignty by non-Indigenous governments. It is this history that

distinguishes their rights respecting border crossing from those of non-Indigenous Canadians. First Nations therefore view the imposition of the Canada-US border, which in some cases literally divided their existing nations in two, as an unjustified and unlawful abridgement of their inherent rights which have a direct relation to their cultural survival.

The First Nations' characterization of these rights as inherent is at the root of their position respecting Canadian laws and policies relating to border crossing, with the understanding that inherent rights involve considerations of both domestic and international law.

While, for example, First Nations consider the relevant provisions of the Jay Treaty of 1794 [3], the United Nations Declaration on the Rights of Indigenous Peoples [4] and domestic treaties as an acknowledgement of these inherent rights, they do not see these instruments, which could be removed or repealed by non-Indigenous governments, as the source of their rights.

Thus, while there was a belief on the part of some of the First Nation representatives I met with that the current issues would not exist had Canada implemented the Jay Treaty, there was also a view that, in order to set the path forward, what is required is a mechanism to recognize inherent and Jay Treaty rights in a modern context. All who expressed themselves on the subject were of the view that recognition of these rights should be an integral part of the federal government's commitment to reconciliation and the recognition of a nation-to-nation relationship. Such recognition, in their view, would honour and respect their identity as North American Indians having long-standing historical relationships with Canada and the US based on historical alliances and treaties.

Potential solutions proposed

1.1 Ratification by Canada of the Jay Treaty

While it is not considered the source of their inherent rights, the Jay Treaty has nonetheless become a powerful symbol of the recognition of these rights for many First Nations. There is therefore a belief held by many that a Canadian recognition and implementation of the provisions of the Jay Treaty relating to First Nations will resolve most, if not all, of the issues explored in the following paragraphs.

1.2 Legislative or other framework for recognition of rights

While the importance of the Jay Treaty should not be overlooked, another solution proposed was that a legislative or other framework be developed which would serve a framework for the recognition of historic and inherent rights in a modern context. While this suggestion was not accompanied by a detailed proposal, my impression of the intent was that this proposed framework would set out a context through which government laws, regulations and policies respecting border crossing by First Nations would be measured. It was suggested in one of the engagement sessions that First Nations scholars who are well versed in historic treaties and alliances should be engaged in any efforts to develop such a framework.

2. Adverse impact on family and cultural connections

The imposition of the Canada-US border has been, in the eyes of First Nations, destructive of family, cultural, governance and other connections with US Tribes which are of great importance to their identity as well as to their cultural survival. In some cases (for example, the Mohawks of Akwesasne in Central Canada, the Passamaquoddy in New Brunswick, and the White River First Nation in Yukon), existing communities have been literally divided in two.

For other First Nations, the normal flow of family and cultural practices as well as of governmental and membership alliances has been disrupted by current immigration rules.

The most common instances cited were:

- The difficulties experienced with respect to Native American spouses who are not registered as Indians under the *Indian Act* and who wish to reside with their First Nation spouse in Canada. Whereas historic practices of First Nations recognized this right in accordance with their own membership rules, in the Canadian situation these individuals are treated under the immigration rules as foreign nationals without an automatic right of entry or residence in Canada.
- Native Americans having a criminal offence on their record may be refused entry to Canada even where the offence took place in the distant past and no re-offending has occurred.
- Situations of divorce or separation involving spouses or former spouses residing on different sides of the Canada-US border where family visits respecting children may become complicated for a variety of reasons, in particular, cases where the spouse is a Native American not having a legal right of entry into Canada.
- Medicine men and healers face challenges entering Canada based on the nature of the medicines in their possession, notably where they are unable to provide a scientific justification for the effectiveness of the medicine acceptable to the CBSA officer. Thus exchanges of medicines which have been used for many years may be blocked, as a result denying an ancient cultural practice. In other cases cited to me, medicine men from the US seeking admission to attend to individuals in Canada were questioned at the border to determine whether they were in possession of a permit in order to work in the country.

This is all further complicated by the sentiment expressed by many of the First Nations representatives, and referred to in section 4 below, that First Nations people as well as Native Americans are negatively profiled or singled out for questioning by CBSA officers at the border, such that the atmosphere at the Ports of Entry is an active discouragement for Native Americans to enter Canada and, in some cases, for First Nations members to cross into the US, knowing the issues that they could face upon their return.

Potential solutions proposed

2.1 Relaxation of Canadian restrictions on entry for those Native Americans having a criminal offence on their record

This would apply, in particular, where the offence is dated and there is minimal risk of re-offending. While provisions in the current *Immigration and Refugee Protection Act* (IRPA) permit a review of these situations, it was felt by many First Nations people I met with that this recourse is too cumbersome and leaves too much discretion in the hands of CBSA officers.

2.2 Amendment of Section 19 of the *Immigration and Refugee Protection Act*:

To permit anyone who is a member of a Canadian First Nation, or a member of a federally-recognized U.S. Tribe (which tribes would be set out in a schedule under the IRPA regulations), a right to enter and remain in Canada, identical to that of an Indian registered under the *Indian Act.*

2.3 Review of import restrictions as they relate to traditional medicines, and recognition of the not-for-profit nature of Indigenous healers practice

3. Acceptability of identity documents at ports of entry

There was a general feeling expressed at the engagement sessions that the types of documents currently accepted as proof of identity at ports of entry (for example, passports, Nexus cards, enhanced drivers licences) do not take into account the desire of individuals to identify primarily or exclusively as members of First Nations, of Treaty groups, as North American Indians or by another Indigenous identity. This preference was identified as an important aspect to cultural preservation.

With respect to the Certificates of Indian Status (CIS) issued by INAC (both the laminate card and the more recent Secure Certificate of Indian Status or SCIS), there was considerable dissatisfaction expressed about having to rely on these as proof of identity.

In the case of the SCIS, the primary concerns related to:

- the length of time involved in applying for and obtaining the card (in some cases cited to me, almost a year)
- the fact that communities could no longer produce these locally as they could with the laminate card
- the expiry (or renewal) date feature to the card

In addition, neither the CIS or SCIS has a machine readable zone which would permit speedier processing at Ports of Entry, as the current cards require CBSA officers to type in the information on the card. The frustration felt by both CBSA officers and First Nations people with the delays caused by the lack of a machine readable zone feature cannot be overstated, as it is a significant factor in wait times, which in turn increases the possibility of confrontation between CBSA officers and First Nations people.

In the case of the laminate CIS card, it was felt by many that this was increasingly questioned by border agents in both Canada and the US, possibly because it may appear easier to forge or otherwise falsify.

Potential solutions proposed

3.1 Creation of a separate page in the Canadian passport allowing primary identification of an individual to be that of a First Nations person, North American Indian, Treaty Indian, or other Indigenous identity

3.2 Creation of secure identity cards issued by First Nations for their members, compliant, for example, with the requirements of the US Western Hemisphere Travel Initiative for land border crossings

The model most often referred to is that of the Enhanced Tribal Card (ETC) which is currently issued by five US tribes pursuant to agreements with US Customs and Border Protection. [5] The objective would be for the acceptance of such cards as identity documents for land travel at both Canadian and US ports of entry. As mentioned above, the AFN has undertaken exploratory work in this area.

3.3 Improvement of service standards for the issuance of the SCIS to make the time delay equivalent to that for obtaining a passport

It was also highly recommended that the expiry date feature be removed, with some other process being put in place to update the information on the cards. In order to facilitate more efficient processing at ports of entry, it was recommended that a machine readable zone be added to the SCIS. This addition of an machine readable zone was also highly recommended by the CBSA officers who attended the engagement sessions.

4. Issues with treatment by CBSA officers

It was the opinion of most participants in the engagement sessions that, while not all treatment of First Nations people by CBSA officers is problematic, the following instances of what was considered inappropriate, or disrespectful treatment of First Nations people occur with a degree of frequency requiring them to be addressed at both a national and local level:

- Profiling: There was definitely a feeling among many that Indigenous peoples are singled out because of the colour of their skin, and hence subject to more questioning and searches than would apply in the case of a non-Indigenous person. The impression being left by such questioning and searches is that CBSA officers operate under the presumption that Indigenous people are more likely to be engaging in illegal activity than other people crossing the border. In addition, First Nations people of lighter skin colour report that some CBSA officers are skeptical when they present their Indian status card, questioning whether they are truly of First Nations heritage.
- Disrespectful, inappropriate or racist comments: There were also serious discussions regarding the appropriateness of some of the type of questions asked by CBSA officers at the border. Some participants asked whether there were guidelines governing the type of questions which officers are permitted to pose. Questions as to the individual's heritage in particular were thought to be inappropriate and disrespectful. Similar concerns were expressed over the treatment of elders and those who were not able to communicate effectively with the CBSA officer in either English or French. In some cases the alleged comments or questions attributed to CBSA officers were thought to be racist in nature.

- Improper handling or treatment of cultural or spiritual goods and medicines: Lack of knowledge and understanding by CBSA officers as to the proper handling of these types of goods in accordance with the relevant First Nation custom was identified as an important concern. This is particularly the case where searches of vehicles are conducted where the First Nation individual is not present while the search takes place. In the case of medicines, instances were mentioned where the medicine was not admitted when the individual was not able to explain its scientific healing properties to the satisfaction of the CBSA officer. In the view of the First Nations people with whom I met, this does not give proper accommodation to healing practices which have been successful over the course of centuries, practices that are rooted in First Nations' cultures and traditions.

Potential solutions proposed

4.1 Mandatory cultural awareness training for CBSA officers

The general feeling expressed at the engagement sessions was that many of the issues listed above were a result of a lack of training of CBSA officers in First Nations history, culture and rights. This contributed also to what was perceived as a lack of consistency in treatment by CBSA officers and a "luck of the draw" at the border as to whether an understanding CBSA officer was present. The overwhelming opinion of those attending the engagement sessions was that the mandatory training of CBSA officers in the history, culture, and rights of First Nations people should be instituted. In particular, it was thought that this training should be tailored around the First Nations in close proximity to the Port of Entry where the CBSA officer is posted and that these First Nations should participate in the design and implementation of the training.

4.2 Increased hiring of First Nations people as CBSA officers

While it would appear that both the CBSA and First Nations consider this to be a desirable objective, First Nations people expressed a concern that the CBSA culture is not friendly to increased hiring and retention of First Nations CBSA officers. It was therefore thought that CBSA and First Nations should explore methods of increasing First Nations presence in the ranks of the CBSA.

4.3 Creation of an independent complaints mechanism

There appears to be a significant lack of confidence in the existing CBSA complaints mechanism structure, which is managed internally by the agency. Some First Nations believe that using these mechanisms will result in retaliatory measures by the CBSA and that, in any event, they will not likely be treated fairly as the CBSA is the "judge and jury" on all complaints. It was therefore proposed that a complaints body independent of the CBSA be created in order to ensure impartiality and fairness.

4.4 Outreach, education, and use of existing tools to support increased cooperation

In the exchanges with CBSA officers which took place during the engagement sessions, it became apparent that further outreach by the agency into the surrounding First Nations communities would be beneficial not only to increase awareness of issues on both sides, but also to take advantage of preventive measures and existing tools to help prevent issues from arising during border crossings. Examples given were possible increased outreach by First Nations to the CBSA in advance of significant cultural gatherings in order to facilitate border crossings, and prior notice by individuals crossing into Canada as to the presence of cultural goods requiring special handling. Existing tools which were thought to be potentially helpful included memoranda of

understanding between the CBSA and First Nations (such as that between the CBSA and the Ktunaxa Nation Council in British Columbia [6]) and the appointment by the CBSA of community liaison officers.

4.5 Separate lanes for First Nations travellers at certain Ports of Entry

There are, in effect, two schools of thought on this option, which would involve designation of a separate traffic lane at certain land Ports of Entry where the volume of First Nations travellers is significant. The Blackfoot Confederacy in Alberta, for example, believes that implementation of this measure would both reduce time delays for their members as well as facilitate border crossing in that these Ports of entry would be staffed with CBSA officers who have received cultural awareness training. Certain other First Nation representatives were not inclined toward this option, fearing that it might increase the chances of negative profiling.

5. Restrictions on trade and personal goods

Again with reference to their historic practices, as well as the Jay Treaty, First Nations regard the imposition of customs duties on their personal use goods and items of historic trade as being inconsistent with their inherent rights.

First Nation representatives pointed to the regular traffic across the US border for purchases of personal use goods by First Nations communities where US stores are in closer proximity than those in Canada. They also noted historic trade practices involving both Indigenous and non-Indigenous communities. Proposed, for example, was a potential relaxation of import and export duties on items for trade as an opportunity to stimulate First Nation economies. In addition, First Nation representatives I

met with underlined how customs and importation rules interfered with cultural practices such as the exchange of game meat and fish for ceremonial purposes as well as the exchange of medicines.

As the announcement by the federal government of its intention to seek the inclusion of provisions respecting Indigenous peoples in a revised North American Free Trade Agreement (NAFTA) was not made until the vast majority of the engagement sessions were concluded, no discussion of this initiative took place.

Potential solutions proposed

5.1 Relaxation of import duty rules for personal use goods for communities in close proximity to the US border

A number of representatives of First Nations communities that are located in very close proximity to, or along, the Canada-US border spoke of a long history of purchase of goods for personal use at locations which are now on the US side of the border, both for economic reasons as well as for convenience of access to merchants. As a result, they advocate for a relaxation of customs and import duties for such personal use items. This could be done on a permanent basis, such as in the case of the remission order for Akwesasne residents first introduced in 1991, or on a semi-regular basis. In the case of certain First Nation communities in Southern Ontario, mention was made of a practice in years past of an annual "Border Day" where Canadian border services officers would allow duty free passage of First Nations travellers' purchases of personal use goods.

5.2 Greater recognition of First Nations' trading rights and consequent modification of import and export rules

Not much detail was provided on this possible solution, which would

likely differ from one First Nation to the next. It was, however, seen as a means of achieving the dual objectives of rights recognition and economic stimulation.

5.3 Review of import and export rules respecting goods used for cultural purposes including medicines

The views expressed by many participants in the engagement sessions were that general rules for importation of animal and fish products, plants, food, and herbs as well as medicines should be amended consistent with the cultural practices of First Nations. Once again, these practices may differ significantly among First Nations.

6. Location of Ports of Entry

In two cases, Akwesasne (discussed below in section 7) and the White River First Nation in Yukon, the location of the local Port of Entry was identified as a significant issue. In the case of White River, the location of the Port of Entry at a distance of 37 kilometres from the actual border line meant that members exercising traditional pursuits beyond the Port of Entry location but still within Canada have to cross through the Port of Entry at Beaver Creek, Yukon and be questioned, for example, on the possession of wild game and fish even though they have not left Canadian soil. In both cases, in addition to other solutions mentioned in the above paragraphs, First Nations recommended relocation of the Port of Entry.

7. Akwesasne

While many of the issues and solutions mentioned above are relevant to the situation of the Akwesasne First Nation, it is nonetheless my view that the community is worthy of special mention in this report. This is not to

downplay the concerns of other First Nations, but only to highlight the extraordinary nature of the border crossing issues faced by the community.

Akwesasne is the only First Nation where land travel from one part of their reserve territory in Canada to another requires travel into the US and, in the case of travel to that part of its territory located on Cornwall Island, travel to the CBSA Port of Entry in Cornwall before going to a destination on the Island.

This trajectory also requires passage through a toll booth, in some cases twice depending on the final destination of the individual. Whenever First Nations border crossing issues have been brought to the fore in the past, and most recently in the June 2016 report of the Standing Senate Committee on Aboriginal Peoples, Akwesasne has been front and centre with respect to illustrating the nature of the border crossing challenges faced by First Nations. This in itself demonstrates the pressing need for a solution.

The best way to illustrate the particular situation of Akwesasne is to compare it with that of non-Indigenous Canadians. For most non-Indigenous Canadians border crossing is infrequent. In the case of members of the Akwesasne First Nation, it could be five to six times per week. Non-Indigenous Canadians, for the most part, are not required to leave Canada to travel to another part of their home community for work, school or social events on a regular basis. They are also, for the most part, not required to pass through Ports of Entry and tolls should they wish to purchase food for supper. In the case of residents of the Snye and St. Regis districts of the Akwesasne reserve, however, grocery purchases can involve food inspections by US border agents.

Moreover, non-Indigenous Canadians are not faced with situations where tradesmen, repair technicians and delivery personnel may refuse to provide service based on a reluctance to pass through toll booths and Ports of Entry. A simple decision to take a child to a sporting event on another part of the Akwesasne reserve, for example, may require the parent or guardian to factor in the time necessary to cross through the toll booth and the Port of Entry, as well as ensuring that they bring with them the identification documents which may be required at the border crossing.

There are many more examples that could be given, but the above should serve to demonstrate that, while border crossings for most non-Indigenous Canadians may be a tolerable inconvenience, it is a daily factor of life for many Akwesasne members. There is therefore a cumulative frustration for Akwesasne residents which can and does increase the possibility of confrontational experiences at Ports of Entry.

Potential solutions proposed

As previously mentioned, many of the solutions discussed above are relevant to Akwesasne. In my meetings with the Mohawk Council of Akwesasne and members of the community, the following solutions would appear to be high on the list for immediate action:

- It goes without saying that the need for recognition of inherent and treaty rights is at the top of that list.
- As for some of the more operational solutions, there was a strong view that there is a pressing need to reduce wait times which are created by the need to pass through tolls and the local Port of Entry.

7.1 While there is support for a border identity card which could be issued by the Akwesasne First Nation, it is also believed that the creation of a machine readable zone on the Secure Certificate of Indian Status (SCIS), as at least an interim measure, could significantly reduce wait times.

7.2 Further, the creation of a CBSA remote reporting kiosk on Cornwall Island could significantly reduce Port of Entry and toll traffic.

7.3 Akwesasne members also believe that the elimination of the bridge toll booths would significantly reduce wait times and frustration. Given that approximately 70% of the traffic through these tolls consists of Akwesasne residents who are exempt from payment of the fees, they seriously question the necessity and utility of these tolls.

- Moreover, Akwesasne representatives suggest that the relocation of the Cornwall Port of Entry to the South Channel portion of the Seaway International Bridge on the US side should be considered (referenced under section 6).
    - Family and cultural considerations were also top of mind for Akwesasne members and the type of solutions discussed under section 2 above were endorsed by the Akwesasne representatives with whom I met.
    - While progress has been made in developing a positive relationship between the Akwesasne First Nation and the CBSA (for example, CBSA officers receive cultural awareness training developed in collaboration with the community, and a community liaison officer is in place), the community feels strongly that an independent claims mechanism should be created. The rationale for this is discussed in section 4 above.

7.4 Finally, Akwesasne points to the increased governance costs incurred as a result of the community being divided by the border as well as located in three sub-national jurisdictions (Quebec, Ontario and New York State). This may involve, for example, differing licence requirements for teachers, nurses and other professionals serving the community's population. In their view, such increased governance costs are not adequately covered by the current INAC band funding models. Akwesasne representatives therefore recommend the creation by INAC of an international community funding model to help address this situation.

Part D: Process and next steps

When I explained during the engagement sessions that this report would be submitted to senior government officials for consideration of next steps, the strong and unanimous view of people I met with was that First Nations would need to be involved in partnership with government in designing solutions to border crossing issues. Some suggested that First Nations should be represented on the committee of senior government officials responsible for developing a plan to arrive at solutions.

Although my mandate did not include examination of issues faced by First Nations when crossing into the US, these issues did come up in the engagement sessions. As a result, it was the view of many participants that a real solution to First Nation border crossing issues could only be achieved by a working partnership of the Canadian and US governments, First Nations and Native American Tribes working together to design a holistic approach.

All of the above is respectfully submitted in the hope that it will help achieve long awaited progress. In addition to once again thanking First Nations members who provided such valuable input, I would like to acknowledge the valuable support provided by Canadian government officials, in particular Marc Wills, Kevin Nixon and Julie Gaudreau-Cormier of INAC.

Annexes

Annex A: Summary of First Nation border crossing issues and potential solutions proposed by participants in the engagement sessions

Issue	Potential solution proposed
1. Lack of recognition of inherent rights	1.1 Ratification by Canada of the Jay Treaty 1.2 Legislative or other framework for the recognition of rights
2. Adverse impact on family and cultural connections	2.1 Relaxation of Canadian restrictions on entry for those Native Americans having a criminal offence on their record 2.2 Amendment of Section 19 of the *Immigration and Refugee Protection Act* (IRPA) 2.3 Review of import restrictions as they relate to traditional medicines, and recognition of the not-for-profit nature of Indigenous healers practice

Issue	Potential solution proposed
3. Acceptability of identity documents at Ports of Entry	3.1 Creation of a separate page in the Canadian passport allowing primary identification of an individual to be that of a First Nations person, North American Indian, Treaty Indian, or other Indigenous identity 3.2 Creation of secure identity cards issued by First Nations for their members, compliant, for example, with the requirements of the US Western Hemisphere Travel Initiative for land border crossings 3.3 Improvement of service standards for the issuance of the Secure Certificate of Indian Status (SCIS), to make the time delay equivalent to that for obtaining a passport
4. Issues with treatment by officers of the Canada Border Services Agency (CBSA)	4.1 Mandatory cultural awareness training for CBSA officers 4.2 Increased hiring of First Nations people as CBSA officers 4.3 Creation of an independent mechanism to review complaints regarding treatment by CBSA officers 4.4 Outreach, education, and use of existing tools to support increased cooperation 4.5 Separate lanes for First Nations travellers at certain Ports of Entry

Issue	Potential solution proposed
5. Restrictions on trade and personal goods	5.1 Relaxation of import duty rules for personal use goods for communities in close proximity to the US border 5.2 Greater recognition of First Nations trading rights and consequent modification of import and export rules 5.3 Review of import and export rules respecting goods used for cultural purposes including medicines
6. Location of Ports of Entry	6.1 Relocation of the CBSA Ports of Entry at Cornwall, Ontario, and Beaver Creek, Yukon
7. Akwesasne	Adoption of proposed solutions 1.1, 2.1, 2.2, 4.3 and 6.1 plus: 7.1 Introduction of a machine readable zone on the Secure Certificate of Indian Status (SCIS) 7.2 Creation of a CBSA remote reporting kiosk on Cornwall Island 7.3 Elimination of the toll booths on the Seaway International Bridge 7.4 Creation by Indigenous and Northern Affairs Canada (INAC) of an international First Nation community funding model

Annex B: Engagement activities (January to August 2017)

Engagement session	Meeting with representatives of	Also invited but unable to attend
January 17, 2017 Ottawa, ON	The Assembly of First Nations – Special Representative on Border Security and Border Crossing, Mike Mitchell	
January 25, 2017 Akwesasne	The Mohawk Council of Akwesasne	
February 22, 2017 Ottawa, ON	The Assembly of First Nations (AFN) Executive Committee	
April 19, 2017 Montreal, QC	The Assembly of the First Nations of Quebec and Labrador Listuguj First Nation Nation Huronne Wendat Odanak First Nation Mohawks of Kahnawake Mohawks of Kanesatake	Gesgapegiag First Nation Gespeg First Nation Wôlinak First Nation Viger First Nation
April 20, 2017 Kahnawake, QC	Mohawks of Kahnawake Mohawks of Akwesasne Mohawks of the Bay of Quinte Six Nations of the Grand River Oneida Nation of the Thames	Mohawks of Kanesatake Wahta Mohawk

Engagement session	Meeting with representatives of	Also invited but unable to attend
May 24, 2017 Kitselas First Nation, Terrace, BC	Kispiox First Nation Nisga'a Village of Laxgalt'sap Nisga'a Village of Gingolx Haisla First Nation Gitxaala Nation Lax-Kw'alaams First Nation Kitselas First Nation	All 201 British Columbia were invited to attend one of the three sessions held in the province on May 24-26, 2017.
May 25, 2017 Osoyoos First Nation, Oliver, BC	Whispering Pines/Clinton First Nation Little Shuswap Lake First Nation Adams Lake First Nation Tk'emlúps te Secwépemc (Kamloops) First Nation Okanagan First Nation Coldwater First Nation Westbank First Nation Penticton First Nation Osoyoos First Nation Lower Similkameen First Nation Okanagan Nation Alliance	All 201 British Columbia were invited to attend one of the three sessions held in the province on May 24-26, 2017.

Engagement session	Meeting with representatives of	Also invited but unable to attend
May 26, 2017 Musqueam First Nation, Vancouver, BC	Squamish Nation Tsawwassen First Nation Aitchelitz First Nation Sts'ailes First Nation Chawathil First Nation Spuzzum First Nation Boothroyd First Nation Lytton First Nation Cayoose Creek First Nation Ts'kw'aylaxw First Nation Hesquiaht First Nation Huu-ay-aht First Nation Ditidaht First Nation Pacheedaht First Nation Penelakut First Nation Halalt First Nation Cowichan First Nation ʔa'qam First Nation Neskonlith First Nation Nak'azdli Whut'en First Nation Takla Lake First Nation BC First Nations Health Authority	All 201 British Columbia were invited to attend one of the three sessions held in the province on May 24-26, 2017.

Engagement session	Meeting with representatives of	Also invited but unable to attend
May 30, 2017 Couchiching First Nation, Fort Frances, ON	Couchiching First Nation Anishinabe of Wauzhushk Onigum Lac La Croix First Nation Mitaanjigamiing First Nation Naicatchewenin First Nation Grand Council Treaty #3	Animakee Wa Zhing #27 Anishinabe of Naongashiing Big Grassy First Nation Buffalo Point First Nation Eagle Lake First Nation Grassy Narrows First Nation Iskatewizaagegan # 39 Lac Des Mille Lacs First Nation Lac Seul First Nation NigIgoonsiminikaaning North West Angle # 33 Obashkaadagaang Ochiichagwe'babigo'ining Ojibway of Onegaming Rainy River First Nation Seine River First Nation Shoal Lake # 40 Wabaseemoong Independent First Nation Wabauskang First Nation Wabigoon Lake Ojibway Nation

Engagement session	Meeting with representatives of	Also invited but unable to attend
June 6, 2017 Walpole Island First Nation, ON	Walpole Island First Nation Munsee-Delaware Nation Chippewas of the Thames Delaware Nation (Moravian of the Thames) Caldwell First Nation Chippewas of Kettle and Stony Point Mississaugas of the New Credit Aamjiwnaang	

Engagement session	Meeting with representatives of	Also invited but unable to attend
June 14, 2017 Regina, SK	Wood Mountain First Nation Pheasant Rump Nakota First Nation White Bear First Nation Ocean Man First Nation Nekaneet First Nation Carry the Kettle Nakoda First Nation Standing Buffalo First Nation Wahpeton Dakota Nation Pasqua First Nation Sakimay First Nations File Hills Qu'Appelle Tribal Council	Whitecap Dakota First Nation Mosquito, Grizzly Bear's Head, Lean Man First Nation Red Pheasant First Nation

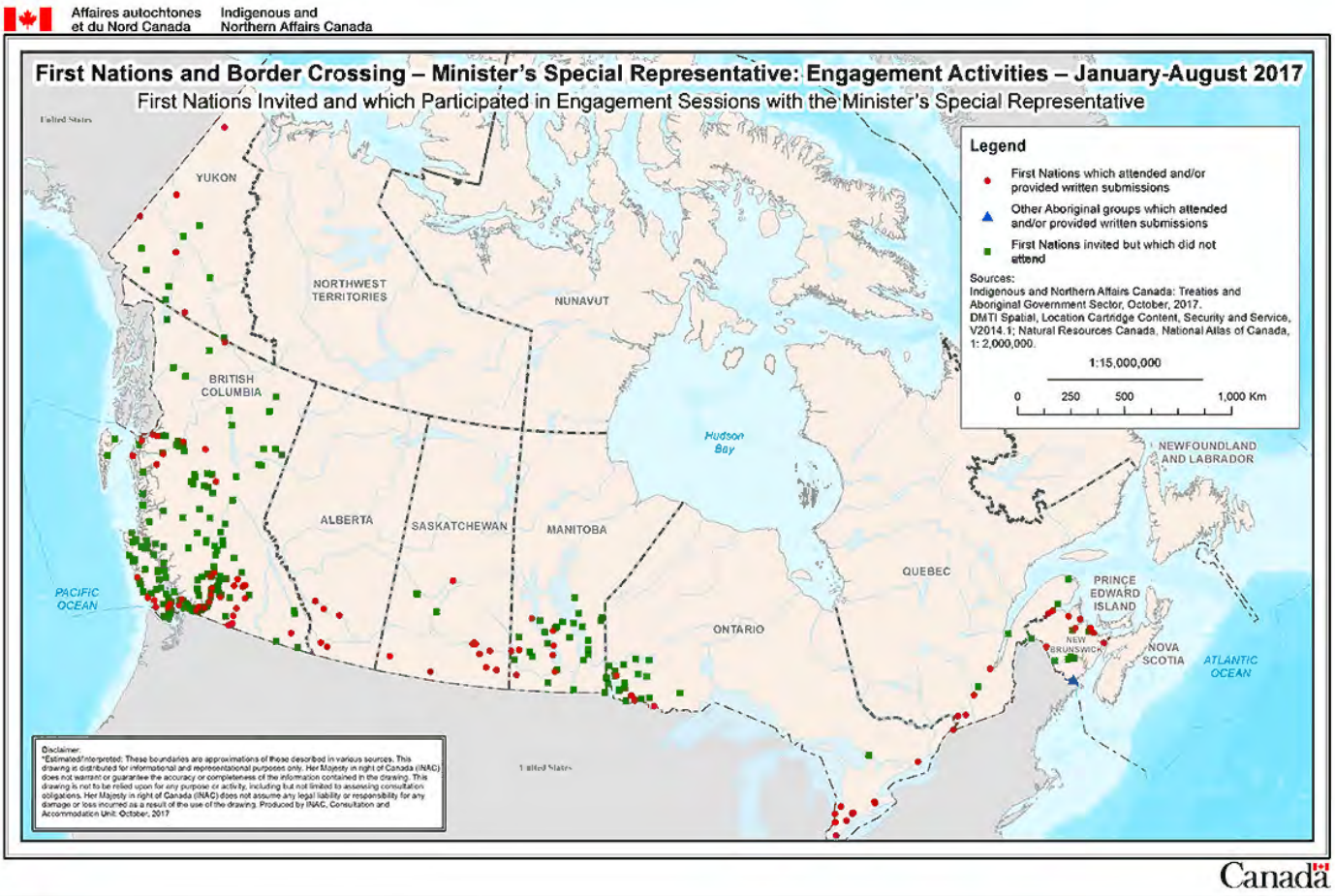
Engagement session	Meeting with representatives of	Also invited but unable to attend
June 15, 2017 Swan Lake First Nation, Headingley, MB	Canupawakpa First Nation Gambler First Nation Lake Manitoba First Nation Long Plain First Nation Pinaymootang First Nation Pine Creek First Nation Sandy Bay First Nation Waywayseecappo First Nation Southern Chiefs' Organization	Berens River First Nation Birdtail Sioux First Nation Black River First Nation Bloodvein First Nation Brokenhead First Nation Buffalo Point First Nation Dakota Tipi First Nation Dauphin River First Nation Ebb and Flow First Nation Hollow Water First Nation Keeseekoowenin First Nation Kinonjeoshtegon First Nation Lake St. Martin First Nation Little Grand Rapids First Nation Little Saskatchewan First Nation O-Chi-Chak-Ko-Sipi First Nation Pauingassi First Nation Peguis First Nation Poplar River First Nation Rolling River First Nation Roseau River First Nation Sagkeeng First Nation Skownan First Nation Swan Lake First Nation Tootinaowaziibeeng First Nation

Engagement session	Meeting with representatives of	Also invited but unable to attend
July 6, 2017 Niagara Falls, ON	Assembly of First Nations (AFN) Six Nations of the Grand River Mohawk Council of Akwesasne Batchewana First Nation Mohawks of Kahnawake Nation Huronne-Wendat Documentation Committee of the Grand Council of the Haudenosaunee Association of Iroquois and Allied Nations Seneca Nation of New York State United States Customs and Border Protection	

Engagement session	Meeting with representatives of	Also invited but unable to attend
July 10, 2017 Miramichi, NB	Eel River Bar First Nation Pabineau First Nation Eel Ground First Nation Esgenoôpetitj First Nation Indian Island First Nation Fort Folly First Nation Buctouche First Nation Mi'gmaw'el Tplu'tagnn Inc. (MTI) MAWIW Tribal Council	Metepenagiag Mi'kmaq Nation Elsipogtog First Nation
July 11, 2017 Fredericton, NB	Passamaquoddy Recognition Group	
July 11, 2017 Fredericton, NB	The Maliseet Nation in New Brunswick Tobique First Nation	Woodstock First Nation Kingsclear First Nation St. Mary's First Nation Madawaska First Nation Oromocto First Nation
July 17, 2017 Ohsweken, ON	Elected Council, Six Nations of the Grand River	

Engagement session	Meeting with representatives of	Also invited but unable to attend
July 26, 2017 Whitehorse, YT	Teslin Tlingit Council Little Salmon/Carmacks First Nation Tr'ondëk Hwëch'in First Nation White River First Nation Daylu Dena Council	Carcross/Tagish First Nations Champagne & Aishihik First Nations Selkirk First Nation Nacho Nyäk Dun First Nation Kluane First Nation Kwanlin Dün First Nation Ta'an Kwach'an Council Ross River Dena Council Liard River First Nation Dease River First Nation Taku River Tlingit First Nation Council of Yukon First Nations
August 14, 2017 Gatineau, QC	Haudenosaunee External Relations Committee	
August 16, 2017 Calgary, AB	The Stoney Nakoda/Tsuut'ina Tribal Council: Bearspaw First Nation Chiniki First Nation Wesley First Nation Tsuut'ina Nation	
August 16, 2017 Calgary, AB	The Blackfoot Confederacy: Blood Tribe - Kainai First Nation Piikani Nation Siksika Nation	

Engagement activities from January to August 2017: First Nations participation



▼ Description of the map of Engagement activities from January to August 2017: First Nations participation

Map of engagement activities by the Minister's Special Representative on First Nation border crossing issues between January and August 2017. Indicated on the map are First Nations which attended meetings or provided written submissions, other Indigenous groups which attended meetings or provided written submissions and First Nations invited to meetings but which did not attend.

- In the Yukon Territory, five 5 communities participated out of 17 invited.
- In British Columbia, 40 communities participated out of 203 invited.

- In Alberta, 7 communities participated.
- In Saskatchewan, 11 communities and organizations participated out of 14 invited.
- In Manitoba, 9 communities participated out of 34 invited.
- In Ontario, 21 communities and organizations participated out of 42 invited.
- In Quebec, 6 communities and organizations participated out of 10 invited.
- In New Brunswick, 12 communities and organizations participated out of 19 invited.

None of the communities are named on the map. More details about the locations of the meetings and the participants can be found in the text of the report at Annex B.

Footnotes

1 Under section 289 of the United States' *Immigration and Nationality Act*, "American Indians born in Canada" have a right to pass "the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race."

As the United States Embassy in Canada's website indicates, "Native Indians born in Canada are entitled to freely enter the United States for the purpose of employment, study, retirement, investing, and/or immigration." While United States immigration law requires that a person demonstrate that they "possess at least 50 per centum of blood of the American Indian race", the United States Embassy website indicates that the Certificate of Indian Status issued by INAC to Status Indians is accepted as evidence of meeting the prescribed criteria.

From the point of view of the United States government and First Nations, this provision in the United States' *Immigration and Nationality Act* honours the spirit of the *Treaty of Amity, Commerce, and Navigation* — or the Jay Treaty — concluded by the United States and Great Britain in 1794. Article III of the treaty provided Indigenous people ("Indians") with the same rights as American and British subjects with respect to free passage across the boundary between the United States and the British colonies that later became Canada.

2 Under Section 19 of the *Immigration and Refugee Protection Act* (IRPA), Canadian citizens, permanent residents of Canada and registered Indians, under the meaning of the *Indian Act*, have a right of entry to the country. All other travellers are treated, for the purposes of entry to Canada, as foreign nationals, subject to IRPA requirements relating to admissibility.

3 *The Treaty of Amity, Commerce and Navigation Between His Britannic Majesty and the United States of America*, was concluded by Great Britain and the United States in 1794 to settle outstanding issues dating from the end of the American War of Independence. The treaty is commonly known as the Jay Treaty, in reference to the name of the US negotiator, John Jay.

Article III of the treaty includes the following commitment that "It is agreed that it shall at all Times be free to His Majesty's Subjects, and to the Citizens of the United States, and also to the Indians dwelling on either side of the said Boundary Line freely to pass and repass by Land, or Inland Navigation, into the respective Territories and Countries of the Two Parties on the Continent of America (the Country within the Limits of the Hudson's Bay Company only excepted) and to navigate all the Lakes, Rivers, and waters thereof, and freely to carry on trade and commerce with each other." Consult the full text of Article III of the Jay Treaty.

4 Article 36 of the United Nations Declaration on the Rights of Indigenous Peoples pertains, in particular, to the situation of Indigenous peoples whose traditional lands are traversed by international borders:

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

5 The five tribes are: the Pascua Yaqui Tribe of Arizona; the Kootenai Tribe of Idaho; the Seneca Nation of New York State; the Hydaburg Cooperative of Alaska; and the Pokagon Band of Potawatomi Indians of Michigan. The issuing of the cards is subject to a number of security and production requirements agreed upon by the tribes with US Customs and Border Protection. Costs are borne by the tribes. An additional 18 federally-recognized US tribes are currently in discussions with US Customs and Border Protection concerning the potential to issue their own Enhanced Tribal Cards.

6 Among the questions addressed in the CBSA's memoranda of understanding with the Ktunaxa Nation Council are: the roles and perspectives of the parties; cultural awareness and training; ongoing communications between the parties; and dispute resolution. The memoranda of understanding also references: the dutiable status of gifts and other items being imported; the examination and questioning of First Nation individuals; advance notice of ceremonial events requiring cross-border travel; and cooperation concerning the targeting of contraband.

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Reflecting back and looking forward



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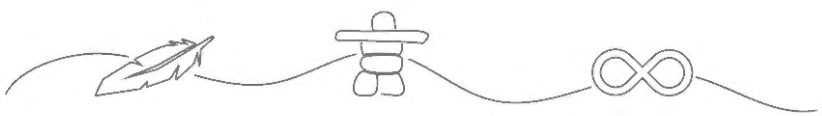
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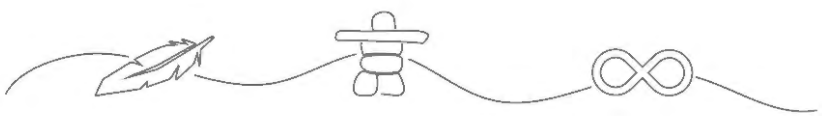


Acknowledgement

Immigration, Refugees, and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA) would like to thank First Nations, Inuit, and Métis Partners who took the time to share their stories, ideas, perspectives, and concerns related to Indigenous mobility into Canada, and look forward to continuing these important discussions and relationships as the work progresses. The openness and consideration provided in these many conversations has helped to further shape our understanding of the issues. IRCC and CBSA acknowledge the challenges faced in sharing information that, at times, was personal or sensitive. It is hoped that this report reflects the discussions to date, and demonstrates that what we heard was taken into account when considering new directions.

We also extend our thanks and gratitude to the Elders who welcomed us to their territories, and whose unique and vital knowledge has helped guide and support Indigenous and government partners along our journey to the understandings outlined in this report.

The following report has been developed as part of the process of consultation and cooperation carried out by IRCC and CBSA on a path to implementing *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) Action Plan Measure Shared Priority 52 (APM SP52). The report is a snapshot in time, capturing the comments and feedback received to date. It is intended to summarize what has been shared with the Government of Canada by Indigenous Partners on the issue, and to provide information on possible directions as we consider next steps in advancing this important priority. The report in no way precludes further discussion of the issue with Partners or development of additional ideas as work proceeds towards the objectives outlined within APM SP52.



Executive Summary

The introduction of international borders has had profound impacts on First Nations, Inuit, and Métis communities, with ripple effects across many aspects of their lives – families, governance, traditional practices, language preservation, kinship, cultural ties, and economic opportunities.

Concerns with respect to Indigenous mobility across Canada's international borders with the United States (U.S.) and Greenland, and the right to remain in Canada, have long been expressed by Indigenous partners. Discussions at varying levels have happened, including the work carried out by a Minister's Special Representative to publish a report on findings of many of these discussions in 2017. This work gained momentum with the Royal Assent of the *United Nation Declaration on the Rights of Indigenous Peoples Act (UNDA)* in 2021, and the subsequent release on the UNDA Action Plan in June 2023. This Plan provides a roadmap of actions Canada needs to take in partnership with Indigenous Peoples to implement the principles and rights set out in the UN Declaration and to further advance reconciliation in a tangible way.

Among the Plan's 181 measures, APM SP52 committed the Government of Canada to:pursuing legislative amendments to the *Immigration and Refugee Protection Act* (IRPA), amendments to relevant Regulations, and revisions to policies in order to address these complex border crossing and migration challenges faced by Indigenous peoples.

Acknowledging the work to come, IRCC and CBSA began developing a plan that would describe and guide the process of consultation and cooperation on APM SP52. Between July 2023 and February 2024, IRCC and CBSA carried out discussions with Indigenous partners across Canada with a view to advancing this Action Plan Measure. The process included a series of Roundtable meetings and bilateral discussions through existing mechanisms or as requested by interested parties.

This report marks the launch of the next phase of this work. It reflects back on the input provided by partners and participants, and looks forward to what potential new directions might be taken in amending the legislative right to enter and remain in Canada under the *Immigration and Refugee Protection Act (IRPA)*. It outlines the many, and often shared, comments and concerns of First Nations, Inuit, and Métis partners and participants related to barriers faced as a result of the international border, and presents ideas that have emerged for consideration and feedback with a view to working towards solutions.

In addition to this report, a website was created to provide background and additional context to support discussions: Consulting and cooperating with Indigenous Peoples on border mobility – Canada.ca. The site includes background information on Indigenous border mobility, how to participate in the discussions, and contact information to provide input or contact IRCC and CBSA.

Introduction

"My grandparents, my parents, myself, and my children have lived with the harm of the 49th parallel."

The introduction of colonial borders has seriously affected First Nations, Inuit and Métis living on their traditional territories. Legislation and policy related to borders and mobility rights have an important impact on:

- families
- governance
- traditional practices
- language preservation
- kinship
- cultural ties
- economic opportunities

This is especially true for those in communities near, or divided by, these borders, such as Akwesasne on the Ontario/Quebec/New York border, White River First Nation and Vuntut Gwitchin First Nation on the Yukon/Alaska border, and Métis communities at the Manitoba/North Dakota border. Indigenous peoples rely on the ability to move across the border for temporary visits, and occasionally longer term or more permanent stays, in order to maintain and build relationships within their families and communities. Indigenous voices have long called for the expansion of the legislative right to enter and remain in Canada.

Frequently, this issue is framed in relation to an inherent right to cross the border and the Jay Treaty of 1794. Signed by the U.S. and Great Britain, the Jay Treaty included a provision for free passage by First Nations Peoples and their personal goods across what is now the Canada-U.S. border. In 1965, the Supreme Court of Canada determined that the Jay Treaty is currently not in force in Canada. In June 2016, the Standing Senate Committee on Aboriginal Peoples issued a report entitled "Border Crossing Issues and the Jay Treaty" which looked at challenges with respect to Indigenous border crossing.

Acting on the Committee's report, in December 2016, the Minister of Indigenous and Northern Affairs appointed Fred Caron as a Minister's Special Representative (MSR) on First Nation border crossing issues with a mandate to:

- obtain a comprehensive picture of concerned First Nations' Canada-United States border crossing challenges
- hear about the impacts on their communities
- collect their views on potential solutions

The 2017 MSR Report on First Nation border crossing issues underscored the need to bring forth changes, prompting the Government of Canada in 2018 to commit to a "…longer-term process with concerned First Nations, Inuit and Métis communities to discuss potential solutions to a number of more complex border-crossing issues."

In 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) received Royal Assent for it to come into force, and Canada began a process of consultation and cooperation with Indigenous Peoples to develop an Action Plan that would be a roadmap of actions to take in partnership with Indigenous Peoples to implement the principles and rights set out in the UN Declaration, and to further advance reconciliation in a tangible way.

The UNDA Action Plan was launched in June 2023 and included Action Plan Measure Shared Priority 52:

> *"The Government of Canada will take the following actions in consultation and cooperation with Indigenous peoples:*
>
> *Pursue legislative amendments to the* Immigration and Refugee Protection Act*, amendments to relevant Regulations and revisions to policies in order to address complex border crossing and migration challenges faced by Indigenous peoples divided by Canada's international borders, including options to amend Canada's right of entry provision, and work and study permit requirements.*
>
> *Engagement with Indigenous peoples and their representative organizations to implement the action plan measure is being initiated in 2023, with a view to advancing amendments and policy reforms in 2024. In parallel, the Government of Canada will continue discussions with international partners on Indigenous border crossing issues.*
>
> *(Canada Border Services Agency; Immigration, Refugees and Citizenship Canada)"*

Challenge: Existing *IRPA* Legislative Framework

Together, IRCC and CBSA manage the legislative right to enter and remain in Canada, which is set out under *IRPA*:

- Canadian citizens, people registered under the *Indian Act* and permanent residents have **the right to enter and stay** in Canada
- people registered under the *Indian Act* are also exempt from needing a work and/or study permit (if they are not otherwise Canadian citizens or permanent residents)

> ***19(1)** Every Canadian citizen within the meaning of the* Citizenship Act *and every person registered as an Indian under the* Indian Act *has the right to enter and remain in Canada in accordance with this Act, and an officer shall allow the person to enter Canada if satisfied following an examination on their entry that the person is a citizen or registered Indian.*
>
> — Immigration and Refugee Protection Act

Currently, *IRPA* does not reference a specific right to enter and stay for "Aboriginal Peoples of Canada." For members of First Nations, Inuit and Métis in Canada, however, the right to enter and stay in Canada is based on the person being:

- a Canadian citizen, and/or
- registered under the *Indian Act*, or
- a permanent resident

IRPA currently views Indigenous Peoples outside Canada as "foreign nationals". For the purposes of entering and staying in Canada, this means that they do not have the status (rights, obligations, and privileges) afforded to an individual that falls into any one of the three above categories. Remaining in Canada for any length of time, particularly if an Indigenous person from outside Canada wishes to be in Canada for the purposes of work or studying, would require additional steps.

Objective: Consultation and Cooperation towards implementation of APM SP52

The process of consultation and cooperation towards realizing the objective outlined in APM SP52 has centered on better understanding the issues and exploring possible solutions to address barriers faced by communities at the border. The discussions focused heavily on the scope and way forward on the legislative right to enter and remain in Canada under *IRPA*, and an exploration of possible policy solutions to related issues.

To support this objective, and with a view to understanding the necessary actions to move forward, the IRCC and CBSA are taking into account several key considerations:

- ensuring due consideration for, and understanding of, Indigenous rights in Canada;
- demonstrating respect for the views, perspectives, and ideas we have heard;
- approaching new directions with consideration for what is implementable, without creating new challenges or hurdles to Indigenous Peoples;
- addressing issues in a way that creates clarity; and,
- providing flexibility to evolve.

To improve mobility across borders for Indigenous Peoples, IRCC and CBSA engaged in nation-to-nation, Inuit-Crown, and government-to-government discussions. Building on discussions prior to 2023, the process launched in a more formal way in Fall 2023, with a series of Regional Roundtables across Canada, which ran from October 2023 to February 2024, and the expansion of bilateral discussions with First Nations, Inuit, and Métis partners.

IRCC and CBSA held discussions with a number of Indigenous groups and collectives related to these issues. In particular, these bilateral, parallel discussions were ongoing through the Jay Treaty Border Alliance-Collaboration Initiative (JTBA-CI), the Haudenosaunee External Relations Committee Working Group (HERC Working Group), the Inuit-Crown Partnership Committee (ICPC), the Assembly of First Nations (AFN), the Manitoba Métis Federation (MMF) and the Métis National Council (MNC). IRCC and CBSA also met with a number of groups that requested one-on-one discussions. These regular discussion tables, and other discussions as the requests emerge, are ongoing and will continue along with the various stages of reaching the objectives of APM SP52.

Additional information on the process of consultation and cooperation, including further details on participation in discussions related to the Action Plan Measure can be found in *Annex A: Consultation and Cooperation on APM SP52*.

What We Heard

The following section highlights the key themes that emerged during these discussions. It includes consolidated feedback or ideas, as well as quotations to help illustrate the issues from the voices of those who raised them. While it is not a transcript of the discussions, it strives to capture the range of views expressed, and suggestions posed.

During the process of consultation and cooperation across the country, discussions were often organized into five topics in an attempt to gather input across a range of issues to be addressed through this process. In some cases, input received reflected things conveyed in earlier discussions, such as through the work of the Minister's Special Representative in 2017, while in other cases, we heard stories and ideas that further shaped our understanding of the issues.

For ease of review, the information has been grouped under these themes in this report. Please note that in some circumstances, feedback may be relevant across multiple themes. Any feedback received will be taken into consideration throughout this work, regardless of the category in which it is presented.

Discussion Topic: Right to Enter Canada

Currently three groups have a right of entry to Canada under *IRPA*: Persons registered under the *Indian Act*, Canadian citizens and permanent residents. This discussion sought views on which Indigenous Peoples outside Canada should have a right to enter and remain in Canada (i.e. federally recognized Tribes in the U.S., connections to Canada, proximity to Canada), and whether it is enough that *IRPA* refers to persons registered under the *Indian Act*, or if there should be additional or other references to Indigenous Peoples.

Many expressed strong support for a distinctions-based approach for mobility, noting that all distinctions (First Nations, Inuit, and Métis) should have the right, and that determination of identity/citizenship/membership should rest with the Indigenous government/organization/community. Overall there was strong support voiced for being able to cross the border into Canada more easily for temporary reasons such as family, ceremony, business needs, economic activities, and short term work, etc.. There were also calls for longer term stays such as living in Canada with family members and opportunities for work or study. Additionally, there was interest expressed in learning more about how the right of entry is determined at the border by an officer. The discussion was focused on land and marine Ports of Entry as there are additional requirements for air travel which are not being addressed at this point.

Through the discussion, examples were shared to demonstrate why the issue of border mobility should be addressed:

- It was stated that often family members are living in the U.S. This means frequent need to cross the border into Canada to visit family; for events and ceremonies (e.g. namings, funerals, dances, powwows, etc.); to access hunting & harvesting grounds; for work; etc.
- It was also noted that some communities are physically divided by the border. Specific mention was made of Sault Ste. Marie where there is a large Métis community who traditionally moved back and forth across the border at different times of the year (sugaring in early spring on Michigan side, harvesting in the fall on Ontario side).

More on what we heard regarding mobility for those *inside Canada*.

On recognition of all distinctions (First Nations, Inuit, and Métis):

- Many participants voiced support for a distinctions-based approach with respect to the language of s.19 (1) *IRPA*. Many participants wanted to ensure that the scope would include all Indigenous groups, and that consequently, Inuit, and Métis should also be explicitly referenced. However some felt that distinctions based approach could still result in some ambiguity.
- Some participants advocated for an inclusive approach to ensure *all* Indigenous Peoples are included in any conversation around right to enter.

"Basing a definition of Indigenous peoples on what's in the Indian Act *is not reconcilable with the spirit of the UN Declaration."*

"I'd like to see the separation of First Nations, Inuit, and Métis in the documentation. That identifies us as individual groups with individual needs and participation. If this is a language that will be taught to people at the borders, it's better they learn properly the first time."

"Not differentiating between First Nations, Inuit, and Métis in legislation is problematic."

"Who gets to define who's Indigenous? The government? [No, the people.] Once we answer that question, then we can talk about who gets to go back and forth."

On identity/citizenship/membership:

- Many participants expressed the view that, in line with self-determination, there should be a recognition of members of First Nations communities even if they do not have status under the *Indian Act*, although it was noted that communities are at varying stages of self-determination and some are still developing membership rules.
- It was further noted that the current wording of s.19 (1) does not reflect the reality that many Indigenous governments, including many with modern treaty of self-government agreements, determine their own citizenship and memberships by their own laws.

"We need to be able to work within our own lands, with our own people."

"We are tribes of people based on a land, based on a language."

"'Who is allowed into Canada?' is perhaps the wrong question. Rather, it should be: 'Who is allowed into our ancestral territories?'"

Other:

- Concerns were expressed that expansion of the right to enter could still unjustly exclude some individuals who do not have status due to adoption, enfranchisement, forcible relocations, etc.
- Participants added that although discussions were focused on land travel, the air travel border needs to be considered as well, especially for people in the North who have to fly.

More on what we heard regarding expanding the right to enter for those *outside Canada*.

On widening the scope:

- In multiple cases, participants raised the issue of "abbreviated identity", and community members being cut off from their broader kinship networks by the border. Inuit circumpolar identity was mentioned as well in this context.
- There was a concern that expanding right of entry only to U.S. states within close proximity to the border would be too limited. Many participants noted that there are significant populations and communities across the U.S. border that include their families and relations, and that these go beyond border adjacent states. Forced relocation of relatives to southern states was also mentioned. The idea of expanding to also include Mexico also surfaced given the familial ties and trading relations between some Indigenous communities.
- Many participants emphasized the enormity of the issues being discussed regarding which Indigenous Peoples in the U.S. or Greenland should be included in a widened scope of those having a right to enter Canada. Concerns were voiced with respect to speaking on behalf of peoples whom participants do not know and cannot represent; and on the prospect of Canada making pronouncements on which peoples it chooses to recognize/legitimize as Indigenous. It was suggested that U.S. tribes should be invited to the table. Questions around the difference between federally and State recognized tribes were raised.
- It was pointed out that a benefit of expanding entry to Tribes in the U.S. is the facilitation of emergency management, especially in the north or more remote areas (e.g. flood, evacuation, wildfire response). The issue of communities divided by the border was raised a number of times – one example is White River First Nation which falls on the Yukon/Alaska border and would benefit from calling in surge resources to help in emergency situations.
- It was noted that expanding right of entry to include members of federally recognized Tribes in the U.S. might not capture Indigenous peoples who may have lost status (enfranchisement) under the *Indian Act* in the past (e.g. due to military service) or adoption.

"The Nation-to-Nation relationship between American Reservations and First Nations communities needs to be recognized in all this in some way. We're not just Canada and America, we're Nations too."

"We are afraid to cross the border, and afraid to have our relatives come to see us."

"There are family on both sides of the border. They have ceremonies on either side. They frequently cross the border. It's a truly embedded cross-border community of Métis citizens."

"We are relearning how to be a family. Colonization has separated us from our responsibilities. It takes a village to raise a child. Back in the day, everybody had a role in parenting and raising children."

"Treaty People have a right to decide who comes to Canada."

Other:

- The issue of how to address mobility of Greenland Inuit was discussed with acknowledgement this may take additional time to develop solutions.
- There were some calls for Canada to implement the Jay Treaty (1794) and Treaty of Ghent (1814), however others expressed that Canada needs to recognize the principles of the Jay Treaty, not implement the Jay Treaty itself.

- Freedom of mobility was emphasized as a right that pre-existed colonies in North America and which extends to movement of people and goods. It was noted that although the Supreme Court decision on Desautel does not directly address mobility, it is inherent.
- Some participants suggested it might be worth considering stand-alone legislation with regard to border mobility.
- Concerns about the definition of who is Métis and the legitimacy of certain groups that declare themselves to be Métis was also raised.
- A view was expressed that, as First Nations are not immigrants, there is preference for a new legislation outside of the *Immigration and Refugee Protection Act*.

"I am not an immigrant, this is my homeland."

"There has to be recognition of that large non-status population that is currently excluded from everything in Canada."

Discussion Topic: The Right to Remain in Canada

Currently, under section 19(1) of *IRPA*, Canadian citizens and persons registered under the *Indian Act* have the right to enter and remain in Canada (i.e. cannot be refused entry or be removed from Canada). Persons without a right to remain can be found to be inadmissible, and may be removed (such as for criminal inadmissibility).

The consultation and cooperation discussions with First Nations, Inuit, Métis, including Modern Treaty Partners on the "right to remain" in Canada included the complex question of whether everyone (Indigenous) should be able to stay in Canada as long as they like, and what it means to have the right to remain in Canada (i.e. should this mean a right to work or study, should it grant access to services and, if yes, which ones?).

Many participants shared the view that, if people have the right to enter then they also have the right to remain, which includes accessing services provincially, territorially and, federally; however others thought the issue required more thought and exploration.

The need for a crosswalk between federal and provincial/territorial responsibilities was discussed, and it was stated that there is a need to look at the practicality of a wide range of issues including accessing health care, documentation like driver's licences, as well as the ability to work and study.

More on what we heard on right to remain in Canada.

On complexity of the issue:

- It was noted that questions around the right to remain are very complex and that the right to remain relates to deeper and foundational aspects of history, identity and culture.
- Some participants expressed that, given that the action of remaining in Canada is consistent with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), then these conversations, and the approach taken, must also relate to the implementation of UNDRIP.
- There were some who agreed generally with the principles in Jay Treaty (Indigenous peoples in U.S. should be able to live and work freely in Canada), but recognized challenges reconciling an operational "wish list" with the existing legal frameworks.

- In terms of any potential legislative amendments, participants felt that the law should remain flexible and evergreen in the sense that as Nations evolve and move toward self-governance, the law too should evolve.
- Participants strongly felt the terms “foreign nationals” and “immigration” should always be avoided when talking about Indigenous people and added that there should be policy-specific terminology for Indigenous people.

On a right to work and a right to access services:

- Many participants felt that all the services available to people on one side of the border should be afforded to those on the other side of the border. Some added that while visiting is the most important aspect of cross-border connection, the right to work and study on the Canadian side should also be included.
- Several participants also shared the view that the threshold for what services would be available should be no less than what is offered to asylum seekers.
- Some participants suggested that there may be a distinction in access requirements or conditions between a community member and a kinship group or broader cultural group. They expressed that, in the former instance, there may be interest in allowing members the same access as a Canadian citizen; however there could be conditions placed on those who are not as closely associated with the organization.
- It was suggested that, if an American Tribal Member has a child/children with Indian status under the *Indian Act*, then they should have the right to come work and support their kids; otherwise, the border continues to fragment families.
- Participants expressed a general recognition of the practicality of having access to Canadian services such as health care and ability to get a driver’s licence. It was noted that there should be special considerations for remote communities, where there are no alternative places to receive those services.
- Concerns were also raised however, around the potential financial burden of service delivery as falling on the Nations themselves, many of whom do not have the capacity to support their own current members/citizens.

“Anyone recognized as Indigenous right across Turtle Island should be able to enter, work, study.”

“Is it also a concern that folks without adequate healthcare in the U.S. will come into Canada to access healthcare?”

“For me, Entry to Canada is different. It’s one thing to come visit and drive with an American licence, but living here and needing health care is another question. Is there a companion document where someone would include whether they intended to stay in the country?”

Other:

During the discussions, some asked if the right to remain could include dual citizenship of U.S. and Canada.

Admissibility issues due to criminality.

Canada has specific requirements for who can and cannot enter Canada but, only in certain cases for the type of identification they require. At the border, the Canada Border Services Agency (CBSA) determines the admissibility of individuals by asking questions, verifying identification and checking systems for possible flags concerning previous examinations or criminality.

Views expressed at the discussions regarding criminal inadmissibility focussed primarily on the right to enter Canada if someone has a criminal record. The issue, however, also touches on the right to remain in Canada as, currently, under section 19(1) of *IRPA*, Canadian citizens and persons registered under the *Indian Act* have the right to enter and remain in Canada regardless of any history of criminality (i.e. cannot be refused entry or be removed from Canada), while permanent residents can lose their status (and be removed) if inadmissible.

More on what we heard on admissibility/inadmissibility.

On a right to remain and community safety*:*

- Many participants felt that all Indigenous people should be able to enter or remain in Canada and not be removed for any reason (i.e. no barrier to enter or remain if a person has a criminal record or commits an offence in Canada).
- It was also stated that it is the Community that should be responsible for community safety and for any process for exclusion orders.
- Some concerns were noted about expanding right of entry to Tribes in the U.S. including those who have committed a criminal offence, but also noted that traditional practices like banishment and removing people from tribal membership lists in the U.S. are a means to mitigate this concern.

> *"First Nations – we were the original border security on Turtle Island."*

On additional considerations:

- Many participants expressed support for a tiered treatment – based on severity of offence, timeframe, any pardons, etc. Participants expressed that there should be some classification of admissibility prohibitions (major vs minor).
- Participants noted some concerns about individuals who may have committed a serious criminal act, but there was also acknowledgement that people make mistakes, and a person should not be denied access for that.
- Participants expressed some concerns around security – e.g. would members who had been banished from their home community be able to cross the border and enter a sister community?
- One group discussed criminal admissibility and concluded that while they did not want Canada setting admissibility checks, they did want Canada's assistance to enforce banishment laws within First Nations.
- Some shared that there is a need to balance mobility with concerns of community safety – specifically with respect to human trafficking.
- It was noted that, while crossing the borders without documentation/passport should be a right (not a privilege), consideration must be given to also protect women, children and 2S+ community.

Other:

- Participants expressed a general need to keep Indigenous communities in Canada safe.
- The view was expressed that any changes should not allow Canada to increase criminality concerns at the border.
- Some participants shared the view that consideration should be given to people with records owing to criminalized activities that communities may in fact support, such as political activism, or the exercise of Aboriginal rights, including economic rights. One participant gave the example of transport and sale of tobacco, referencing the recent Quebec Superior Court decision in *R v White and Montour*. It was stated that protest should not be a cause for removal.

Discussion Topic: Documentation

Currently, *IRPA* does not have specific document requirements for persons with a right of entry. *IRPA* states that "*Every Canadian citizen within the meaning of the Citizenship Act and every person registered as an Indian under the Indian Act has the right to enter and remain in Canada in accordance with this Act, and* ***an officer shall allow the person to enter Canada if satisfied following an examination on their entry that the person is a citizen or registered Indian***."

In this part of the discussion, participants shared views on what an individual could show to a Border Services Officer to facilitate assessment of whether the individual has a right to enter Canada. Some examples discussed were Treaty and/or First Nations citizenship/membership cards, U.S. Tribal cards and enhanced Tribal cards.

Generally, participants agreed that there is a need for documentation that can be used to support mobility, with the emphasis on Indigenous government-issued documents, and ensuring the Indigenous government-issued documents are recognized. There was recognition that border officers need to have sufficient information to facilitate the entry process. There was also a suggestion for a separate Indigenous passport, either for all Indigenous Peoples in Canada, or the entire Turtle Island. Overall, there was general support for making things simpler, requiring fewer pieces of identification, and having more clarity and consistency as to which documents would be accepted at the borders.

More on what we heard about documentation requirements.

On Indigenous government-issued documents:

- Participants underlined the fact that not many Indigenous government-issued documentation options exist. Many also felt that existing Indigenous documentation should be more widely recognized at borders. They wondered if it might be possible to update and modify that documentation to ensure its validity.
- It was also noted that an option of consistent, secure cards would require federal government support for capacity building and technology.
- There was a recommendation to provide lists of citizenship/enrollment at both points of entry, so that if a person is on that list, they can cross.

> *"I'd prefer it be one of our own organizations providing documentation, rather than the Canadian government."*

"Community documents are community responsibility, and need to be issued first, to support National documentation…I don't think we can require the Federal government to do that work for us. Nothing for us, without us."

"If people take over their own membership, through self-government agreements, they should have the right to decide what kind of documentation they will issue and what they will need."

"On that topic, I don't want to be 'Indian.' My status card says I'm Indian. I'm not Indian, I'm Mi'kmaq. It should say registered Mi'kmaq."

On barriers to accessing documents, or use of existing documents:

- Many participants, but particularly youth, shared that some particular issues relate to the upfront cost, access to travel documents, and risks this can create in homes, communities and societies at large. Others noted the cost of passports is a barrier to many First Nations people, and access to services (including passport photo services or issuance of birth certificates) may not be readily available.
- Participants expressed many frustrations with the Secure Certificate of Indian Status (SCIS) cards in general, and being required to use documentation controlled by Canada that purports to determine their Indigeneity. Expiry dates on the cards create confusion, both for card holders and at the border as status does not expire.
- There was discussion of the practicality of the documents at the border. It was noted that the less Canada Border Services Agency officers have to input/write, the better. One participant explained that "*Border Guards don't like us using our status cards, because they have to type in all the information for each traveler."* Another participant noted that they are being refused at some Border Crossings (e.g. Sault Ste. Marie) on the basis of potential fraud.
- It was noted that certain communities face additional hurdles in obtaining passports and other secure documentation. One participant explained that due to errors and inconsistencies in how names were spelled in government records, many Inuit have great difficulty in obtaining birth certificates and other documents that are required for issuing passports.
- It was noted that many people are choosing to use Indigenous names, instead of their English names, and that traditional names are beginning to be accepted on documents.

"We have our own citizenship cards, but do they hold merit? If not, what do we need to do to bring it up to code, so that citizens aren't feeling that anxiety when crossing to and from?"

"I like the idea of having a card we can use, instead of a passport. But that might come with some requirements to provide more information."

"I'd like to see the separation of Inuit, Métis, and First Nation in the documentation. That identifies us as individual groups with individual needs and participation."

On exploring the idea of a Nexus-type card/lane:

- There were some calls for Canada and the U.S. to create a Nexus-type card for Indigenous Peoples or other models for prioritization (e.g., Trusted Traveler program). Some participants felt that, in the short-term, status cards issued under the *Indian Act*, including Certificate of Indian Status (CIS) or SCIS cards could be used, but longer term there should be a Nexus-type card developed.
- There was recognition that the quality of documentation could vary and the need for Indigenous governments/organizations to do the necessary ground work to support efforts towards developing a document that could be issued for the purpose of Indigenous border mobility (similar to Nexus).

"We should be exploring First Nations Nexus cards, or something similar, with our own line at Customs."

"Major issue is the onerous background checks, etc. Many people may not want to sign up for an invasive process to get an Indigenous Nexus card... But since the infrastructure exists, perhaps the policy around it could be significantly loosened and tweaked."

Other:

- Some noted that different approaches and a phased approach to implementation may also be required.
- Some felt that for those who are non-status or off-reserve but members of representative organizations, options to use other types of documentation, like those issued by Provincial or Territorial Organizations (PTOs), should be explored.
- The issue of balancing mobility and safety concerns around human trafficking was raised: *"We are in the golden triangle for trafficking women and children. While crossing the borders without documentation/ passport is a right (that shouldn't be a privilege), we also need to consider what we want and expect at our borders, in order to protect our women, children and 2S+ community."*
- There was some discussion about U.S. models and how they might work in Canada – e.g. the U.S. has a list of acceptable documents, including letters issued by U.S. Tribes.
- Participants expressed a desire for "border fluidity", for example needing a passport to travel to events such as the Arctic Games.
- Some participants wondered if there could be a document that First Nations people could use for air travel as well.

"A dream would be to have a North American Indigenous Passport, so we could go anywhere on Turtle Island."

"If we're visiting family and participating in games among our relatives [e.g. Arctic Games], we shouldn't have to go through the colonial process of having a passport to go back and forth."

Discussion Topic: Accompanying Issues

There are a number of accompanying issues that impact the border crossing experience for Indigenous Peoples. Building on commitments made in December 2018 and further addressed later in this report, these issues include training on culture and history for Border Services Officers, the movement of sacred and ceremonial cultural items and medicines, trade, and technology-based solutions. The Canada Border Services Agency sought feedback on these issues through breakout sessions and a question and answer platform.

A recurring theme is the need for enhanced cultural awareness training and culturally safe implementation of policies and procedures at the border, including the movement of sacred goods, and improving and easing trade. The need to remove barriers to cultural trade was highlighted across the country. Participants across regions underscored the inconsistency and unpredictability of how they are treated when they are crossing the border. They expressed frustration with the wide discretion of Border Services Officers, whose treatment of travelers may vary.

More on what we heard.

On training for Border Services Officers*:*

- Some participants noted that cultural awareness training needs to involve local First Nations, Inuit, and Métis from beginning to end, while others felt that it should not be the job of Indigenous People to educate Border Services Officers. Examples of community-developed educational materials and community-led cultural training were noted at most sessions.
- There were suggestions for Canada and U.S. to be better aligned on cultural competency training for border officers; not just distinctions-based training, but training on regional customs as well, underscoring the need for the U.S. Customs and Border Patrol to be included in these conversations.
- It was noted that Border Services Officers should have connections with Indigenous communities located close to the respective Points of Entry so that Border Services Officers could reach out to communities with questions. There was also the suggestion that the front line needs to be staffed with more Indigenous employees.
- Some participants raised specific training needs including training on how to interact with Elders as they face a lot of racial discrimination at the border, training to recognize what human trafficking looks like, as well as training in addressing 2SLGBTQI+ when they are crossing the border.
- There was a desire expressed to be able to notify Border Services Officers of ceremonies and events to decrease challenges of crossing the border. This includes working with local communities when larger events are being planned to ease the border crossing experience.
- There was a call to put together a one-pager on Métis travel rights, along with further clarification regarding pre-travel preparation.
- Participants across regions underscored the inconsistency and unpredictability of how they are treated at the border, including being subjected to different levels of scrutiny, and different views on what documentation is accepted. They expressed frustration with the wide discretion of Border Services Officers.

"Border Services Officer discretion is a concern. There needs to be a consistent understanding of what documentation can be used, that is agreed upon by all, and information needs to be accessible online."

"If increasing security means adding more border officers, will they also be trained properly? Will additional security measures lead to additional problems for Indigenous folks crossing?"

On barriers of bringing sacred and ceremonial cultural items and medicines across the border:

- Participants placed an emphasis on the need for Border Services Officers to have training on cultural and ceremonial items, and we heard of the importance of ensuring Indigenous Peoples are not criminalized for importing cultural and ceremonial items.
- Participants across the Regional Roundtables stressed that their priority is facilitating their members' ability to cross the border with medicines and harvested goods for food, economic, spiritual and other cultural uses without the fear of confiscation.
- The handling of cultural and ceremonial items was cited as a main priority for many participants, and additionally that Border Services Officers need to understand the diversity amongst Indigenous Nations as each Nation has different cultural and ceremonial items. Some examples of this issue included bringing fish across the border to restore populations or gift as food, as well items such as moose and caribou, and that Pow Wow vendors often face complications crossing borders with their items for events.
- With regard to sacred, ceremonial and cultural items, participants stressed the indignity of having two colonial states place restrictions on Métis rights to practice their culture, especially in a post-*Daniels* context.

"It's not just about respecting the items, but also respectfully communicating."

"It would be very valuable if we could sit down with border guards and educate them on our ceremonial items – with feathers, regalia, medicines and other cultural items."

"We have members living on the other side of the border who can receive fish and other traditional foods, but we often run into difficulties in transporting these items."

On trade:

- Trade was considered a critical priority for participants across all sessions. Many saw this issue as indivisible from the movement of people, and expressed their disapproval that APM SP52 is primarily focused on the latter. Along with the need to consider trade and commerce along with the right of entry, many cited that the right of entry needs to include duty and tax-free provisions for Indigenous Peoples.
- Trade and duty/tariff-free sale and transport of goods, within one's own homeland, or throughout Turtle Island, was flagged repeatedly as a major priority throughout the sessions.
- It was felt that there needs to be a mechanism to return goods; some businesses require this, but there are always issues at the border.
- It was stressed that the Canada Border Services Agency needs to recognize and facilitate Nation-to-Nation trade. Further, participants underlined the central significance of trade and the movement of cultural goods to Indigenous identity and cultural well-being.

"Economic impacts of the border are real."

"We have many holdings in many American institutions we need to reclaim. But there are so many laws to doing that – it can take decades to go through all the paperwork and bring them back."

"Charging people duties and taxes at point of entry is a violation of the Jay Treaty. If Canada is going to recognize UNDRIP and implement it, that necessarily means also recognizing and honouring the existing treaties, including the Jay Treaty…Being taxed and charged duties carrying out our daily business, including livelihood, is a violation. It's important that this come from us and be written down and sent back exactly as we said it."

On interest in having further discussions on technology-based solutions to facilitate travel across Canada's international borders.

- There was a general desire to hear more about what technological solutions the CBSA plans to implement. Some participants expressed interest in the prospect that these could make things easier for Indigenous travelers.
- Others flagged potential concerns including ensuring that people don't get left behind.
- Many do not have reliable access to internet connectivity and some may not read or speak English or French as it is not their primary language.

Other:

- Suggestion for Indigenous-specific lanes – Border Services Officers that are stationed there should be particularly knowledgeable regarding local communities, cultural safety and cross-cultural awareness.
- Many first-hand and second-hand accounts were shared of Border Services Officers subjecting travelers to unacceptable questioning, search and seizure.
- The border also creates barriers with regards to Nation elections. Nation members may not be able to vote due to discomfort crossing the border.
- Many expressed the priority of getting Indigenous women, girls and Two-Spirited people who are victims of human trafficking home.
- There was a lot of interest regarding repatriation. Participants were interested in knowing the best way to reach out to the CBSA on this.

"One issue we often deal with is the challenge of bringing dead back from the US. There are certain timelines and burial rites you must adhere to, it's often very challenging."

"We have many band members on the other side of the border. Family members need to cross when a death occurs in the family. The deceased sometimes need to be moved across too."

Discussion Topic: Putting Changes in Place

The CBSA seeks to put changes in place that improve the border crossing experience for Indigenous Peoples. Through the Regional Roundtables, the CBSA shared information about the Indigenous Affairs Secretariat and the role of CBSA Regional Indigenous Advisors, and asked participants how services could be delivered and the best way to engage regarding the programs, policies and laws the Canada Border Services Agency implements.

Though there was strong support for the capacity that it offers to the CBSA, a recurring theme throughout the Regional Roundtables was that participants were not aware of the Indigenous Affairs Secretariat nor the services that are being offered.

More on what we heard.

On CBSA's work on border mobility:

- There is a need for greater outreach and cooperation with Indigenous Nations to raise awareness of the CBSA's work on border mobility and for Indigenous Peoples' awareness on how to seek support for border crossing concerns.
- Canada Border Services Agency's Border Services regional staff need to have a dialogue with Indigenous Nations, not just individual communities, as there is no one-size-fits-all approach to resolving border crossing challenges.
- One individual expressed that the work of Indigenous Affairs Secretariat would be better carried out as a stand-alone organization, rather than a secretariat within CBSA and the federal government.

"Whenever I've had to work with Canadian government agencies, it's impossible to set up meetings and effectively communicate with people."

"If we're taking this work seriously, you have to get out of the government and form your own organization."

On need to better understand the process of what happens at the border:

- Participants requested outreach to urban Indigenous communities in city centres and student centres at universities to spread the word about the Indigenous Affairs Secretariat and Regional Indigenous Affairs Advisors.
- Suggestion for CBSA to create brochures outlining what programs and services they offer, as well as communications and contact information, so that travelers can find answers to specific questions in advance of arriving at the border.
- There is an interest in learning more about the training and technologies currently in place in order to have a better understanding of the current process.

"I think it's IRCC and CBSA's job to better promote the services they offer. But what could we [as communities] be doing to help promote that too?"

Turning information into Action: Potential New Directions

"We don't want to leave a mess for the next generation. I'm a great-grandmother, things should be different for the little train that goes behind me."

Now is a pivotal time in this process for you to provide your input on some of the concrete suggestions for change that were put forward during discussions with Indigenous partners and participants. Decisions have not yet been made on any of the ideas below, and this does not mark the end of discussions on these issues. Based on what we heard, the ideas and directions that follow represent a range of possible directions that could help realize APM SP52 – toward expanding the right to enter and remain in Canada under the *Immigration and Refugee Protection Act* (*IRPA*).

As we consider these possible directions, it is important to recognize that the complexity of making some of these changes may take some time. As you review the possible solutions below, we request your feedback, both on the ideas themselves, and the following questions:

- What ideas do you think should be prioritized, and why?
- Are there changes that should be made immediately?
- Are there changes that could take time?

Scope: How do we define Indigenous peoples of Canada in IRPA?

- Change legislation to refer to First Nations, Inuit, and Métis (in addition to reference to people registered under the *Indian Act*).
- Amend the legislation to include a recognition of Modern Treaties and Self-Government agreements, as they have authority to define their members/citizens/beneficiaries, including individuals who may reside outside of Canada.
- Expand the legislative right to enter and remain in Canada to non-citizen and non-resident Aboriginal Peoples of Canada.
- Ensure that legislation and policies provide that Canadian Inuit have a statutory right and documentation to enter Canada as Inuit.
- Ensure legislation is expanded in a way that is inclusive of all Indigenous Peoples in Canada, regardless of distinction, and considers those who are non-status and off-reserve.

Scope outside Canada: Who should be included in the right to enter and remain in Canada?

- Expand the right to enter and remain in Canada initially to federally recognized Tribes in the U.S. that are located in states adjacent to the Canada-U.S. border, as they are most likely impacted by border mobility issues.
- Expand the right to enter and remain in Canada to all members of federally recognized Tribes in the U.S., acknowledging the impact of forced relocation on communities that may have historical and cultural connections to communities and land inside Canada (but are currently located away from Canada-U.S. border) as well as families impacted by the border with members of Tribes in the U.S. located away from the Canada-U.S. border.
- Ensure legislation makes direct reference to "Indigenous Nations with whom the Crown has treaty relations" as peoples entitled to the rights to enter, reside, work, study, and receive services in Canada.

- Explore changes to legislation to enable Greenland Inuit to enter, work, study, and reside in Canada, recognizing the challenges this presents.
- Amend *IRPA* to establish a new Indigenous Peoples permanent residency class. The new permanent residency class would enable Alaska and Greenland Inuit to apply for permanent residency on the basis of their status as Indigenous peoples.

Considerations: How do we make these changes in legislation?

- Amend the current *IRPA*.
- Develop new stand-alone legislation outside of *IRPA* to address Indigenous border mobility.
- Ensure flexibility to add additional Indigenous populations in the future.

Documentation: What could you show to provide greater clarity and consistency at the border?

- Develop documentation regulations to ensure that Indigenous people with right to enter Canada have certainty with respect to documents presented at Ports of Entry, enabling the ability to consistently and conveniently exercise these rights.

Right to remain in Canada: Should there be restrictions?

- Eliminate admissibility requirements for Indigenous peoples with an expanded right to enter and remain.
- Retain admissibility requirements for most serious offences and to ensure territorial security for both Indigenous peoples and Canada.

Implementation

Following the immediate work towards a legislative amendment for entry of people, consultation and cooperation will continue as increased attention will be placed on the work to implement any forthcoming legislative changes. As CBSA holds the responsibility for managing and enforcing more than 100 Acts of Parliament regarding Canada's international borders, the Agency will be responsible for implementation of any amendments to the legislation, regulations and policies resulting from consultation and cooperation on APM SP52. Through a phased approach, the implementation process will be longer and ongoing, aiming to continuously address challenges faced by Indigenous Peoples crossing Canada's international borders.

Future discussions with Indigenous partners and work on implementation will be led by the Indigenous Affairs Secretariat within CBSA. The Indigenous Affairs Secretariat was established in 2018 with a specific objective of addressing border crossing issues for Indigenous Peoples, including facilitation of Indigenous travellers and their sacred goods. In terms of moving forward, implementation will aim to address concerns and recommendations that Indigenous partners have raised thus far and ongoing, which can potentially include, but is not limited to:

- guiding documents and training for Border Services Officers specific to the communities they serve, in proximity to their given ports of entry;
- public education of identification requirements, and what can be expected while interacting with a Border Services Officer during the border crossing process;
- creation of new programs to facilitate strong relationships between Canada Border Services Agency and the Indigenous Peoples it serves;
- modernization of infrastructure and processes at ports of entry, including new technology;
- creation of new programs and policies to facilitate more positive and expeditious border crossing experiences for Indigenous Peoples;

- support from Regional Indigenous Affairs Advisors;
- internal working groups to help coordinate efforts between implicated branches and other federal departments; and,
- increased collaboration with counterparts in the United States.

Next Steps

At this time, we are requesting your feedback on the content of this report. In particular we welcome your views on the ideas outlined in the potential new directions section. To ensure that your views are captured for the legislative amendment stage of this work, **we encourage you to provide feedback no later than April 22, 2024**. Information received after that time will be taken into account in future stages of this work.

In order to provide your feedback, we encourage you to reach out to IRCC and CBSA through the following email addresses:

IRCC: IRCC.IndigenousMobility-MobiliteAutochtone.IRCC@cic.gc.ca

CBSA: CBSA.Indigenous_Affairs_Secretariat-Secretariat_aux_affaires_autochtones.ASFC@cbsa-asfc.gc.ca

A sincere thank you to everyone who joined IRCC and CBSA in these important discussions. We clearly heard your expectation to have your views reflected in this report and we understand your expectations on action. We acknowledge that some of these discussions reflected the position of an individual not an organization, and we were encouraged as well to hear from many organizations and communities. We heard you on the important principle of “Nothing about us, without us” and this continues to shape our approach on this work going forward.

Annex A – Consultation and Cooperation Plan

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) both affirms the Declaration as a universal international human rights instrument with application in Canadian law, and provides a framework for the Government of Canada's implementation of the Declaration. UNDA includes a statutory obligation under s.5 which states:

> *"The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration."*

Under s.6, the UNDA Action Plan was also developed in consultation and cooperation with Indigenous peoples and released on June 21, 2023.

In order to action the commitment under Action Plan Measure SP52, IRCC and CBSA developed a plan to guide "consultation and cooperation" with Indigenous Peoples. There were three phases of the consultation and cooperation plan:

Phase 1 – Getting the word out in Spring/Summer 2023. This phase included the finalization of the UNDA Action Plan measure SP52 in June 2023 and sharing messaging from the Prime Minister and U.S. White House signaling commitment to improving Indigenous border mobility.

Phase 2 – Deeper Discussions Summer/Fall/Winter 2023 – Winter 2024. Discussions took place through Regional Roundtables across Canada, Permanent bilateral mechanisms, existing working groups and collaborative initiatives, Nation to Nation meetings and online submissions.

Phase 3 – Reflecting Back Winter 2024. The publishing of this public report will provide an opportunity to reflect on what was heard and to continue discussions with Indigenous partners on potential legislative directions and improving border mobility.

As part of the Consultation and Cooperation Plan, IRCC and CBSA engaged in nation-to nation, Inuit-Crown, and government-to-government discussions about border mobility. These discussions included, but were not limited to:

1. scope of Indigenous people who may be facilitated by an expanded right to enter and remain;
2. status in Canada and associated abilities (work/study etc.);
3. identity documentation that could be used at Ports of Entry to show that an individual has a right of entry as an Indigenous person; and,
4. issues related to implementation, including issues that accompany having a right to remain in Canada and border crossing experience of Indigenous travellers (including matters related to the importation of cultural items and the facilitation of Indigenous trade).

This process of consultation and cooperation respects that Indigenous border crossing issues affect First Nations, Inuit, and Métis differently. It also takes into consideration that Indigenous border crossing issues affect non-status and urban Indigenous Peoples, Indigenous Peoples outside Canada, as well as diverse groups (i.e. women, 2SLGBTQI+ youth, elders, persons with disabilities).

IRCC and CBSA worked with other federal departments (CIRNA, Indigenous Services (ISC) and Global Affairs Canada (GAC)) and with Indigenous Partners to leverage existing forums to sharing information with Indigenous partners about the Government of Canada's commitments on Indigenous border crossing issues.

This included the **Jay Treaty Border Alliance-Collaboration Initiative (JTBA-CI)**, a joint process established between the JTBA and Government of Canada to "convene in partnership to address unique First Nations border crossing issues related to the mobility of First Nations and their goods." This Initiative is separate from, but parallel to, the government's UNDA process. Discussions were also held with the **Inuit-Crown Partnership Committee**, established for the purpose of facilitating a whole-of-government approach to complex issues impacting Inuit; and the **Haudenosaunee External Relations Committee Working Group**, established to address matters arising from the creation and operation of the Canada-U.S. border.

In addition, between October 2023 to February 2024, IRCC and CBSA held nine in-person Regional Roundtables (across five provinces and one territory) and three virtual Roundtables. The Regional Roundtables were not the sole opportunity for Indigenous partners to consult and cooperate with the Government of Canada on these issues.

The Roundtables were attended by **First Nations** participants, many of whom have expressed interest in border mobility with IRCC and CBSA through bilateral channels or through the process of developing APM SP52. All First Nations in each region were invited to the Roundtables. All **Modern Treaty Partners** were invited both to the Roundtables in their respective regions, and to the Modern Treaty Partner Roundtable, except those represented by Inuit Treaty organisations who are being consulted through the ICPC sub working group on Inuit mobility.

The **Métis National Council (MNC)** participated in a Roundtable including MNC representation and its governing members. Separate discussions were also held with the **Manitoba Métis Federation (MMF)**.

There was an in-person regional Roundtable for **Indigenous women, 2SLGBTQI+ and youth**, as well as a virtual Roundtable focused on **youth**.

A virtual Roundtable was held with the **Congress of Aboriginal Peoples** and their provincial/territorial affiliates.

Following the series of roundtables, an additional roundtable discussion was held with Indigenous and non-Indigenous academics and lawyers with knowledge and experience with Indigenous border crossing issues. This discussion was convened to bring new perspectives to the ideas and technical issues surrounding possible legislative amendments.

Where interest was raised, further discussions were held with Nations, Indigenous representative organizations, or groups in addition to the processes or discussions noted above.

IRCC also created a website to support the Roundtables: Consulting and cooperating with Indigenous Peoples on border mobility – Canada.ca. The site includes background information on Indigenous border mobility and how to participate in the discussions, and contact information to provide input or contact IRCC and CBSA.

The release of this report also invites partners (and all readers) to review the report and provide direct feedback to IRCC and CBSA.

Roundtable Participation

Invitation lists for the roundtables with First Nations and Modern Treaty Partners were developed based on the lists maintained by CIRNA and ISC such as the First Nations Profiles found on the CIRNA website. Contact information was reviewed and verified, and all efforts were made to communicate the invitation through email and by phone. For the additional non-distinctions based roundtables, such as the one with Indigenous women, 2SLGBTQI+ and youth, and the virtual youth roundtable, efforts were made to identify contacts and to raise awareness of these events through discussions with Indigenous partners. On the distinctions based roundtables with the Métis National Council and its Governing Members and the Congress of Aboriginal Peoples, they provided the invitation lists for their membership to be included in the discussions. In lieu of roundtables, both Inuit Tapiriit Kanatami, along with the Inuit Treaty Organizations in Canada, and the Manitoba Métis Federation chose to work through bilateral mechanisms with the Government of Canada.

The chart below provides an overview of the participation in the roundtable discussions, as well as a list of those Indigenous partners engaged through other mechanisms.

	# of Organizations	# of Indigenous Participants
Atlantic Regional Roundtable October 17, 2023 – Fredericton NB	6	13
Quebec Regional Roundtable November 21, 2024 – Quebec City	4	8
Ontario Regional Roundtable November 28, 2023 – Ottawa ON	10	14
Women, Youth, and 2SLGBTQ+ Roundtable November 29, 2023 – Ottawa ON	7	9
Prairies Regional Roundtable January 10, 2024 – Saskatoon SK	9	25
Métis National Council Roundtable January 11, 2024 – Saskatoon SK	6	22
Western Arctic Regional Roundtable January 16, 2024 – Whitehorse YK	8	11
British Columbia Regional Roundtable January 23, 2024 – Vancouver BC	27	42
Modern Treaty Partner Roundtable January 24, 2024 – Vancouver BC	11	20

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	# of Organizations	# of Indigenous Participants
First Nations Roundtable (National) January 29, 2024 – virtual	38	48
Youth Roundtable January 30, 2024 – virtual	5	6
Congress of Aboriginal Peoples Roundtable February 14, 2024 – virtual	10	15

Those engaged through other bilateral mechanisms:

- Arctic Council Advisory Committee
- Assembly of First Nations
- Congress of Aboriginal Peoples
- Gwich'in Council International
- Haudenosaunee External Relations Committee
- Inuit Tapiriit Kanatami and Inuit Treaty Organizations, via the Inuit-Crown Partnership Committee
- Jay Treaty Border Alliance (separate but parallel)
- Manitoba Métis Federation – National Government of the Red River Métis
- Métis National Council and Governing Members
- National Indigenous Economic Development Board
- Sinixt/Colville Confederated Tribes

Annex B – Terminology

Action Plan: In keeping with the *UN Declaration Act*, the Government of Canada worked in consultation and cooperation with Indigenous peoples to identify the measures necessary to ensure federal laws are consistent with the UN Declaration, and to co-develop an action plan to achieve the objectives of the UN Declaration. In December 2021, Justice Canada launched a two-phased broad, inclusive and distinctions-based consultation and cooperation process with Indigenous peoples to advance the implementation of the *UN Declaration Act*. On June 21, 2023, the UNDA Action Plan, was tabled in Parliament.

Action Plan Measures: The Action Plan includes 181 important Action Plan Measures that: reflect priorities and proposals identified by First Nations, Inuit and Métis; contribute to achieving the objectives of the UN Declaration; and align with specific topics covered by the *UN Declaration Act*.

Criminally Inadmissible: This term describes people who are not allowed to enter or stay in Canada because they have committed or been convicted of a crime. That crime may have occurred in or outside Canada.

Enfranchisement: Prior to the Bill C-31 amendments in 1985, enfranchisement resulted in an individual no longer being considered an Indian under federal government legislation. Indians who were enfranchised were removed from their band lists before September 4, 1951, or lost Indian status if enfranchised after September 4, 1951. When an individual was no longer considered an Indian, the individual lost all associated benefits that resulted from being on a band list (pre-1951) or a status Indian (post-1951). It also meant all their descendants were not considered Indian and could not obtain any related benefits.

Jay Treaty: *The Treaty of Amity, Commerce and Navigation Between His Britannic Majesty and the United States of America*, was concluded by Great Britain and the United States in 1794 to settle outstanding issues dating from the end of the American War of Independence. The treaty is commonly known as the Jay Treaty, in reference to the name of the US negotiator, John Jay. Article III of the treaty includes the following commitment that "It is agreed that it shall at all Times be free to His Majesty's Subjects, and to the Citizens of the United States, and also to the Indians dwelling on either side of the said Boundary Line freely to pass and repass by Land, or Inland Navigation, into the respective Territories and Countries of the Two Parties on the Continent of America (the Country within the Limits of the Hudson's Bay Company only excepted) and to navigate all the Lakes, Rivers, and waters thereof, and freely to carry on trade and commerce with each other."

Non-citizen and Non-resident Aboriginal Peoples of Canada: In *R. v. Desautel* (2021), the SCC declared that people who are not Canadian citizens, and who do not reside in Canada, can exercise an Aboriginal right that is protected under section 35 of the Canadian Constitution.

Modern Treaty Partners: Indigenous peoples who entered into Modern Treaties ("Indigenous Modern Treaty Partners") defined some or all of their Aboriginal rights as treaty rights which, by their very nature, are legally distinct and were painstakingly negotiated and agreed to by both Canada and the Indigenous people in question. Indigenous Modern Treaty Partners are therefore a distinct element within the distinctions-based approach that includes First Nations, Inuit, and Métis peoples, as recognized within Canada's Collaborative Modern Treaty Implementation Policy.

Regional Indigenous Affairs Advisors: Develop, builds and fosters positive relationships with local Indigenous communities to promote interrelationships and mutual understanding while supporting CBSA legislation. They assist and participate in a variety of outreach activities with the Indigenous communities. They also assist Indigenous communities to enhance their understanding of CBSA, and promote the recruitment of Indigenous people. Further, they provide assistance and guidance to CBSA staff in how to address issues with the Indigenous communities while also assisting at Ports of Entry to ensure the admissibility of persons and goods and that policy and procedures are applied in a culturally appropriate manner.

Right to Enter and Remain: Under the *Immigration and Refugee Protection Act,* persons registered under the *Indian Act;* Canadian citizens; and, permanent residents have a right to enter and remain in Canada. Officers must allow a person to enter Canada if the officer is satisfied, following an examination on the person's entry, that the individual is registered under the *Indian Act,* a Canadian citizen or a permanent resident.

Study Permit: Foreign nationals are required to obtain a study permit (unless exempted) for engaging in academic, professional, vocational or other education or training that is more than 6 months in duration at a designated learning institution in Canada. Persons registered under the *Indian Act* are exempt from requiring a study permit.

UNDA: In 2016, the Government of Canada endorsed the UN Declaration without qualification and committed to its full and effective implementation. On June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (*UN Declaration Act*) received Royal Assent and immediately came into force. It creates a lasting framework to advance the implementation of the UN Declaration at the federal level.

Work Permit: A work permit or authorization to work without a permit is required in order for a foreign national to be allowed to work in Canada. Persons who are registered under the *Indian Act* are exempt from requiring a work permit.

KING GEORGE GOT DIARRHEA: THE YUKON-ALASKA BOUNDARY SURVEY, BILL RUPE, AND THE SCOTTIE CREEK DINEH

Norman Alexander Easton
Yukon College, Box 2799, 500 College Drive, Whitehorse, Yukon Territory, Canada Y1A 5K4; northeaston@gmail.com

ABSTRACT

The imposition of the international boundary along the 141st meridian of longitude between Yukon and Alaska has separated the aboriginal Dineh of the region into two separate nation-states. This division holds serious implications for the continuity of identity and social relations between Native people across this border. This paper examines the history of the establishment of this border along its southern margin through the Scottie Creek valley, comparing the written record of the state surveyors with the oral history of the Scottie Creek Dineh. I argue that the evidence supports the notion that the Dineh of Scottie Creek, like elsewhere in the Yukon and Alaska, were both aware of and resistant to the implications of the boundary and refused to cede their rights to continued use and occupancy of both sides of the border. Concurrent with this history is that of William Rupe, the unacknowledged first trader in the Upper Tanana River basin, and his role in mediating the negotiations between government surveyors and Dineh leaders. Despite the difficulties imposed by the border, Natives of the region continue to formulate a strong identity as Dineh, holding and practicing distinctive values and social relations that collectively are known as the Dineh Way.

Keywords: Upper Tanana, aboriginal-state relations, 141st meridian, Yukon-Alaska history

PRELUDE

It is July 1997. I am atop Mount Dave, Yukon, just east of the international border with Alaska. About fifty residents of the region, mostly Dineh, have gathered here to witness the marriage between Rickie John and his Cree bride from Saskatchewan, whom he met while attending school outside. They stand beneath a willow bower specially constructed under the direction of Rickie's mother, Bessie John. The Beaver Creek justice of the peace goes through his state-dictated role to formalize the marriage and then Bessie and her sisters launch into their own Dineh ritual of approval in their Upper Tanana Athapaskan language. Everyone cheers at the end and we break up into smaller conversational groups. I walk aside with Joseph Tommy Johnny, with whom I have been living off and on for the past two years in his borderlands cabin, and Teddy Northway, his close friend, older cousin, hunting partner, and mentor in the Dineh Way. We pause overlooking the Scottie Creek valley laid out below us in the sunshine to the northwest (see Fig. 1). They ask and I share cigarettes with them. We smoke. They point out to me Ts'oogot Cho Niik—their name for Scottie Creek[1]—the mountain beyond known as Tets'eniikąyy, the village at its base called

1 Place and personal names transcribed in Athapaskan language follow the orthography for Upper Tanana established by the Yukon Native Language Centre, Whitehorse. They include tonal indicators and represent utterances within the Scottie Creek dialect of the Upper Tanana Athapaskan language. Both John Ritter and James Kari have assisted in the collection, transcription, and translation of these words, though any errors (and there may well be) are my responsibility alone.



Figure 1. View from Mount Dave to the west, overlooking the lower Scottie Creek Valley.

Tayh Chìį, the point to the north called Tthee tsaa k'eèt, and the borderline vista that bifurcates the valley, crossing the Alaska Highway at the United States Customs station, which itself lies atop the old village of Ts'oogot Gaay. Teddy starts to hum a tune and on the second refrain begins to softly sing some words, which are taken up in unison by Tommy. They repeat it twice and then stop, laughing. "You know that one?" Teddy asks me. I have heard it before: Tommy has sung it quietly on the trail as we walked to Tayh Chìį earlier in the summer and later again as he built a fire at our camp. "What does it mean?" I ask. Looking at each other, they both laugh. "Oh no," says Tommy, "we can't tell you that one. We don't want to start a war. The Queen would get mad at us." I plead further. "It means," says Tommy with hesitation, "it means, 'King George got diarrhea.' We sing that for that border there."

INTRODUCTION

The survey of the international boundary between Canada and the United States along the 141st meridian between 1907 and 1913 was the first prolonged incursion by the modern state into the lands and lives of the Upper Tanana Dineh, the aboriginal Athapaskan language speakers indigenous to these borderlands that today are traversed by the Alaska Highway (see Fig. 2).

While at first this long straight line across Dineh lands had only a minimal effect on their lives, the existence of the border would come to have profound social, economic, and cultural effects later in the 1900s (Easton 2005a) and remains problematic in their lives today. The Dineh of the borderlands were always aware of the implications of the boundary survey effort, however. In fact, from early

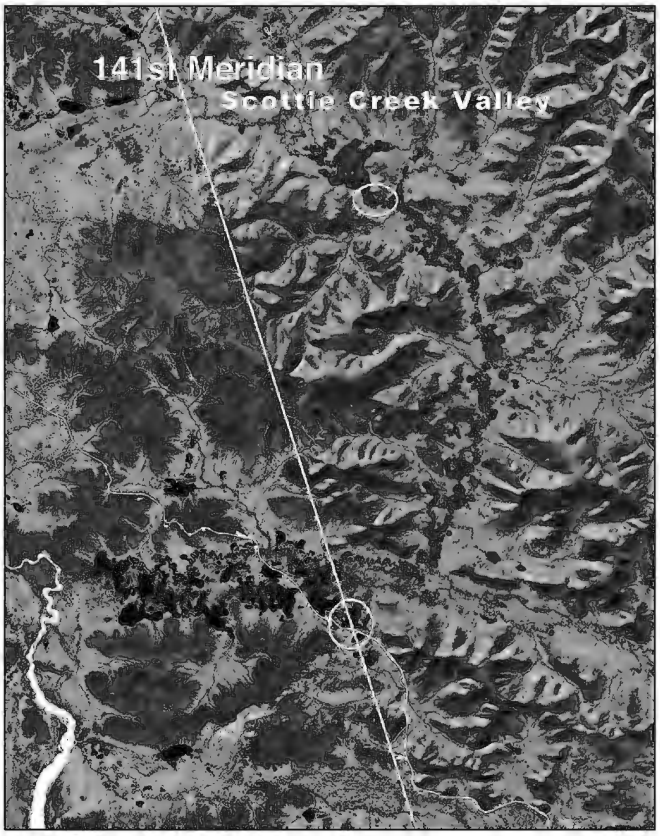


Figure 2. Satellite photo of the Yukon-Alaska Borderlands. The Alaska Highway can be seen as the white line running northwest from the bottom left to intersect with the border at the lower circle, which marks the Dineh village of Ts'oogot Gaay. The other circle above shows the general location of Nàhtsìa ch'ihchuut Màn̓n'.

on the Dineh asserted their rights to occupation and use of the borderlands regardless of the claims of the new nation-states of America and Canada. In this paper I present contrasting versions—that of the state and that of the Dineh—of how the international border was established across the territory of the Scottie Creek valley and examine some of the implications of their differences.

The choice of the 141st meridian as the international boundary between Alaska and Yukon was established through the terms of "The Treaty between Great Britain and Russia, signed at St. Petersburgh, February 28/16, 1825," which also set out its demarcation through the coastal panhandle region (Green 1982: Appendix, contains the full text of the original treaty). However, the panhandle boundary identified in the treaty was geographically vague and the 141st meridian boundary was practically unenforceable for lack of any Russian presence within the interior. This led to a number of international disputes between Britain and Russia and, after its purchase of Alaska from Russia in 1867, the United States.

The most significant of these disputes, known variously as the Dryad Affair or Stikine Incident, occurred in 1834 (Green 1982; Shelest 1990). Among other issues, it identified to both parties the practical imprecision of the 1825 treaty's demarcation of the boundary within the coastal panhandle and the almost utter lack of topographic knowledge along the borderlands. Due to these ambiguities, different interpretations of the treaty text were possible, and the precise position of the border along the coast remained unresolved for many years. This led to a number of additional incidents through the late 1800s and culminated in a treaty agreement between Britain and the United States to survey and establish the boundary in the panhandle in 1892 (Green 1982).

FIRST ATTEMPTS TO ESTABLISH THE 141ST MERIDIAN

Although the border along the 141st meridian seems more straightforward, the lack of surveys establishing the boundary led to disputes as well. Until 1871, when the region was incorporated into the Northwest Territories of the Dominion of Canada, the lands to the east of the boundary were granted by the British Crown for the exclusive use of the Hudson Bay Company (HBC). However, the HBC regularly transgressed into the territory claimed by Russia (and subsequently sold to the United States), establishing Fort Yukon at the confluence of the Yukon and Porcupine rivers in 1847 and carrying out trade in the lower reaches of the Tanana River. In 1869 an American military survey determined the HBC's illegal occupation in Alaska and deported their representatives upriver (Green 1982).

This led to further recognition by the respective states of the need to establish unequivocably and permanently the location of the border in order to avoid future conflicts of this sort. Initial work on determining the precise location of the 141st meridian began in 1887, with William Ogilvie's astronomic observations along the Yukon River in association with the Geological Survey of Canada's Yukon Expedition of the same year (Dawson 1888; see also Easton 1987). From 1889 to 1895, several additional surveys were made of the 141st meridian in the Klondike region, and in 1902 the line was extended south from the Yukon River to the headwaters of Scottie Creek (International Boundary Commission 1966); no mention is made in the official reports of these surveys of any Dineh inhabitants of the region.

From the south, in 1898 a United States Geological Survey party led by Alfred Brooks explored the Upper Tanana territories, providing the first known record describing the upper reaches of the Tanana River watershed. Little is recorded on their nongeological observations in their formal report; however, a map provides some detail on their route and dates of passage through the area: 10 July at Snag, on the White River; 11–18 July along Snag Creek to the 141st meridian; 19–21 July south of Mirror Creek; 1 August at the mouth of Mirror Creek and Tanana River [sic] (Brooks 1898; U.S. Geological Survey 1899).[2]

Again, no mention is made of any Dineh, a curious absence, since the Dineh villages of Nìį'ìį, Taatsàan, and Taatsàan T'oh all lie within a mile or two north and south of the surveyor's passage over the flatlands through which the middle Snag and upper Mirror Creeks run. However, late July–early August is the time of fish camp in the region, and this may account for the Dineh's absence from these nonfishing villages. Another possible explanation is that these surveys, unlike those undertaken by George Dawson, were singularly uninterested in recording Native settlements or encounters. Or perhaps we might surmise that the official reports neglected mention of Native people

2 The identification of the Tanana River here is a geographical error; Mirror Creek runs into the Chisana River, which in turn meets the Nabesna River, at which point the Tanana River proper begins.

occupying the borderlands in order to avoid raising, at a bureaucratic state level, the presence of Native occupations (and perhaps the rights that might flow from their occupation) along the borderlands.

Be that as it may, Brooks did recall something of the Upper Tanana Dineh in his memoirs:

> These [people] were essentially meat-eaters, their only fish diet being the Arctic trout, or grayling, and a small whitefish. These highlanders, as they might be called, were the last to come into contact with the whites and hence preserved many of their original customs up to recent times. In 1898 and 1899 I found such men living on the upper Tanana who, except for their firearms, exhibited but little evidence of intercourse with the whites. Most of the men and some of the women were dressed entirely in buckskin, and their bedding was made of furs. Here I saw an Indian hunting with bow and arrow. His arrows were tipped with copper from the gravels of near-by streams. On this same stream, the Kletsandek, a tributary of the upper White River, I found a party of natives searching for the native copper pebbles in the gravels, their digging implements being caribou horns. (Brooks 1953:117–118)

Two years later, in early June 1900, W. F. King, Canada's chief astronomer, and O. H. Tittmann, superintendent of the U.S. Coast and Geodetic Survey, arrived in Skagway, Alaska, to mark out the provisional boundary between Canada and the United States along the three main passes (the Chilkat, Chilkoot, and White) from the coast to the interior gold strikes in the Klondike. As they traversed the Chilkat valley, they were approached by a group of Tlingit from the village of Klukwan who "presented a petition to the commissioners asking that they be allowed to continue to hunt, fish, and trade across the new boundary line that sliced cross the Chilkat River valley about a mile north of their village. The commissioners agreed to forward the petition to the president and governor general respectively" (Green 1982:76; see also United States 1903: case appendix). While no official reply to this petition has been uncovered to date, it reveals that the coastal Tlingit inhabitants were not unaware of the implications of the state's boundary-making across the landscape. So too were the interior Dineh, as demonstrated below.

DINEH LIFE IN THE BORDERLANDS BEFORE THE BOUNDARY[3]

Until the turn of the 20th century, the Dineh of the borderlands were exclusively foragers. In this regard they shared much with their Athapaskan cognates within the western Subarctic, such as the Southern Tutchone (McClellan 1975), the Han (Mishler and Simeone 2004; Osgood 1971), the Koyukon (Nelson 1983), and the Ahtna (Kari 1986). Their economic adaptation of hunting and gathering natural resources followed a seasonal round within an ecological region generally defined by a geographical watershed. They gathered within semipermanent villages for labor-intensive economic and ritual activity and dispersed as small extended families during times of resource scarcity. They traveled widely for the purposes of trade and to establish and maintain kinship relations (Easton 2005a; McKennan 1959).

Kin-based economic and ritual activity was promoted and regulated by clan membership; through much of the region this was a dual moiety bifucation of society members, but among the Upper Tanana in the precontact period there seems to have been a three or more clan phratry division (Easton n.d.(a); Guedon 1974). This included prescriptive marriage and ritual relations between moieties or phratries, which were socially recognized through "potlatch" aggregations (Guedon 1974).[4] Political relations were egalitarian, with a strong emphasis on the authority and responsibility of the individual in determining and pursuing an appropriate choice of action (Goulet 1998;

3 While many features of Dineh culture of the western subarctic have been described, prior to my fieldwork (which began intensively in 1993) there had been little direct ethnographic, historical, or archaeological work with the Scottie Creek Dineh. McKennan conducted fieldwork among the Upper Tanana in 1929–30, but due to transportation difficulties he was unable to visit the territory of the borderlands (McKennan 1959:3). In subsequent decades he conducted additional studies among the Alaskan Upper Tanana (McKennan 1964; 1969a; 1969b; 1981). McKennan's field journal of 1929–30 has recently been published (Mishler and Simeone 2006). Other ethnographic work amongst the Upper Tanana has included Case (1984), Guedon (1974), Halpin (1987), Haynes and Simeone (2007), Haynes et al. (1984), Pitts (1972), Simeone (1995), Vitt (1971), and Northway (1987); all of these works contain no or only tangential reference to the borderland Dineh. Linguistic research of the Scottie Creek dialect of Upper Tanana has been undertaken by John Ritter, James Kari, and myself; much of this remains unpublished, but see Easton (2005b, n.d.(b), John (1994), John and Tlen (1997), Kari (1986), Milanowski (1962, 1979), Tyone (1996), and Yukon Native Language Centre (1997, 2001). Easton (2002a, 2002b, 2007), Easton and MacKay (n.d.), and MacKay (2004) discuss the archaeology of the borderlands prehistory, while contemporary ethnicity and subsistence is discussed in discussed in Easton (2001) and Friend et al. (2007), respectively.

Ridington, 1982, 1983). The authority of leadership was a contingent acknowledgement by those led by a category of people known as *ha'skeh* in the Upper Tanana language—men of respect who had demonstrated capacity to make sound decisions affecting the group and who practiced a life of generosity and wisdom. Extensive oral traditions provided the ideological and moral basis for many aspects of social life, as well as support to a naturalistic world view that understood humans and nature to be bound by reciprocal obligations to each other. The interpretation of dreams, visions, and communications from animals—regarded as "nonhuman persons"—informed decision-making, contextualized experience, and explained misfortune (Easton 2002c.; Guedon 1994; Nadasdy 2007; Nelson 1983; Ridington 1988).

The initial effects of the arrival of Europeans in the northwest were diffused along existing aboriginal exchange networks before Native people met Europeans. This included the trade of material goods (e.g., metal and beads), the spread of disease (e.g., small pox and influenza), and the communication of ideas (e.g., shifting from cremation to burial of the dead). These effects increased in volume and intensity as the western fur trade escalated in geographical reach in the 19th century (Helm et al. 1975; Van Stone 1974), culminating in a wave of Euro-American immigration and the establishment of permanent settlements associated with the gold rushes of the Yukon River watershed between 1896 and 1902 (Hosley 1981; McClellan 1981).

The Dineh of interior Yukon and Alaska reacted to this influx of newcomers with both a culturally driven generosity and a concerned desire for the stability of their indigenous society. In a letter dated 13 January 1902, for example, Kashxóot (Jim Boss), the *ha'skeh* of the Ta'an Kwäch'än Dineh who lived in the region of Lake Laberge, Yukon Territory, sought compensation from the superintendent of Indian Affairs for Canada for his people's losses since the Gold Rush of 1898. "Tell the King very hard" he asked, "that we want something for our Indians because they take our land and game." (cited in Gotthardt 2000).

Closer to the borderlands, the Tr'ondëk Hwëch'in *ha'skeh* Isaac anticipated the coming difficulties for his people in the Dawson City area as early as 1896; by the following year he had arranged for a reserve and the movement of Dawson Dineh 5 km downstream to Moosehide. At about the same time he led a contingent of Tr'ondëk Hwëch'in to Dixthadda (Mansfield) and Tetlin Lake, two Upper Tanana Dineh villages in Alaska. Here he taught his maternal relatives the songs and dances of the Tr'ondëk Hwëch'in, asking them to "hold on to them" in the years ahead; Chief Isaac correctly foresaw the suppression and loss of these traditions in the Dawson region in the years to come.[5]

A few years later in Alaska, a group of Tanana River Dineh *ha'skeh* met to discuss the effects of Euro-American immigration into the Alaska interior, and they agreed to bring their concerns forward to the newcomers' authorities. The Tanana Chiefs Conference of 1915 was held in Fairbanks to discuss land claims and educational and employment opportunities within the emerging American state order. Foremost on the agenda of the representatives of the United States was the settling of the Tanana Dineh upon individual homesteads or collective reservations, under the terms of the 1906 Native Allotment Act. This proposition was rejected by the chiefs, who maintained "We don't want to go on a reservation. . . . We just want to be left alone. As the whole continent was made for you, God made Alaska for the Indian people, and all we hope is to be able to live here all the time" (Mitchell 1997:177–78; see also Patty 1970). To my knowledge, based on an examination of records held by the U.S. National Archives, no land grants under the Allotment Act were granted within the upper Tanana River region.

I cite these examples of western Dineh attempts to negotiate a mutually agreed-upon relationship with the new state-based governments that had assumed control over their ancestral lands in order to provide a context for the history of the international boundary survey in Upper Tanana Dineh territory. These examples demonstrate that the Dineh throughout the northwestern Subarctic were not passive acceptors of the new regimes; rather, from early on

4 The term "potlatch" is the English gloss of the western Dineh ritual of formal intercommunity gatherings in which gifts are exchanged between clans in recognition of social obligations met by another clan or family, such as handling the dead of another clan, and honoring members of the opposite moiety, such as a spouse or a paternal child. The Dineh potlatch—called *huhte'etìin* in Upper Tanana—differs considerably in structure and meaning from the more widely described potlatch of the Northwest Coast cultures (see also Guedon 1974 and Simeone 1995).

5 I was told of this responsibility by Titus David of Tetlin Village, Alaska, during an interview in 1996 (Easton tape 1996-4). He himself had learned these songs and dances as a youth. It was also about this time that the transfer back to the Tr'ondëk Hwëch'in of these songs and dances, along with some ritual paraphernalia, began to take place, a process which is still continuing.

they had thought through and discussed the implications and their response to these historical events within their local and regional society. Such a context lends credibility to the specific accounts held by Upper Tanana Dineh in their oral history, which I will present below.

The Upper Tanana borderland Dineh held an additional advantage in their encounter with the international surveyors, however: a white man by the name of William (Bill) Rupe—a man who in Upper Tanana history has come to embody all the contradictory aspects of Native–newcomer relationships in the twentieth century: unknown creature–human, stranger–kinsman, advocate–traitor, contempt and compassion.

THE STORY OF BILL RUPE

Throughout the history of contact between indigenous peoples and European explorers and settlers, there are numerous stories of the newcomers finding themselves in a strange land, lacking even the basic knowledge of survival. Many simply disappeared, dying in the "wilderness" they had entered with such ignorance, their remains discovered, or not, by others. But the wilderness for the newcomer is a homeland for its indigenous occupants, people who have come to survive in their environment through the lessons of their ancestors, learned through the mastery of traditional knowledge and their own careful observation of the world in which they live. There are many instances in which the newcomer to a place, faced with death from his own ignorance, is saved by the intercession of locally adapted and informed indigenous peoples. The oral histories of the northern Athapaskans contain many such accounts; the tale of Bill Rupe is one of them.[6]

During the latter part of the 19th century, and increasingly in the period between the Klondike and Chisana gold rushes (1896–1914), the borderland Dineh helped many men who had become lost or run out of food on the trail.[7] Chajäktà, Andy Frank's "father," who was married to the sister of the major Scottie Creek *ha'skeh* T'saiy Süül (known as Joe in English), was very industrious and always had lots of food cached—indeed, he himself carried *ha'skeh* status. As a result, he was able to help many lost and hungry people who passed through the country at the turn of the century.

Sometime after the Klondike gold rush,[8] Chajäktà found such a man lost and hungry in the bush. His name was Bill Rupe (often pronounced "Bell Root" in Native nonstandard English).[9] Chajäktà took him in and fed him. While Rupe was recovering over the winter, he taught both father and son the English language. On Rupe's recovery, Chajäktà proposed a partnership to Rupe: he would guide Rupe back to Dawson where Rupe would exchange Chajäktà's winter fur catch and with the proceeds purchase a trading outfit. Chajäktà reasoned that a white man would be able to strike a better deal in these transactions than an Indian. Then Chajäktà would bring Rupe back to the big village site at Nàhtsi̱ą̀ ch'ihchuut Mą̃nn' in the upper Scottie Creek valley (see Fig. 3), and together they would open a store. Rupe agreed to the proposal.

The small trade post at Nàhtsi̱ą̀ ch'ihchuut Mą̃nn was the first of its kind in the upper Tanana River watershed and proved a successful venture for both men. In 1908 the itinerant missionary Rev. O'Meara reported Rupe's presence in the Scottie Creek valley: "W. S. Rupe has a trading post situated 40 miles [64 km] due West from a point 60 miles [96 km] up the White River. This post is situated on a branch of the Tanana River. *He also trades with the Copper Indians as well as other Bands, who come a distance of 250 miles [400 km] up the Tanana River*" (Anon. 1908, emphasis added). The remains of Rupe's cabin have been identified and will be the subject of future archaeological investigation (see Fig. 4).

6 There is a parallel structure to the stories of Indians' assistance to "starving prospectors" found in the tales told by prospectors' themselves, in which the roles are reversed; prospectors' accounts maintain the pathetic nature of the Indian and how through their actions and patronage Indians gained food, clothing, medical care, education, and, perhaps most importantly, a job or wage—in short, some measure of "civilization."

7 For another example in the region, see Walter Northway's account of meeting his first White men in his biography recorded by Yarber and Madison (Northway 1987:36–37).

8 Possibly during the short "rush" to the White River district in 1902, stimulated by Jack Horsfeld's discovery of gold at the mouth of Beaver Creek, west of the Canadian border.

9 According to the Northwest Mounted Police Records of Entry, a W. S. Rupe entered Canada through Lake Bennet on 19 May 1898. In 1906 the Post Office List of People Dying or Leaving the Klondike lists "Rupe, W. S., age 29" at Stewart City, Yukon. There are several mining claims in the Dawson and Stewart River areas registered in his name as well in the Dawson City Museum Archives. See also footnote 22.



Figure 3. Nàhtsı̨a ch'ihchuut Mànn' (wolverine grabbed something lake) from the northwest. The Scottie Creek Dineh village was located along the hillside to the left, while Bill Rupe's trading cabin site was on the first promontory to the right. (Photo by N. A. Easton.)

Andy Frank spoke to me several times about the years of Rupe's residence [comments in square brackets are my own]:

> My daddy and Bill Rupe used to haul freight over that way, from head of Ladue [river]. Bill Rupe and my daddy had a boat, old time motorboat, I guess, bring stuff on it, so far as head of Ladue, I guess. Make cache, put it up. Got two horse there. My daddy use one horse there, Bill Rupe use one horse there, then haul the stuff over to the head of Pepper Lake [Nàhtsı̨ą̀ ch'ihchuut Mànn]. Lots of work, to do that, lots of work.
>
> They got store there, they make store. They do good. Even lots of Tetlin, Tanacross people go over there. Go there, bring lots of fur. He doing pretty good, Bill Rupe.
>
> [Did he share the money from that with your grandpa?]
>
> Yup. It's my daddy, he work lots that time. He bring horse load, he got lots of stuff, he got traps, more stuff, more stuff, more stuff. They bring more stuff, guns, groceries, lots of blankets, tobacco, all stuff like that. They still bring lots of stuff, two horses, eh. They buy fur, I remember. They're all full of fur in the cache. Fur high [in price] too that time, eh. A long time ago. Black fox high that time.[10]

Rupe remained in partnership with Andy's father for about ten years. During this time he settled into a "country marriage" with an Upper Tanana woman named Annie John, and they had a baby girl who was called Margaret in English and popularly called Maggie by the Dineh. Andy Frank and others also recall that Rupe had a habit of recording births and other important events in a book with red binding that was very smooth to touch, "like a bible" (i.e., of tanned leather). Sometime after 1910, Rupe took his daughter Margaret to Dawson and placed her in the charge of the Sisters of Saint Anne, who ran a school for Indians and the hospital there.

OFFICIAL ACCOUNTS OF THE INTERNATIONAL BOUNDARY COMMISSION SURVEY

In 1903, the Alaska Boundary Tribunal was established by Britain and the United States to adjudicate the disputed

10 Easton field recording (SCCHP 1994-02). Interview with Andy Frank, Northway, Alaska, 4 July 1994. See also Easton fieldnotes 14 October 1993.



Figure 4. Close-up view of the remains of Bill Rupe's trading cabin on the shore of Nàhtsi̱a ch'ihchuut Mànn'. (Photo by N. A. Easton.)

boundary between Canada and Alaska along the coastal Panhandle (the Dominion of Canada had not yet been given control over foreign relations by Britain). While the treaty negotiations were riddled with intrigues against Canadian interests (see Green 1982; Penlington 1972), the final terms of the resulting Convention of 1906 initiated intensive surveying of the border, including determination of position by astronomical observations and triangulation, and the cutting of a 20-foot-wide vista along the entire length of the established border by collaborating crews of the Canadian and American Geological Surveys. Fieldwork began in 1907 and continued until 1913 (International Boundary Commission 1918; see also Fig. 5). The remainder of this narrative of the work of the International Boundary Commission survey will be restricted to that occurring in our principal area of interest, the territory occupied by the Upper Tanana Dineh.

The official accounts of the work of the boundary survey present the following general chronology of work in the region (see also Fig. 6):

1907: Several members of the survey projected a line from the Yukon River southwards 200 km (125 miles) to a point near the crossing of Snag Creek.

1908: This line was continued southward past the White River crossing of the border, triangulation was completed to about 120 km (75 miles) south of the Sixty-mile River (near the headwaters of Scottie Creek), topographic mapping and vista clearing undertaken to the Sixty-mile, and permanent monuments set through to the Ladue River.

1909: Over 50 men arrived at Canyon City on the White River in late spring (May 21) to carry out the work of the survey; the majority proceeded up the White River to work their way towards Mt. Natazhat in the Wrangell Mountains, while two smaller crews continued topographic surveys about the border to the north, meeting at Mirror Creek on August 24; cutting of the 20-foot vista was completed north from Mt. Natazhat to Mirror Creek.



Figure 5. Surveyors of the 141st Meridian in the Nutzotin Mountains, 1912. (Geological Survey of Canada, National Archives of Canada.)

1910: The vista was completed between Mirror Creek and the Ladue River and monuments set from the Sixty-mile River to Mirror Creek.

1911: All survey efforts were north of the Yukon River.

1912: Additional triangulation was carried out along the upper reaches of the White River to the Skolai pass and into the Chitina watershed south of the Wrangell Mountains.

1913: A final inspection of the boundary from the Yukon River south to Mount Natazhat was conducted, checking and numbering monuments, thus completing the work of the International Boundary Survey along the 141st meridian (information extracted from International Boundary Commission 1918).

This chronological account of the activities of the survey does not give full justice to the enormous undertaking that was completed between 1907 and 1913. The final report of the commission cited above provides some anecdotal accounts of the challenges met by the surveyors, and Green (1982) expands on this with information gleaned from archival field books and personal logs. Within all of the officially *published* documentation of the International Boundary Commission there are no accounts of observations of or encounters with the aboriginal inhabitants of the region between the Sixty-mile and White rivers. My own research, however, involving the examination of archival documents and the recording of local Dineh oral history, indicates that the surveyors did encounter Upper Tanana Dineh in the course of their work.

Archival research of the survey-related documents was undertaken at the Public Archives of Canada, Ottawa; the Rasmuson Archives, Fairbanks; and the National Archives in Washington, D.C. The research has allowed for a more detailed understanding of the routes and dates of passage through Upper Tanana territory during the course of the survey, including the winter ranges of packhorses within the White River valley, which were undoubtedly encountered by Upper Tanana Dineh hunting caribou in this area, and lists of men employed in supporting the work of the official survey members. The latter provide us with additional unpublished sources (in the form of journals, memoirs, and letters of the named participants) to attempt to document more fully the interactions between the survey members and the local inhabitants.

The final report of the International Boundary Commission (1918) gives an account of the "Chiefs of Parties and Assistants"; Table 1 summarizes these names for most of the years of our interest (1908–11). The record for 1909, for example, names 14 surveyors and their assistants. In addition, the personal diary of F. H. Lambert, who acted as a chief of party for the Crown that year, lists an additional 31 men by name hired by the Canadian survey to cut vistas, lay monuments, cook, and handle horses (Lambert 1909). Presumably, the United States would have hired roughly the same amount, suggesting a total contingent in the neighbourhood of 60 to 70 men active in the region from late spring to late August of 1909.

The earliest reference in the unpublished documents that speaks directly of the Dineh of Scottie Creek is contained in G. Clyde Baldwin's account of his work during the field season of 1908. It is clear from the context of his unpublished report that he followed the established

Table 1. Chiefs and assistants of parties, International Boundary Survey, 141st Meridian, 1908–11.

1908	
USA	Chiefs of parties: G. C. Baldwin, Thos. Riggs, Jr. Assistants: W. B. Reaburn, W. B. Gilmore, A. I. Oliver
1909	
UK	Chiefs of parties: A. J. Brabazon Assistants: Fred. Lambart, D. H. Nelles, Claude Brabazon, Thos. P. Reilly
USA	Chiefs of parties: G.C. Baldwin, Thos. Riggs, Jr. Assistants: W. B. Reaburn, A. C. Baldwin, D. W. Eaton, A. I. Oliver, W. C. Guerin, L. Netland
1910	
UK	Chiefs of parties: A. J. Brabazon, Fred. Lambart, J.D. Craig Assistants: D. H. Nelles, A. G. Stewart, Claude Brabazon, Thos. P. Reilly
USA	Chiefs of parties: Thos. Riggs, Jr. Assistants: A. C. Baldwin, W. B. Reaburn, A. I. Oliver, W. C. Guerin, F. S. Ryus, O. M. Leland
1911	
UK	Chiefs of parties: J. D. Craig Assistants: Fred. Lambart, A. G. Stewart, D. H. Nelles, Thos. P. Reilly

Source: International Boundary Commission (1918).

Dineh trail from the White River, up Katrina Creek, and over the watershed into the Scottie Creek valley. Figure 6 is a Boundary Survey map showing the general routes of the survey 1907–13, while Figure 7 is a less detailed map along the boundary showing the location of the alphabetically named station markers mentioned in the text.

Baldwin (1908:9–10) writes:

> Since for the next portion of our trip we must rely entirely upon our horses as the freight carriers when we failed to find part of them on the 6th [of July] (the day we intended starting overland) we necessarily remained until they were rounded up the next morning. Mr. Brabazon had not yet appeared upon the scene so I left one of the packers and three horses to bring him over to our boundary camp. The trail which we followed wound along through the timber in the bottom of the valley of Katrina Creek and was a gradual easy ascent most of the way until we reached the summit of the divide between the waters of Katrina and those of Scottie Creek on the west. Here it took a decided turn to the south but as we knew that it led eventually to Rupe's trading post somewhere in the valley before us we thought it better to continue following it rather than to strike off due west and cut a new trail through the timber. In the Scottie Creek flat we had some very swampy, soft traveling which was only ended after we had crossed the main stream. This creek at this point is composed of a series of small but deep lakes through which there is a very slow current in a southerly direction. Just before we reached the crossing place an Indian came hopping across the 'niggerhead' swamp from the direction of Rupe's cabin but his English proved to be rather limited so when we tried to make him understand that we needed a canoe to ferry our supplies across the stream he would only grunt and bob his head. As this was a rather unsatisfactory answer we did not wait for his canoe but proceeded to build a raft on which we ferried our outfit across in safety.

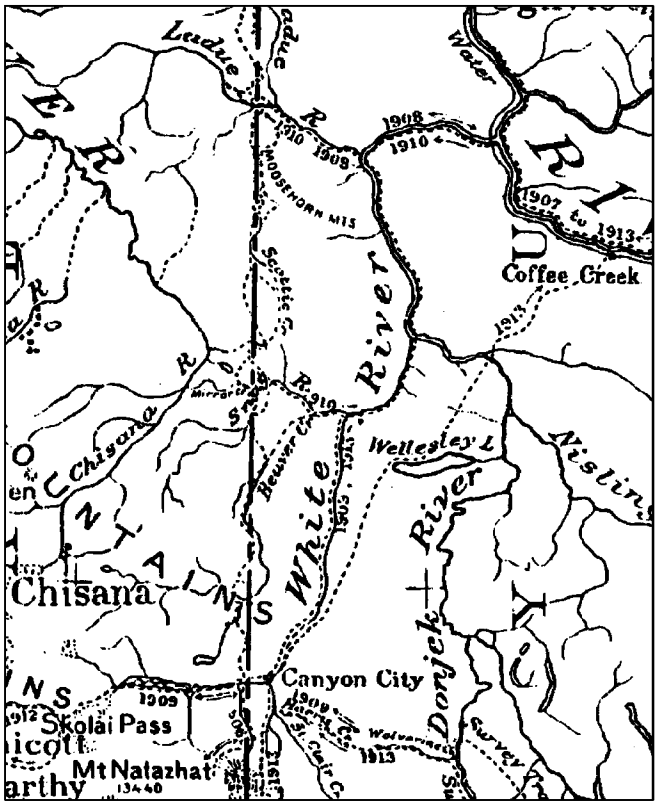


Figure 6. General Routes of the International Boundary Commission Survey, southern portion of the 141st Meridian (reproduced from Green 1982).

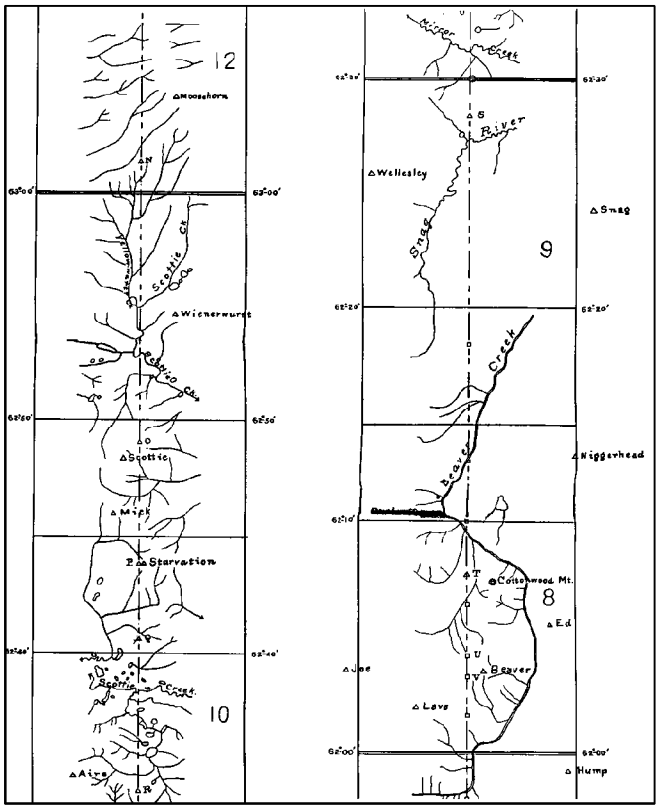


Figure 7. Location of alphabetically named boundary survey station markers and named triangulation points on the 141st Meridian, upper Scottie Creek south to upper Beaver Creek. (Source: National Archives of the United States. College Park Facility, Maryland. Record Group 76, Cartographic Series 136, Preliminary Inventory 170, Entry 378, Folder 2.)

> About this time, however, several Indians arrived and one old man did actually come in a very small but well made birch-bark canoe. When our horses swam the stream these Indians thought it great sport and the shrill laughter of the women could be heard for some distance. Leaving Scottie Creek we encountered some bad traveling through fallen burned timber and on the 12th a steady rain kept us in camp all day. The 13th was spent in exploring the surrounding country and in locating station "O of the Boundary," none of the men with me at the time having seen it before. Then on the 14th we moved our camp to a small draw very close to the station and at last we were on working ground.

The next day the camp was joined by Mr. Brabazon, while two of the men, with 12 horses, set off back to Katrina Creek to retrieve their cache. The boundary party continued their work in the area for another month, breaking camp on August 26. They then set out to cross the "Big Flat," through which both Snag Creek and Beaver Creek flow, just east of the border. Their progress again shadows the traditional Native trail I have documented across these flats to the low hills south of the contemporary village of Beaver Creek, Yukon:

> After crossing Snag Creek we pursued a south south-easterly course until we crossed Beaver Creek when we changed to a south south-westerly direction and kept along the edge of some level bench ground which parallels the latter stream until we finally reached the opening or canyon through which Beaver Creek emerges from the hills. Here we again crossed Beaver Creek and found a fairly well beaten trail along the south bank. This we followed as far as an old Indian camping place near the point of the hill which we knew station "T of the Boundary" to be located. (Baldwin 1908:14)

They set station "T" and quickly pushed on, meeting members of the survey coming north from stations to the south, and were soon thereafter leaving the field for the season. However, Baldwin's 1908 report contains some additional notes on the area and its people in his summary comments:

> During the early part of the season those of us who passed through the flat country saw practically no game of any size, which I think was due to the fact that the Indians keep this region pretty well hunted out. In the many small lakes of the vicinity fish are plentiful and form the chief summer food of the natives. All along the valley of the White River moose, caribou and bear are to be found while in the hills and mountains of the upper river the mountain sheep are very numerous. After reaching the higher hills we had all the fresh meat which we needed for the balance of the season.
>
> The natives of this country have already been mentioned several times but not as yet fully described. In appearance they resemble the Siwashes of the coast, they wear store clothes but continue to use moccasins for foot coverings. Through contact with traders and other white men they have acquired a smattering of English but in many cases their vocabulary is very limited. As in many other non-civilized or half civilized tribes or peoples the squaws do most of the hard work while the bucks do the necessary hunting. In our dealings with them they were perfectly honest but proved to be great beggars and had absolutely no sense of obligation for anything given to them or for any favors accorded them.[11] They are very fond of the white man's food and especially of tea that even the small children will drink without either sugar or milk when as strong as it can be made. Next in value to tea as an article of trade comes tobacco and several times I saw men whose English was entirely limited to the two words "tea" and "chew." In general they know the value of money but prefer silver to any other medium of exchange. This is illustrated by a case in which I paid one of them a silver dollar and a dollar bill for some little service, which he had performed for me, and upon the receipt of the money he immediately bought all the grubs that he could get for the bill although he kept the silver. Some of the squaws had their faces tattooed and I saw one at least with a ring of silver stuck in her nose. In summer they live in tents and in the open but I think most of them have cabins for winter habitations. The women, especially when excited, have very shrill piercing voices, which sound very much like those of small children. (Baldwin 1908:23–24)

Thomas C. Riggs was second-in-command of the American party. His journal for 1909 contains a single reference to encountering Native people:

> *Rupe* [emphasis added] was not at his camp but about 30 Indians were camped there. I tried to take some pictures but desisted when a buck grabbed a gun and said "Indian shoot." They seem to have

11 This observation is ethnocentric. The Dineh behaviour described in this observation is what we now recognize as "demand sharing," a common practice among egalitarian foragers (see Peterson 1993).

> some sort of idea that a picture takes something out of a person that is not replaced. (Riggs n.d.: July 1909)

Rigg's account places him in the upper Scottie Creek valley at the time, and the "camp" he refers to is almost certainly the village at Nàhtsìą ch'ihchuut Mą̀nn where Bill Rupe had his trade store.

UPPER TANANA DINEH ORAL HISTORY ACCOUNTS OF THE BORDER SURVEY

Living and working in the Upper Tanana borderlands I have often encounted reference to the ill effects of the international boundary on the lives of local Dineh; it is generally regarded with bitterness. Most Upper Tanana Dineh hold that they remain one people: "We're all the same family, both sides of the border, Canadian and Alaskan." In the 1990s a few could even recall first-hand the arrival of the boundary survey and their reaction to it, while many local Dineh held oral history accounts learned directly from their older relatives who were themselves witnesses to the events.

These accounts provide important further elaboration on the encounter between the boundary survey people and the Upper Tanana Dineh. They document the physical division of Ts'oogot Gaay village[12] on Little Scottie Creek (see Fig. 8) by the survey and all emphasize the promise by the chief of survey, William Raeburn, that the Dineh would continue to have the right to occupy and use the region as they had done in the past.

Mrs. Bessie John's Account of the Border Survey

The oral testimony of Mrs. Bessie John on the border survey through Ts'oogot Gaay village has been recorded by myself and in John-Penikett and John (1990); the recordings differ only in a few elaborating, stylistic details.[13] Comments in square brackets and footnotes are my own elaborations.

> MRS. JOHN: Right now I'm going to tell you people about when the borderline go through there. There were 200 in the village there, the place white people call Little Scottie Creek [Ts'oogot Gaay]. There are lots of people buried there. All our people, things like that. At that time the borderline went through. That's the story I'm going to tell you guys right now.
>
> This great story. My Great [i.e., respected] grandpa (T'saiy Süül),[14] when that borderline go through ahead there. They got some, what they call, moose skin, caribou skin. That's the kind of tent he got right down there at customs with the borderline going through. They don't know at that time, these white people who come around the boundary line, so maybe that one guy who is the government boss, they hit my great grandfather's tent. They say, "Could you move?" He do that you see? [the surveyor waved his arm]. So, that government said, "Your tent gonna be cut. You gonna be Alaskan, you gonna be Yukon?" they tell my Great grandfather, they say.
>
> So, they make lots of moccasins to be used at that time by those boundary line people. I don't know how many wore those moccasins, but all say, "make moccasin."
>
> I don't know, but my mother and my Great grandfather say, "You know how many moose skin they need to keep warm, those Indian people?" Make moccasin, meat, everything.
>
> After that, the government, they give all kinds of flour and rice, I guess. They don't know what's that,

12 Ts'oogot Gaay is sometimes translated as "little spruce knee" or "little spruce," based on the etymological correspondence between *gaay* = "little" or "small," *ts'o* = "spruce tree," and *got* = "knee"; however, when taken as a whole this literal interpretation is not semantically sound within the Upper Tanana language. While there is no doubt of the interpretation of *gaay* = "little" or "small," it seems that *ts'oogot* in this form is an archaic and un-analyzable word, which generally suggests great antiquity (John Ritter, Yukon Native Language Centre, 1997, written communication; see also Sapir 1916 [1949:436]).

13 The occasion for this recollection by Mrs. Bessie John was the Yukon Historical and Museums Association's 1989 conference on Yukon Borderlands, held at Yukon College, 2–4 June. Comments by her daughter, Lu Johns-Penikett, whose questions and prompts facilitated her mother's presentation, are indicated by "LJP" in the transcript. I have reviewed the original tapes for accuracy and corrected several small errors in transcription arising from Mrs. John's pronunciation of English as her third language (her first was Upper Tanana and her second Northern Tutchone)

14 T'saiy Süül was Bessie John's mother's father, which English speakers would refer to as "grand-father." Her use of the term "Great" here is an honorific, meant to indicate his "greatness," not that he was a third ascendent generation ancestor, as English speakers indicate in the term "great-grandfather."



Figure 8. Aerial View of Ts'oogot Gaay from the northeast. The Alaska Highway runs along the top of the photo, while the international boundary can be seen running diagonally across the top left of the photo. Ts'oogot Gaay Mànn' is the lake on the right; to the left can be seen Ch'ìhjiit Mànn' (ripe or spoiled lake) along the shores of which are found numerous ground caches for storage of fish. (Photo by N. A. Easton.)

> my Great grandfather. That flour, he tried boiling all day, he said, grandma.[15] He tell his wife, he said, "That's sour water. You gonna die if you guys eat it." He boiled it all day, he said, grandma. He boiled it all day and put moose fat—he throw it in there. He finished his fat piece, he said, my Great grandfather, my Great grandma. He stirred all day, and after that he got a stick spoon. They made it out of birch bark sometimes. You used a little bit, that's all. You were his kids, they say.[16]
>
> That's a long time ago they do that, and I'll talk to you about a story, you guys. The boundary line go through at that time. There were lots of people at Scottie Creek at that time, about 200. They buried fish [in ground caches], dry meat, everything. All that stuff was cached. They put fish in there, dry meat, everything. At that boundary line, he showed it to my Great grandfather and that Great grandma she carried that book [note well the reference to the book] around a long time. I'd like to know if that book is in Ottawa. They give my Great grandma and Great grandfather a red book a long time ago.

15 The Athapaskan language has no gender markers. As a result, it is typical for speakers of English as a second language to ignore or mix-up English gender, as Mrs. John does here.Thus, the sentence "That flour, he tried boiling all day, he said, grandma" is ambiguous as to what sex did what and what sex said what. Informed context generally assists English heads trying to make sense of such utterences.

16 Typical of Dineh narrative structure, Mrs. John here interjects both practical and ethical Dineh knowledge in her speech: (1) You can make a spoon out of birchbark; (2) if you do you shouldn't use too much bark (3) because that bark is like the child of the tree, its life. (4) Extending the metaphor by thoughtful consideration, since one would not want one's own children treated badly, humans should treat the children of "other-than-human persons" with respect and care.

"This is your book," they tell my Great grandfather. They carry it around a long time—it must have been about 1911 when the boundary line went through. Lots of people all just dead now. The story just grow up to us. That's why I tell you guys special story about my Great grandfather.

LJP: So, mom, what happened when the boundary people asked him to move? Did he move or how long did they try and get him to move?

MRS. JOHN: Long time. They stay there. He can't move his moose skin or caribou skin tent. That's right. They give him lots of food, they say. The government people. They stay there everyday. That's all, I think.

LJP: So, did they move or what happened when the boundary survey . . . ?

MRS. JOHN: They don't move! They belong to their village. The old borderline go through. They back and forth. They move all the way down to Big Scottie Creek, all the way down to the Yukon River.

That's the right way to Indian. They feed each other, you know. They don't know boundary between Yukon and Alaska. Right now, just everything happened. It was supposed to be that they feed each other, just one trail in this country. All our country. They help each other, you know, Indian people.

LJP: Well, I thought you told me before that Stsii Stsool [Ts'aiy Süül] didn't want to move. He didn't want to move but they kept asking him. So what happened? They got him to sign a piece of paper or something.

MRS. JOHN: Yeah, that government they tell him to sign a piece of paper. So, he sign paper.

LJP: And what did they say he was going to get from that?

MRS. JOHN: "You gonna be Alaskan. You gonna be Alaskan. You gonna be Yukon. Two sides of the country, all you are from," they tell my Great grandfather. After that they do a book, and my Great grandmother she said, ". . . some kind of bible." They live to sign that, my Great grandfather. He can't move his tent, that's why that government do that and he sign the paper. "Two sides of the country," he say. "All your family, they are all going to grow up on two side of the country." My great Grandfather know all about our country here. That's why he signed that paper. (John-Penikett and John, 1990:187–90)

Andy Frank's Account of the Border Survey

Andy Frank, who was a young boy of about six or seven at this time,[17] shared his version of the arrival of the border survey crew at the village site of Ts'oogot Gaay:[18]

Borderland chief [the survey chief], his name was Raeburn.

That's when he say [my grandfather] at the border that time. "Good people," he say, "what you do this, you cut the bush all the way in a line?"

"That boundary line. New law. There going to be law, nobody can't go across." That's what they [Raeburn] said, he said.

Grandpa, he said, "No," he said, "I don't like that," he said. "Good people. White man good people, but tell 'em what I say," he say. "That we can go anywhere, where we got hunting ground, where we got property to get everything, we go there. You got to tell 'em," he said. "You're allright, good people, but me, I like to go anyplace where I got land," he said, my grandpa.

He [the Dineh] like to hear our grandpa talk too, that people that time. Grandpa talk good. He called Border Chief [his grandfather held *ha'skeh* status]. He got earring bead. "Why you do that?" he say that. Old time chief, borderland chief.

They call the Border People [the English surveyors], that's what my grandpa told me, a long time ago. He tell that people, the Boundary Line Chief [Raeburn], my grandpa he say "No, no, no us," he tell him. They put down [the line] all through. My grandpa he go Dawson, he make meeting [with government officials]. Grandpa he say "What they do down there?"

"They make boundary line. You can't go other side no more."

17 Like many of his generation, Mr. Frank was not absolutely certain of his birthday but certainly could count the years he had been alive. His birth recorded on his obituary is December 24, 1902 (he died in August 1994). Such a day in the historic record for Indian people is commonly found; it can be taken to mean that he was born in that year, well into the winter. His recollection that he was six, suggests the events occurred in 1908, although the survey itinerary suggests it was more likely 1909, hardly a major inconsistency in Mr. Frank's account.

18 Taped interview with Andy Frank, 4 July 1994 with N. A. Easton (SCCHP tape #1994-2) and Easton (Fieldnotes, n.d).

> "No, not us," my grandpa say. He tell it true. He put down . . . [unclear utterence], he tell his dad, who he put down. "Us? No way! We got proper way, we got hunt, good place to hunt we use. We go anywhere. Not us," he say. I tell everybody. I go Fairbanks. I tell you too. That book, somewhere is that book [the "red book" referred to by Mrs. John in which Rupe kept records].

A Short Standard English Summary of Dineh Oral Testimony and Surveyor Records

The evidence of archival and oral history demonstrates that throughout the boundary survey, government representatives of both Canada and the United States did have contact with the Dineh of Scottie Creek. In 1907, projection of the line south to Snag Creek would have taken them through the Scottie Creek valley. In 1908 Baldwin knew of Rupe's presence in the Scottie Creek valley. Although Baldwin (1908) does not mention meeting Rupe specifically, it seems quite likely he did, since Baldwin anticipated arriving at "Rupe's trading post somewhere in the valley below us" and subsequently met an Indian "hopping across the 'niggerhead' swamp from the direction of Rupe's cabin." In 1909 Rupe must have had some contact with the International Border survey, since it was "Rupe's" camp that Thomas Riggs recorded arriving at in July 1909 to find "about 30 Indians were camped there" (Riggs n.d.), again intimating that the surveyors both knew and were looking for him. The Indians were undoubtedly Rupe's Scottie Creek Dineh affines. In 1910, the crew clearing the 20-foot wide vista worked from Mirror Creek northwards towards the Ladue River, a trajectory that would take them directly through the Dineh village of Ts'oogot Gaay, which was arranged on the hill overlooking the border lake of the same name. A general map of a field survey of the surface remains at this site is presented in Figure 9.

Not only does the boundary pass through the village, but according to Dineh oral history the vista ran directly through a large bark-covered domed house structure—indeed if you walk the borderline today you will come to a point at which there clearly was a camp astride the line, evidenced by historic detritus (a kettle, cans, and other metal waste) within a cleared area extending on either side of the borderline.

The survey party insisted that they would have to cut through the house if it would not be moved, and that the Indians would have to decide whether they wished to live on the American or Canadian side of the border. The Dineh at Ts'oogot Gaay refused to do either, seeking assurances that their occupation and use of the region would not be affected by the new borderline.

The Dineh spokesmen, the local *ha'skeh*s Chajäktà and Ts'aiy Süül, asked for a meeting with the "Borderline Chief," the head of the survey crew, and called together the Dineh to discuss the situation. W. B. Reaburn identified himself as the chief of survey and the Scottie Creek *ha'skeh*s, assisted by Bill Rupe, negotiated with him the terms of allowing the survey crew passage through Ts'oogot Gaay. After several days of holding their ground, the Dineh finally received the assurance from Reaburn that the people of the village could continue to live there without interference to their historical use and occupation of the region on both sides of the new boundary, and Reaburn signed a paper to that effect.

Rupe kept the paper or recorded a copy of the agreement in the "Red Book," leaving it with Chajäktà when he later left the valley. Andy Frank was repeatedly told by his father, "Don't you forget that man's name, the borderline chief, Raeburn. You don't forget because one day it will be important."[19] On his deathbed, Chajäktà entrusted the book to his son Andy Frank, reminding him again to remember Raeburn. Frank kept the book for many years as he lived throughout the region; however, about 1957 someone broke into his cache at the place called High Cache, just below the Alaska Highway on Desper Creek about 10 km into Alaska, and stole his outfit of traps, guns, ammunition—and the Red Book.[20]

19 Easton, fieldnotes. Interview with Andy Frank, 30 September 1993, Northway, Alaska.

20 Such theft has been a common occurrence suffered by many Natives over the years, once easy access to their cached (perceived as "abandoned") possessions was gained by tourists and government officials through improved transportation. Government employees flying through the area in tax-paid airplanes and helicopters, for example, pillaged caches at Fort Selkirk (Easton and Gotthardt 1990; Gotthardt and Easton 1989). They justified their theft by the notion that the stuff had been abandoned and would only be taken by tourists, while they would keep it in the territory and care for it as a historic object; of course, many of these people would eventually abandon the territory and take it away, as well.

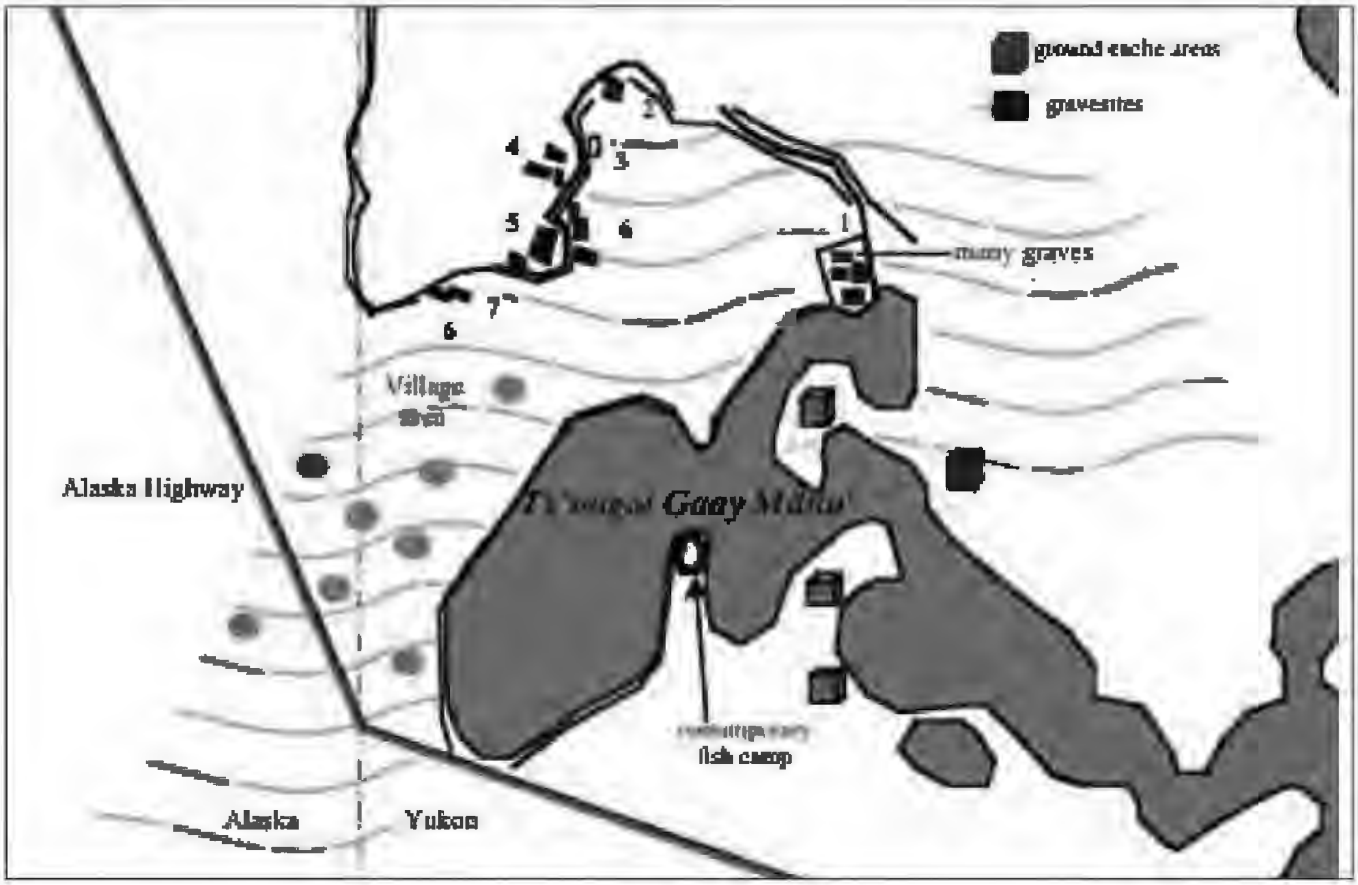


Figure 9. Map of Ts'oogot Gaay based on field documentation by the author. Note the border vista bifurcating the village site and the preponderance of graves; gravesite number 1 is the location of mass burials during the influenza epidemic of 1918–19. Circles indicate approximate locations of large open areas within the contemporary dense willow that are presumed to have been locations of the traditional dome-shaped skin tents of the Upper Tanana Dineh occupants.

TRUST AND BETRAYAL ON THE BORDERLANDS

After the border had come through, when Rupe's child Maggie was about 10 years old (circa 1912), Rupe left his Dineh wife and took his daughter to Dawson, where he enrolled her in St. Mary's catholic school run by the Sisters of St. Ann.[21] Dineh oral history records that her mother, Annie John (Fig. 10), traveled to Dawson and appealed to the court there to have her daughter returned to her, but her request was refused. Unfortunately, Dawson court records of this period were lost in a fire in the 1920s.

The ultimate fate of Maggie Rupe remains a mystery. Bertha Demit, Annie John's older daughter with another Dineh (and thus Maggie's half-sister), worried all her life over the fate of her sister Maggie. Recalling the story



Figure 10. Annie John, Titus John, and Silas Thomas, Northway, 1943. (Photo courtesy Duesenberg Archive Film.)

21 According to records held by the Archives of the Sisters of St. Ann in Victoria, B.C., Margaret Rupe officially entered St. Mary's School in Dawson, Yukon, on 26 August 1912. Personal communication from Margaret Cantwell, S.S.A., archivist, 30 Jan 1998.

of Bill Rupe and Maggie to me in the Upper Tanana language in 1996, translated by her son, Mrs. Demit began to cry and she asked me, as a White man who knew the outside world, to do what I could to find her younger sister, a plea I have followed to the best of my abilities.

After he left the Scottie Creek valley, Bill Rupe continued to trap and prospect from the Klondike to the White rivers until his death in Dawson City in 1937.[22] His daughter Margaret had left Dawson in 1927 for Victoria, B.C., where she graduated from St. Joseph's School of Nursing in 1930 (Fig. 11). She worked at the St. Joseph Hospital until 1956, rising to oversee the nursing staff of the maternity ward. Margaret married an affluent man named Arthur and retired to live with him. For reasons that remain unclear, she had asked the sisters of St. Ann to maintain confidentiality of her married name and residence.[23] At this late date, it is presumed she has now passed on and is buried somewhere in southwestern British Columbia (see also Easton 2002d).

Bill Rupe had a profound effect on the eastern Upper Tanana Dineh. He was the first sustained contact they had with a person who was not Dineh. Not knowing who he was or where he came from, they nevertheless recognized his implicit humanness and extended to him all the generosity that any human being deserves when found in need. They gave him shelter, sustenance, and eventually incorporated the stranger as kinsman through marriage. And while it is true that Rupe would eventually disappoint the Dineh, it seems unacceptable to simply characterize Bill Rupe as another White man who came into Indian country to exploit them and then leave with their riches. Although he may have set the standard of betrayal of trust for White–Indian interaction, there are complex motivations discernable in his actions, not the least of which must have been a deep love for his daughter Margaret, which are not visible for much of the subsequent relations between representatives of the new nation-states and the Upper Tanana Dineh.

Nevertheless, when Rupe left with Annie John's daughter he committed a grievous affront to Upper Tanana *matrilineal* culture. By all local measures, Maggie belonged, literally, to Annie John's lineage and clan. Annie John's failure to convince the government authorities in Dawson of this fact and retrieve her daughter from her father was the first open instance, and certainly not the last, of the capacity of the new encapsulating state order to exercise irresistible force.

Other forces would intrude on the Borderlands Dineh in the years to come. Just before 1920 a devastating influenza epidemic—quite likely the local manifestation of the world-wide Spanish Flu pandemic—struck the village of Ts'oogot Gaay, killing almost everyone there. "Five guys walk out from that—Bell Gaiy, my dad (Little John/White River Johnny), Titus John, and Andy Frank," and one other, recalled Joseph Tommy Johnny. "They bury everyone together, they die so fast. They just quit that village then." A few families would later return after some decades to take up seasonal fishing once again. Today the



Figure 11. Margaret Rupe's graduation photo from St. Joseph Nursing School, Victoria, B.C., 1930. (Photo courtesy Sisters of St. Anne Archives, Victoria, B.C.)

22 "William Rupe, old-time trapper in the White River district, passed away yesterday at St. Mary's hospital after a prolonged illness. The deceased was born in Santa Rosa, California about seventy-one years ago. He is survived by one daughter, Margaret Rupe, now residing on the Pacific Coast." *Dawson News*, 31 July 1937.

23 Archives of the Sisters of St. Ann, Victoria, B.C. Personal communication from Margaret Cantwell, S.S.A., archivist, 30 Jan 1998. This information was in response to a set of well-wishing letters from several of Margaret Rupe's Dineh relatives, which I had forwarded to the Sisters of St. Ann in 1997.

village locality is still used by Ada Galen and the descendents of White River Johnny to net whitefish and collect cranberries in the summer.

However, it was not until the building of the Alaska Highway that any sustained effort was made to enforce the regulations of the international boundary. Along with the highway came numerous other agents of the state who have since attempted to exercise increasing control over the lives of the Borderland Dineh: game regulators, educators, social workers, customs officers, Indian agents, capitalist entrepreneurs, and religious proselytizers. A future essay will address these subsequent impacts; suffice to say that many Dineh see the border as a betrayal of the trust given the newcomers at the time of the International Boundary Survey. In the words of one local Dineh, "When they put in that [border] line everyone got fucked."

It is important to ask to what degree the agreement that the Upper Tanana Dineh believe to have been made with the United States and Canada through their representative Raeburn was purposely not reported to his superiors, made in bad faith, or ignored and discarded by the governments of the United States and Canada? It is of interest to note that there is no record of contact whatsoever with Dineh in the surveyors' accounts of 1910, when the vista was completely cleared from Mirror Creek to Ladue River, a trajectory that passes right through the village. Nor, as shown in the copy of the plane table field map of the survey that year (Fig. 12), is there any indication that the border at Ts'oogot Gaay ran through an Indian village, although the topographical detail of the area is considerable. Furthermore, the aboriginal trail is clearly and accurately marked on this map, and an "X" is seen next to the trail at the location of a Dineh camp and fishing site on Tsà' Kąyy' Mǟnn' (beaver house lake), which is still used by Scottie Creek Dineh today as a base for hunting moose on the lake and is the principal contemporary residence of Joseph Tommy Johnny.

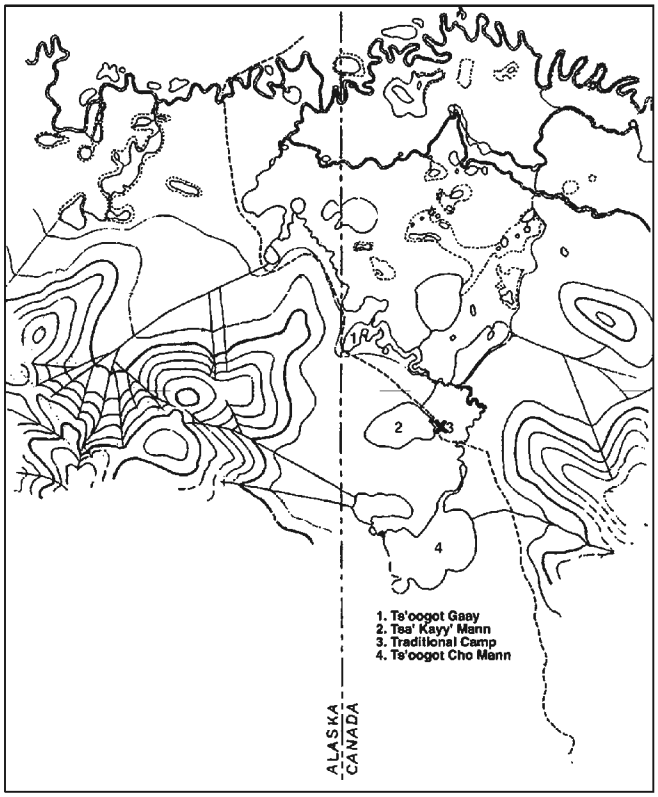


Figure 12. Plane table field map of the International Border around Tsoogot Gaay. The dashed line represents the Native trail through this area documented by the author. Note that it passes directly through Ts'oogot Gaay, and the "X" at the location of another Native fishing site. (Source: U.S. Archives. RG76. Carto Series 136. Public Inventory 170. Entry 378. 34 Maps. Folder 2.)

24 It has recently occurred to me that surely there were meetings with and instructions given to the heads of survey for each country, although I have not encountered any in my research. I suspect I have been looking in the wrong place. A determination should be made of who the heads of survey reported to and who was superior to these individuals, and a search of the records related to these bureaucrats should be made in an attempt to discover memorandums or notes related to meetings held before and after each year's field season. As well, a concerted effort needs to be made to attempt to locate Rupe's "Red Book," stolen from Andy Frank's cache in the late 1950s; it is possible that the traveller who took it, or his heirs, realizing it held some historic merit beyond mere curiousity, may have deposited it in some archives close to their home on their return or death.

25 To be fair, the United States does allow traditional Native commodities of truck and barter freely into the United States from Canada under a provision of the Treaty of Amity and Commerce (the Jay Treaty), which the United States yet recognizes. Canada has always refused to recognize the application of the Jay Treaty provisions since its confederation, maintaining its Parliament has never approved it, a technical point based on the fact the 1794 treaty was between the United States and Great Britain and not explicitly transferred to Canada (Case 1984; Issac 1999).

26 Again, in fairness, many of the Customs officials who work at both nations' custom stations are now aware of the former village and something of its history as a result of both Upper Tanana Dineh and myself informing them, and many also hold some degree of sympathy towards the Dineh case. But individuals are not the State, and while some officials sometimes turn a blind eye, ultimately they are charged with the enforcement of the law and accompanying regulations.

Finally, referring back to the cited survey documents above, some members of the survey recorded some other camps and villages and their interactions with local Dineh. It is simply inconceivable that the boundary surveyors could have missed the existence of Ts'oogot Gaay village, nor that they did not encounter Dineh at this location during their years of survey and vista cutting, since it was used as both a winter village and a major summer fishing site in July and August, drawing to it additional Dineh from the region. And yet the boundary survey records are silent on the existence of the village.[24]

Correspondingly, so too are both the United States and Canadian governments on the matter of Dineh rights on the borderlands. Indeed, Dineh traditional occupation rights were held in such apparent disregard that the United States built the most recent Alcan Customs station right atop the village site, apparently in complete ignorance of its existence and with no archaeological impact assessment, in contravention of general federal laws and policy.[25] My own efforts to undertake archaeological survey (in addition to the surface survey I have conducted) in the late 1990s were rebuffed on the basis of international border regulations concerning its "security," and a general policy of prohibiting activity within a kilometer of the border; although I have not recently requested, no doubt post-9-11 regulations are even more stringent. Requests by the White River First Nation to have the existing interpretive signs at the tourist pullout on the border vista where it crosses the Alaska Highway revised to reflect their historic occupation have been neglected by the Canadian state over the years. The existence of Ts'oogot Gaay, its Dineh inhabitants, and their original (misplaced) trust, has somehow been officially erased from the memory of the national governments, demonstrating to the Upper Tanana Dineh that the word of the state is at best a convenience.[26]

Perhaps the most bitter recollection of the ability of the state to enforce its administrative authority contrary to the expectations of Upper Tanana Dineh is the failed potlatch for the highly respected Dineh elder Mary Eikland in 1981. It is recalled that blankets and other potlatch goods were seized from American resident relatives and friends traveling to her funeral potlatch in Beaver Creek, Yukon, by Canadian Customs agents as illegal importations—unless they paid a duty, which few could afford. The potlatch was ruined. The Upper Tanana Dineh have not held a proper potlatch funeral ritual since then on the Canadian side, and a few elderly American Dineh have told me they never crossed the border again. The loss of this sacred religious ritual, one of the defining elements of their cultural identity as Dineh, is heavily felt among Upper Tanana Dineh in the Yukon. Fortunately, ever-resourceful in developing the means to sustain, confirm, and celebrate their unity as a distinctive Dineh society and culture, they have adapted to these state-imposed circumstances by holding this important ceremony for Canadian resident Upper Tanana Dineh in Northway or Tanacross, Alaska, where the ritual continues to flourish. One Dineh composer has summed up their collective bitterness towards the border and the trust to be placed in the state by making a Dineh song which is sung in campsites on both sides of the border. In translation, the singular refrain repeats: "King George—King George got diarrhea."

CONCLUSION

The existence of the international border of two nation-states dividing the land and people of the Upper Tanana Dineh remains a vexing issue for the descendants of the aboriginal occupants of the region. The resentment of the arbitrary imposition of the boundary between Canada and the United States upon the lands of the Upper Tanana Dineh is deep, separating as it did "Our Great People" from each other with different laws, education, and regulations over their activities. Today, many Dineh work hard to maintain their filial and clan relationships across the border, traveling or telephoning regularly between Beaver Creek, Northway, Tanacross, Tetlin, Mentasta, Gakona, Chitna, Copper Center, Whitehorse, Fairbanks, and other places where relatives and friends have settled, bringing gifts of the land, sharing memories and contemporary

27 In its recently failed land claims negotiations with Canada and Yukon (negotiations were closed by the federal government in 1995), the White River First Nation had sought designation of the Scottie Creek valley and borderlands as a special management area of natural and historical significance, including the possibility of creating an international park at Ts'oogot Gaay (similar to that at the U.S.–Canada border at Blaine, Washington state), which would provide a location for the presentation of Dineh history and culture to the tens of thousands of travellers that pass through yearly, a suggestion which didn't make it into the proposed final agreement. The White River First Nation people have subsequently rejected the proposed land claims final agreement and remain one of three Yukon First Nations (interestingly, all have trans-border claims) who retain all of their constitutional and Supreme Court of Canada–recognized aboriginal rights and territory, unimpeded or affected by constraining specifics of a negotiated final land claim.

experience, and consolidating a continued ethnic identity as the Dineh of the borderlands.

While their dispersal from the villages of the Scottie Creek valley by a variety of factors (see Easton 2005a; Simeone 1992) has resulted in a serious erosion of contemporary knowledge of the area's history, use, and potential among many younger Dineh, there remains considerable contemporary attachment to this land even today.[27] It is embodied in the practices of some Dineh such as Joseph Tommy Johnny, who still live on and off the land in the area of the borderlands in order to "keep the land open for my people," and in parents who take their children regularly out to the borderlands for evening walks "just to look around," during which they tell of their Dineh history and teach the Dineh Way. Much of this contemporary attachment and practice is invisible to the casual outside observer, non-Natives believing that the integration of television, automobiles, homeboy fashions, and hip-hop music demonstrates the final assimilation of the Dineh into western capitalist consumer culture.

But this image is a chimera, unreflective of the social, cultural, and spiritual beliefs and practices that, though unarguably changed by history, remain unalterably Dineh in nature.

> My people help each other. Someone there [in Alaska] wants to bring me fur coat, shirt, that's what I like. Rabbit skin, martin, potlatch food. They [Customs] want tax. It hurts my heart. . . . Where do government people think I came from? A hole in the ground? . . . Who is that Queen Elizabeth anyway? Who made her? We are Queen here, we all are Queens, Native people. (Mrs. Bessie John, speaking to representatives of Canada Customs in Beaver Creek, 24 October 1995)

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Love at the Border

itk.ca/love-at-the-border/

August 21, 2025



HERMAN AND CAROL OYAGAK first met at Kivgiq; an Iñupiat drum dancing celebration hosted in Utqiaġvik on Alaska's North Slope.

Over a century ago, the celebration was called a "messenger feast," where settlements would send out runners inviting neighbouring communities to attend, share news, harvests and gifts. Today, the festival continues to draw Iñupiat and Inuvialuit every other year to

celebrate their common bonds.

Herman, from Utqiaġvik, Alaska, and Carol, from Aklavik, Northwest Territories, had known each other casually for many years, through festival-going and mutual connections, before they noticed a spark. They married in 2017.


Pearl

Carol and Herman perform at a community feast in Aklavik in April 2024. © Ben Mitsuk

Their love story is not uncommon in this part of Inuit Nunaat, where Inuit on either side of the US-Canada border grew up treating the land as one. But when Herman relocated to Canada in 2018, setting out by snowmobile to make the two-day trip from Kaktovik to Aklavik, legal complications arose from their cross-border union that the couple, now in their 50s, continue to face today.

“For myself, you’re not Canadian or American, you’re just Iñupiat,” said Herman, 53. “Growing up, I never knew the border because we really always just went back and forth. We had family over there and family over here.”

Carol, who was born in Canada with Iñupiat roots, never experienced any issues travelling over the US border into Alaska, frequent trips she most often made by snowmobile. She typically tries to spend March through October each year out on the land, “following the food,” she said, spending lots of time in Kaktovik, on Barter Island.

“We never had issues; we were always welcome,” Carol said of her travels.

Still, when Aklavik became his home base, Herman was unable to be formally employed without a work or other residence permit from the federal government, though he applied for permanent residency. In the years that followed, Herman integrated into the Inuvialuit community of 700 people, making new friends and volunteering for the local search and rescue. On March 24, 2020, the couple was getting ready to go to a birthday party when the RCMP showed up at the door. Police had come to arrest Herman and have him deported to Alaska.

“They apologized; [they said] we have no choice, but we’ve had orders from the CBSA,” Carol recalled, referring to the Canadian Border Services Agency. Herman faced a charge under Canada’s Immigration and Refugee Protection Act for not presenting himself when he first arrived in the country. A previous criminal mischief conviction from over a decade ago meant he was inadmissible, which led to a deportation order.

For several days, Herman was kept in custody and transferred to Inuvik and then Yellowknife. That’s where his deportation order was stayed and eventually cancelled. But that move is considered a temporary measure, explained his lawyer, Nick Sowsun, noting the CBSA could still move to deport Herman again at any time.

In the years following his arrest, Carol and Herman have had to do weekly, and now monthly check-ins with the CBSA by phone to confirm Herman’s whereabouts, preventing them from spending long periods of time out on the land, where they would be outside of cell service areas.

> “The CSBA officer who was dealing with Herman had no idea of life in Aklavik or traditional practices,” Sowsun said. “They had no knowledge of that culture of tradition — they thought he was hiding.”

“There’s a long historical record on Iñupiat travelling into the Inuvialuit region and intermarrying, starting families, travelling back and forth to harvest,” he added. “It’s grounded in the historical record, and I think there’s a really strong argument to be made that the right already exists.”

Inherent rights aside, Sowsun pointed to the Jay Treaty as an example of a mechanism that Canada could use to enable and support Inuit immigration. The treaty of Amity, Commerce and Navigation, otherwise known as the Jay Treaty, was signed by the US and Great Britain in 1794.

The Treaty affirms the right of “Indians” living on either side of the border to freely cross it; this means that any Inuk with 50 per cent or more blood quantum may enter the US for the purposes of immigration, employment, study, retirement or investing and cannot be deported for any reason.

The Government of Canada has never enacted legislation required for the Jay Treaty to have force of law in Canada, and as such, the Treaty does not affect the admissibility of US-born Indigenous peoples to Canada.

In the summer of 2024, Herman finally received news that he had passed the first stage in the approval process for his application for Permanent Resident, filed in 2021 on humanitarian and compassionate grounds. He’s now awaiting final approval.

Carol estimates that half of the current Inuvialuit population descend from families who traveled from Alaska to what is now Canada in recent generations. For decades, the Inuvialuit Regional Corporation has raised the issue of cross-border mobility for Inuit who live and travel between that region and Alaska.


Pearl

Carol and Herman perform at a community feast in Aklavik in April 2024. © Ben Mitsuk

In recent years, Inuit Tapiriit Kanatami has proposed legislative measures to Immigration, Refugees and Citizenship Canada that would implement Article 36 of the United Nations Declaration on the Rights of Indigenous Peoples. Article 36 affirms the rights of Indigenous people to move freely throughout their respective territories. Canada's United Nations Declaration on the Rights of Indigenous Peoples Act obligates the federal government to align its laws with the rights affirmed by the UN Declaration.

ITK's proposed legislative amendments would uphold the right of eligible, federally recognized US tribal members like Iñupiat, as well as Greenland Inuit, to enter Canada. They would also create the option for Inuit Treaty Organization members to enter Canada on the basis of their Inuit Treaty Organization membership, rather than on the basis of citizenship.



In late 2023, Canada's then-Immigration Minister Marc Millersaid the federal government planned to make it easier for Indigenous peoples to move across international borders. Then, in October 2024, the government announced interim policy measures that were intended to enable members of US federally recognized tribes who have a close relative in Canada to apply at no financial cost for open work permits, study permits, or to extend the duration of their stay in Canada as visitors—an initiative that could benefit other Iñupiat like Oyagak.

The Oyagaks' story is not unique to the Inuvialuit Settlement Region. In Iqaluit, Nunavut, at the opposite end of Inuit Nunangat, Navarana Beveridge believes that Inuit have so much to gain from more open borders.

Beveridge grew up in Qaqortoq and Nuuk, Greenland, before relocating to Nunavut. She was selected to attend an Inuit youth exchange program in 1994, where she met her now husband William Beveridge, who is from Naujaat, Nunavut.



Carol and Herman Oyagak were wed in 2017.

The couple first tried to live in Greenland, but William was undocumented and forced to leave after a few months. The couple moved to Nunavut and married in 1997 to facilitate her permanent residency status. The administrative process was “daunting,” Beveridge

said, and included an invasive medical exam. It's only been since 2014 that Denmark allows for dual citizenship, meaning Beveridge couldn't vote or serve in public office in Nunavut for many years.

"Through this process, we just understood that [my husband and I are] from two different countries. So even though we're the same people over a large area of land, there are two jurisdictions governing them, and there are rules for entering those lands," said Beveridge, who works as a senior director of strategic planning at the Qikiqtani Inuit Association, the Inuit Treaty Organization for the Qikiqtaaluk region of Nunavut.

Beveridge has also served as Danish honorary consul for Nunavut. Through that experience, she learned of the family relations between many High Arctic communities like Pond Inlet or Grise Fiord, and Qaanaaq in Greenland. Border restrictions and long air travel routes make it very difficult now for those families to travel back and forth. Immigration laws have also deterred Beveridge's sister, a teacher and Kalaallisut speaker, the Inuit language of Greenland, from applying to work in Nunavut.

"It's not to the benefit of Inuit," Beveridge said. "If more people could see what's possible, then that opens up possibilities in terms of language advancement and promotion, and other initiatives.

"Drawing on each jurisdictional strength would empower Inuit to a new level, if we could just figure out how to work better together."

In the meantime, Herman Oyagak continues to wait on his permanent residency, which could spell the end of his fight against deportation. In the meantime, he had to pull out an infected tooth himself because he doesn't have access to Canadian health care. "We just need my husband's case to be done," said Carol. "My personal standpoint is that we're being discriminated against and being colonized all over again."



Herman and Carol Oyagak perform at a cultural celebration in the Inuvialuit Settlement Region. © Courtesy of OKT LLP

Author: Sarah Rogers

SCC File No. 38734

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

HER MAJESTY THE QUEEN

Appellant
(Appellant)

-and-

RICHARD LEE DESAUTEL

Respondent
(Respondent)

-and-

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL FOR SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF THE YUKON TERRITORY, PESKOTOMUHKATI NATION, INDIGENOUS BAR ASSOCIATION IN CANADA, WHITECAP DAKOTA FIRST NATION, GRAND COUNCIL OF THE CREES (EEYOU ISTCHEE)/CREE NATION GOVERNMENT, OKANAGAN NATION ALLIANCE, MOHAWK COUNCIL OF KAHNAWÀ:KE, ASSEMBLY OF FIRST NATIONS, MÉTIS NATIONAL COUNCIL AND MANITOBA MÉTIS FEDERATION INC., NUCHATLAHT FIRST NATION, CONGRESS OF ABORIGINAL PEOPLES and LUMMI NATION

Interveners
(Interveners)

FACTUM OF THE INTERVENER,
ATTORNEY GENERAL OF ALBERTA
(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada, SOR/2002-156)

Attorney General of Alberta
10th Floor, 102A Tower
10025-102A Avenue
Edmonton, Alberta T5J 2Z2

Angela Edgington
Brooklyn Leclair
Telephone: 780-427-1482
Fax: 780-643-0852
Email: angela.edgington@gov.ab.ca
brooklyn.leclair@gov.ab.ca

Counsel for the Intervener,
Attorney General of Alberta

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt
Telephone: 613-786-8695
Fax: 613-788-3509
Email: lynne.watt@gowlingwlg.com

Ottawa Agent for the Intervener,
Attorney General of Alberta

PART I – OVERVIEW AND STATEMENT OF FACTS

1. It is Alberta's position that the right asserted by Mr. Desautel has a mobility aspect and is incompatible with Crown sovereignty. Further, s. 35 relates to the relationship between Canada and its Aboriginal peoples. When interpreted properly, in accordance with this Court's jurisprudence, it is clear that it was not intended to provide constitutional recognition of rights for Aboriginal collectives that are not part of Canadian society. Finally, the facts found by the Trial Judge do not meet the test for establishing an Aboriginal right.

2. Alberta accepts the facts as set out in the Appellant's Factum.

PART II – OVERVIEW OF POSITION

3. Alberta will address the following issues that arise on this Appeal:

(1) Is the right claimed by Mr. Desautel incompatible with Crown sovereignty?

(2) Does s. 35 of the *Constitution Act, 1982* extend to Aboriginal collectives that are located outside Canada?

(3) Did the courts below err in the application of the test for Aboriginal rights to the facts found by the Trial Judge?

4. It is Alberta's position that the courts below erred in determining that Mr. Desautel has an Aboriginal right to hunt in British Columbia (BC) which is protected by s. 35 of the *Constitution Act, 1982*.[1]

PART III – ARGUMENT

A. The Right when Properly Characterized is Incompatible with Crown Sovereignty

(i) The Common Law did not Extend to Rights Incompatible with Sovereignty

5. The common law protected Aboriginal interests and laws as Aboriginal rights upon the assertion of Crown sovereignty over the territory that is now Canada. This protection was subject to certain exceptions: (i) where the rights were incompatible with Crown sovereignty; (ii) where the rights had been surrendered under treaty; and (iii) where the rights were extinguished.[2]

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[1] *Constitution Act, 1982*, s. 35(1), being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[2] *Mitchell v MNR*, 2001 SCC 33 (*Mitchell*) at para 10.

(iv) The Courts Below Erred in Finding no Mobility Aspect to the Claimed Right

15. The hunting activity undertaken by Mr. Desautel is alleged to be the exercise of an Aboriginal right; however, the activity does not, on its own, indicate the scope of the right claimed.[18] This Court has identified three factors involved in the characterization of a claimed right: (i) the nature of the action claimed to be done pursuant to an Aboriginal right; (ii) the government action or legislation alleged to infringe the right; and (iii) the ancestral traditions or practices relied on to establish the right.[19]

16. In this case, the nature of the action claimed to be done pursuant to an Aboriginal right was not just hunting - it was hunting in Sinixt traditional territory in BC. The alleged infringing legislation prohibited hunting without a license and hunting big game while not being a resident of BC. The ancestral practice relied on was hunting in the Sinixt traditional territory which included lands in both BC and Washington.[20]

17. The courts below rejected that there is a mobility aspect to the claimed Aboriginal right to hunt. A site-specific right to hunt includes physical access to the territory and the right to travel to the hunting grounds.[21] Mr. Desautel is a citizen and resident of a foreign country. Alberta submits that the right he asserts must include a mobilty aspect for it to be meaningfully exercised. Including a mobility component more accurately reflects the factors set out by this Court to properly characterize the right at issue. The Sinixt were "a mobile people" who exercised a "seasonal round" in their territory to hunt, fish and gather.[22] One of the charges Mr. Desautel was facing included a residency component.

18. In *Mitchell*, Chief Mitchell denied that his claim entailed the right to freely pass the border – a mobility right. As a Canadian citizen, Chief Mitchell did not require a right to cross the border into Canada. However, Chief Justice McLachlin rejected his contention that it was unnecessary to consider mobility. She noted that once an Aboriginal right has been established it encompasses other rights necessary to its meaningful exercise. The evidence had shown that trade involved travel and that finding a trading right would confirm an included mobility right.[23]

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[18] *Mitchell* at para 14.
[19] *Mitchell* at para 15.
[20] *Trial Decision* at paras 20 and 32.
[21] *R v Côté*, [1996] 3 SCR 139 (*Côté*) at para 57; *Simon v The Queen*, [1985] 2 SCR 387 at 403.
[22] *Trial Decision* at para 24.
[23] *Mitchell* at para 22.

(v) The Right at Issue is Incompatible with Crown Sovereignty

19. Alberta is aware of decisions where the court considered or commented upon an Aboriginal right with a cross-border mobility component. None of these prior cases determined the existence of such an Aboriginal right.[24] A majority of this Court has yet to consider whether such a mobility right is compatible with Crown sovereignty. This is an appropriate case to consider that issue.

20. Control of a country's borders, and who may enter and remain in that country, is a fundamental attribute of sovereignty.[25] In 1846, the Oregon Boundary Treaty established the border along the 49th parallel. At that time, the common law right of the Sinixt who resided in Washington to freely travel to and hunt in the area that became BC was no longer compatible with Canadian sovereignty. The common law right of the Sinixt who resided in Washington did not become incorporated into Canadian law and was not an existing right when s. 35 came into force.

21. The fact that some Sinixt who lived south of the 49th parallel still traveled into Canadian territory to hunt in the late 19th and early 20th century[26] is not determinative of whether the alleged right is incompatible with Canadian sovereignty. As stated by Justice Binnie: "This aspect of the debate … is not at the level of *fact* about the effectiveness of border controls in the 18th century."[27] Whether an asserted right is incompatible with Canadian sovereignty is a legal question.

22. As noted above, the Trial Judge expressed concern with the Crown's sovereign incompatibility argument as, in her view, the hunting rights of the Sinixt who remained in BC would not have survived the assertion of sovereignty. Those Sinixt became their own collective – the Arrow Lakes Band. There is no reason why the practice of hunting in their traditional territory north of the 49th parallel would not have survived the imposition of the border and been incorporated into the common law as a right.

23. The courts below suggested that any border mobility issues that arise can be dealt with in the infringement and justification analysis.[28] In terms of a hallmark indicia of sovereignty – control of the border – this is an unworkable solution. The Crown should not have the burden of justifying why a

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[24] *Mitchell; R v Campbell*, 2000 BCSC 956; *Watt v Liebelt*, [1999] 2 FC 455 (CA); *R v Shenandoah*, 2015 ONCJ 541 (*Shenandoah*).
[25] *Mitchell* at paras 160-163.
[26] *Trial Decision* at paras 40-50 and 137-138.
[27] *Mitchell* at para 73 [emphasis in original].
[28] *Trial Decision* at para 146; *BCSC Decision* at para 108; *BCCA Decision* at para 70.

person who was denied entry into Canada to exercise an alleged Sinixt right to hunt should continue to be denied entry.[29]

24. Finding that the right asserted by Mr. Desautel is incompatible with Crown sovereignty is not at odds with the purpose of s. 35. That purpose is to reconcile the pre-existence of Aboriginal societies with Canadian sovereignty and the interests of all Canadians, including the Aboriginal peoples who are citizens in this country. This issue is dispositive of the appeal and the Court need not make a determination on the additional issues set out below.

B. Section 35 Does Not Include Aboriginal Collectives Outside Canada

25. It is Alberta's position that the interpretation of s. 35 is a threshold issue which should be considered prior to the Court applying the test for establishing an Aboriginal right. Alberta submits that s. 35 does not apply to Aboriginal collectives outside of Canada.

(i) Interpretation Principles

26. In *R v Sparrow*, the Court stated that: "The approach to be taken with respect to interpreting the meaning of s. 35(1) is derived from general principles of constitutional interpretation, principles relating to aboriginal rights, and the purposes behind the constitutional provision itself."[30]

27. When interpreting constitutional rights, the wording of the Constitution should be given a "purposive"[31] interpretation; however, the interpretation must begin with the language of the constitutional provision in question.[32] Interpreting a constitutional provision begins with the ordinary meaning of the language, followed by the historical context and the philosophy and objectives underlying the words and guarantees.[33]

28. A generous and liberal interpretation of s. 35 is required and any ambiguity will be resolved in favour of Aboriginal peoples.[34] However, this does not mean that the Court must adopt an interpretation that is favoured by Aboriginal peoples over competing interpretations. Rather, the Court must reconcile any interpretation with the policies the provision seeks to promote.[35]

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[29] *Mitchell* at para 153.
[30] *Sparrow* at 1106.
[31] *Caron v Alberta*, 2015 SCC 56 (*Caron*) at para 35.
[32] *Caron* at paras 36-37.
[33] *Caron* at para 38.
[34] *Sparrow* at 1106-1107; *R v Van der Peet*, [1996] 2 SCR 507 (*Van der Peet*) at para 25.
[35] *Mitchell v Peguis Indian Band*, [1990] 2 SCR 85 at 142-143 (per LaForest J.).


In 1867, the colonies of Canada, Nova Scotia, and New Brunswick are united in a federal state. The provinces of Nova Scotia and New Brunswick retain their established boundaries, and Canada is divided into the provinces of Ontario and Quebec.
North-Western Territory
British Columbia
Rupert's Land
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario

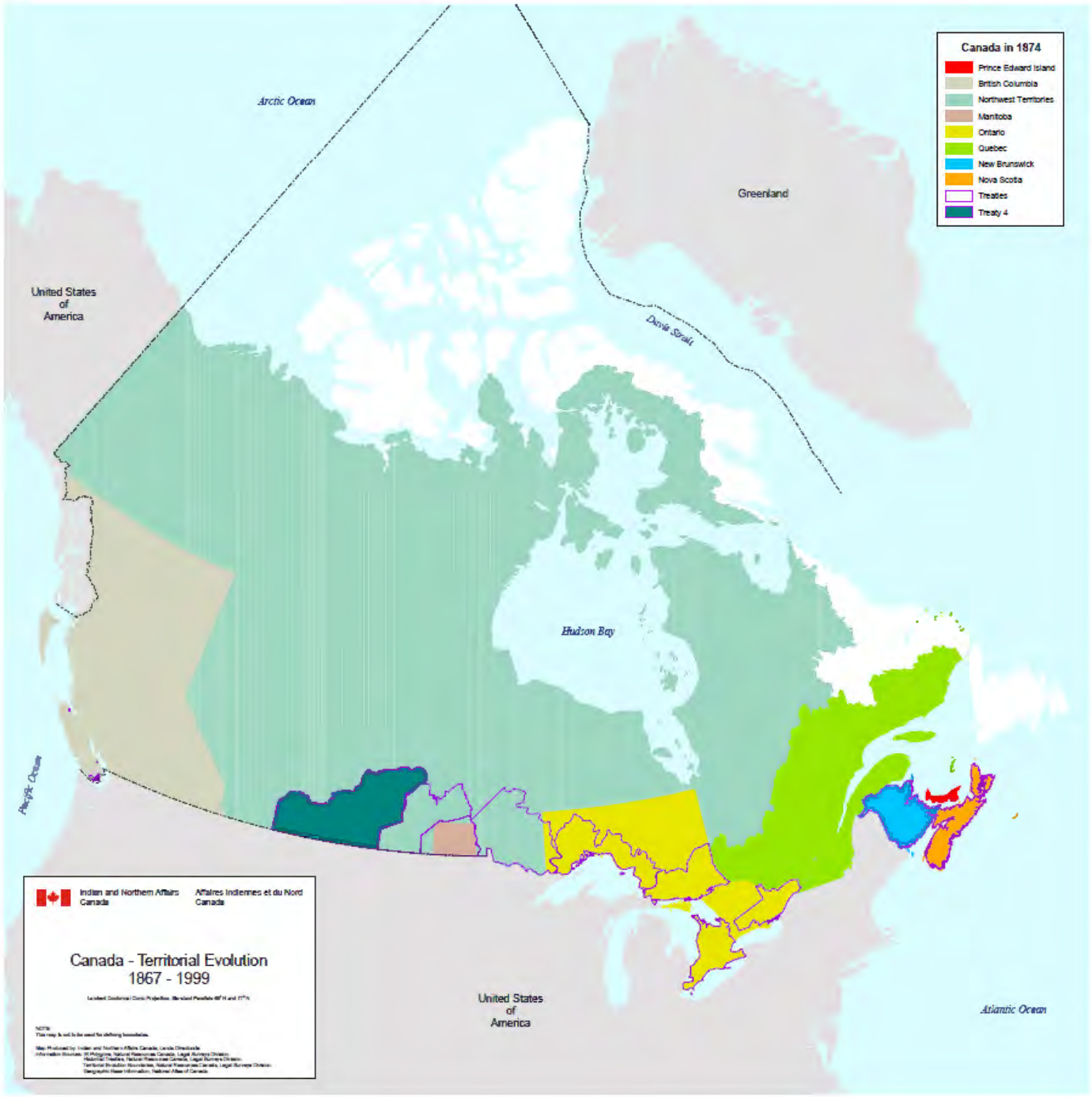

In 1870, Canada acquires "Rupert's Land and the North-Western Territory" and changes their name to the North-West Territories. From part of them, Manitoba is created as the fifth province.
Arctic Islands
British Columbia
North-West Territories
Newfoundland
Manitoba
Ontario
Quebec
Prince Edward Island
New Brunswick
Nova Scotia

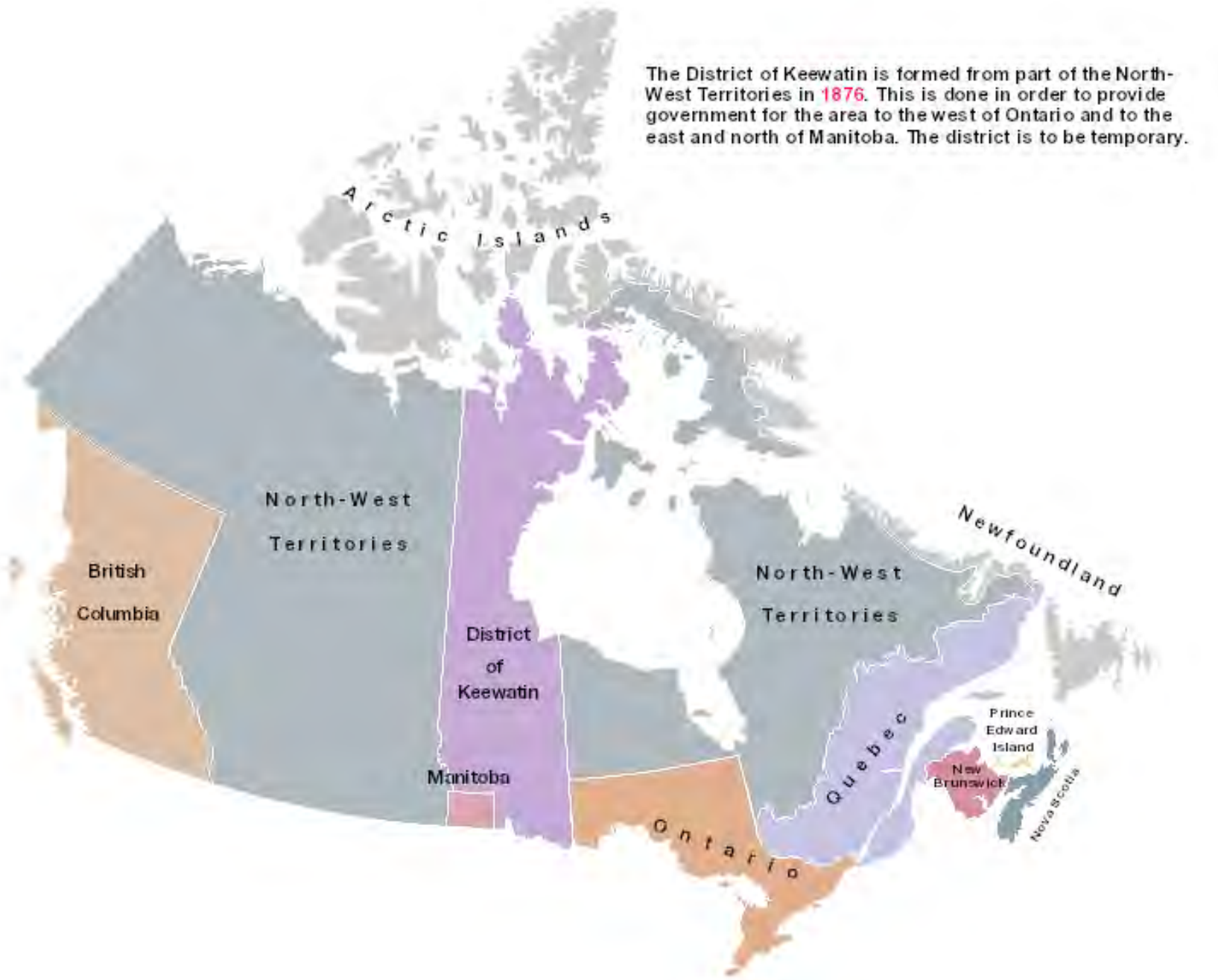

In 1871, British Columbia joins the federation as a province, with the boundaries it attained in 1866.
Arctic Islands
British Columbia
North-West Territories
Newfoundland
Manitoba
Ontario
Quebec
Prince Edward Island
New Brunswick
Nova Scotia

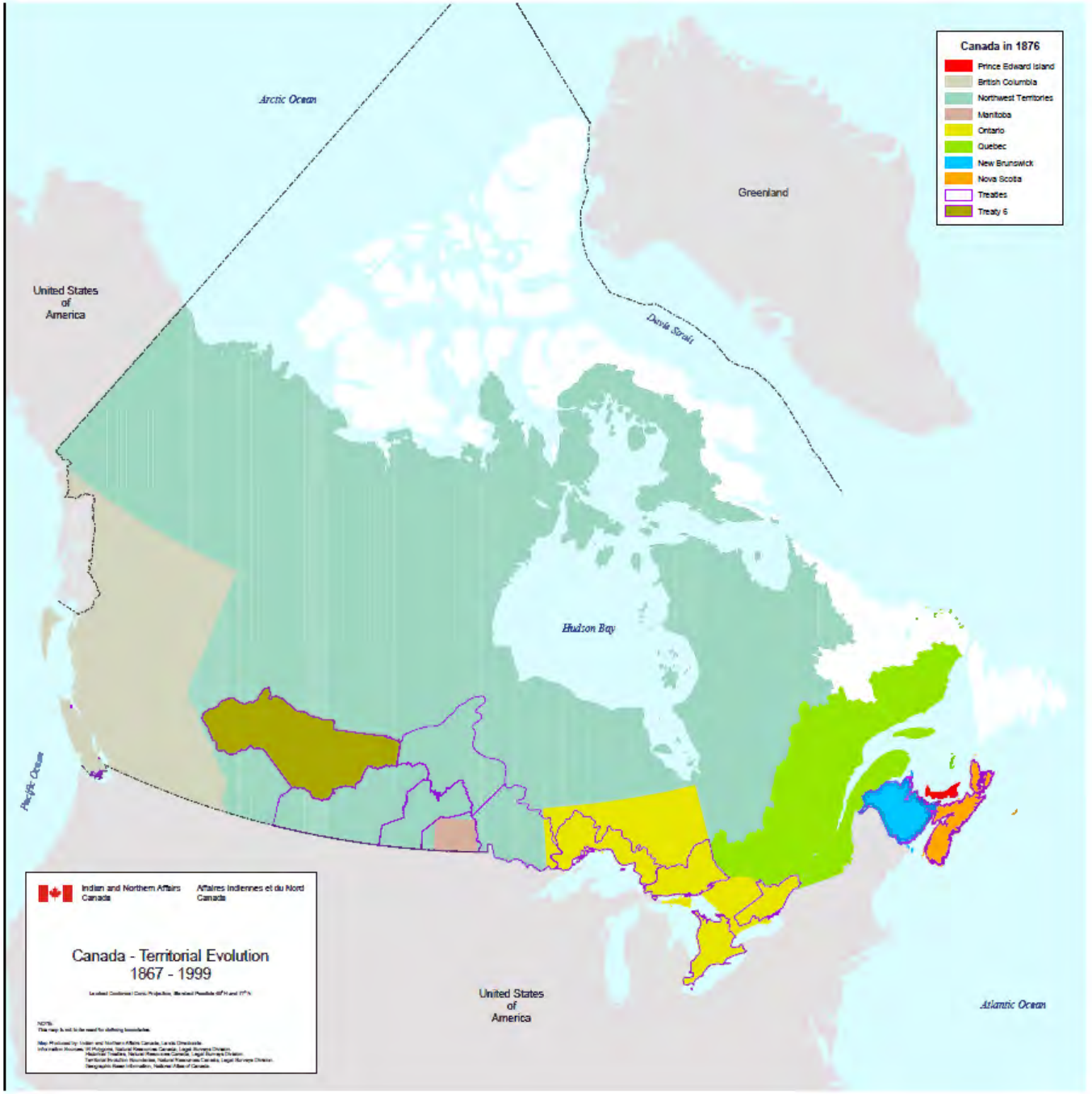
In 1873, Prince Edward Island joins Confederation as the seventh province. Prince Edward Island agreed to join Confederation after an agreement in which Canada promised to buy out absentee landowners, to take over the railway debts, and to establish communications between the island and the mainland.




New provisional boundaries are assigned to northern Ontario. Ontario's western boundary, which was established in 1870 when the province of Manitoba was created, caused many disputes between Ontario and Manitoba. In 1874, the Government of Canada sets provisional provincial boundaries which extend the territory of Ontario both to the west and to the north.
Arctic Islands
British Columbia
North-West Territories
Newfoundland
Manitoba
Ontario
Quebec
Prince Edward Island
New Brunswick
Nova Scotia

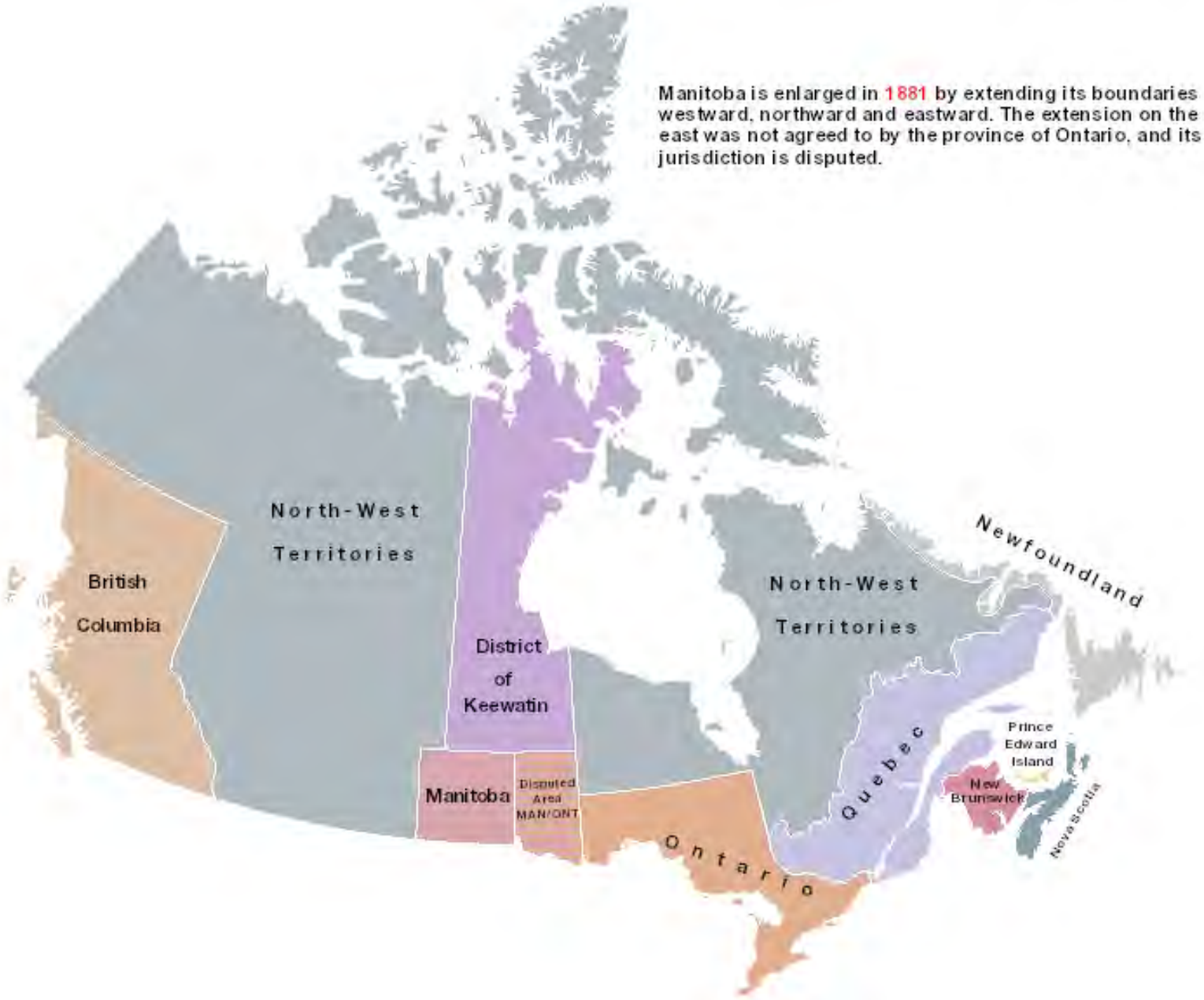

Canada in 1874
Prince Edward Island
British Columbia
Northwest Territories
Manitoba
Ontario
Quebec
New Brunswick
Nova Scotia
Treaties
Treaty 4
Arctic Ocean
Greenland
United States of America
Davis Strait
Hudson Bay
Pacific Ocean
Atlantic Ocean
United States of America
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada - Territorial Evolution
1867 - 1999


The District of Keewatin is formed from part of the North-West Territories in 1876. This is done in order to provide government for the area to the west of Ontario and to the east and north of Manitoba. The district is to be temporary.
Arctic Islands
North-West Territories
British Columbia
District of Keewatin
Manitoba
North-West Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


Canada in 1876
Prince Edward Island
British Columbia
Northwest Territories
Manitoba
Ontario
Quebec
New Brunswick
Nova Scotia
Treaties
Treaty 6
Arctic Ocean
Greenland
United States of America
Davis Strait
Hudson Bay
Pacific Ocean
Atlantic Ocean
United States of America
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada - Territorial Evolution
1867 - 1999


Canada in 1877
Prince Edward Island
British Columbia
Northwest Territories
Manitoba
Ontario
Quebec
New Brunswick
Nova Scotia
Treaties
Treaty 7
Arctic Ocean
Greenland
United States of America
Davis Strait
Hudson Bay
Pacific Ocean
Atlantic Ocean
United States of America
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada - Territorial Evolution
1867 - 1999

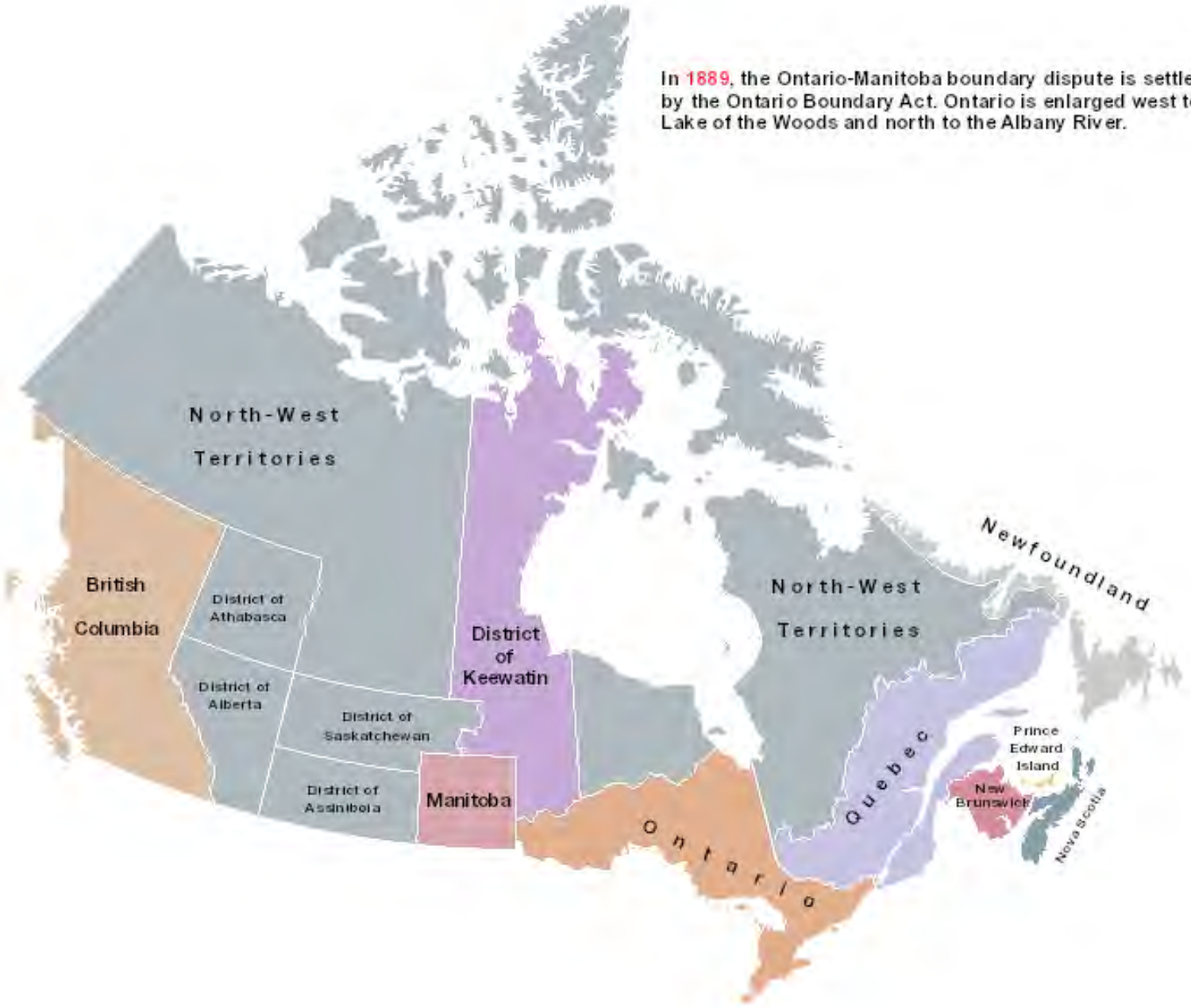

In 1880, an Imperial Order in Council transfers to Canada all of the British territories and possessions left in North America (except for the colony of Newfoundland), and also the islands next to these territories and possessions.
North-West Territories
British Columbia
District of Keewatin
Manitoba
North-West Territories
Newfoundland
Ontario
Quebec
Prince Edward Island
New Brunswick
Nova Scotia

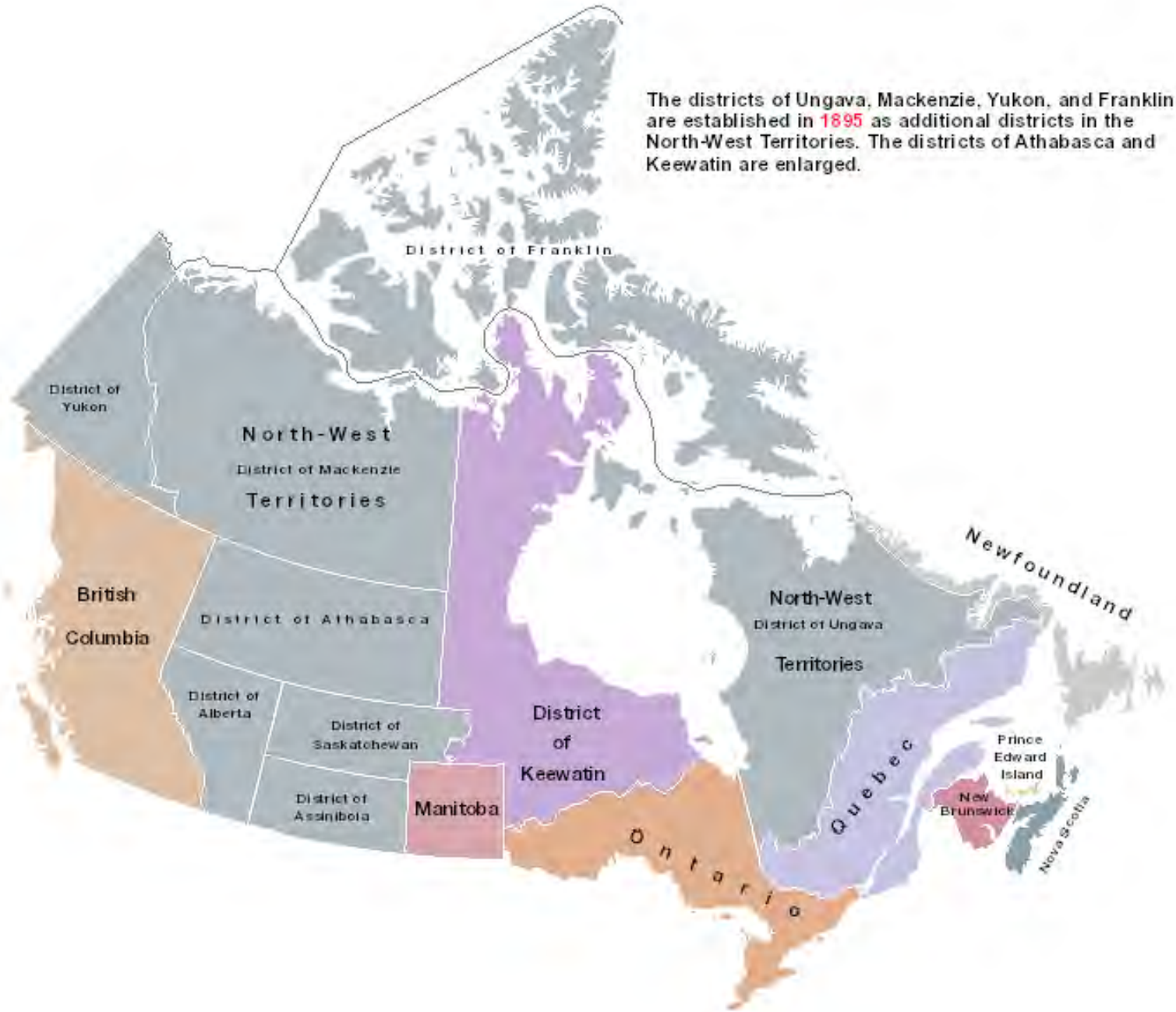

Manitoba is enlarged in 1881 by extending its boundaries westward, northward and eastward. The extension on the east was not agreed to by the province of Ontario, and its jurisdiction is disputed.
North-West Territories
British Columbia
District of Keewatin
North-West Territories
Newfoundland
Manitoba
Disputed Area MAN/ONT
Ontario
Quebec
Prince Edward Island
New Brunswick
Nova Scotia

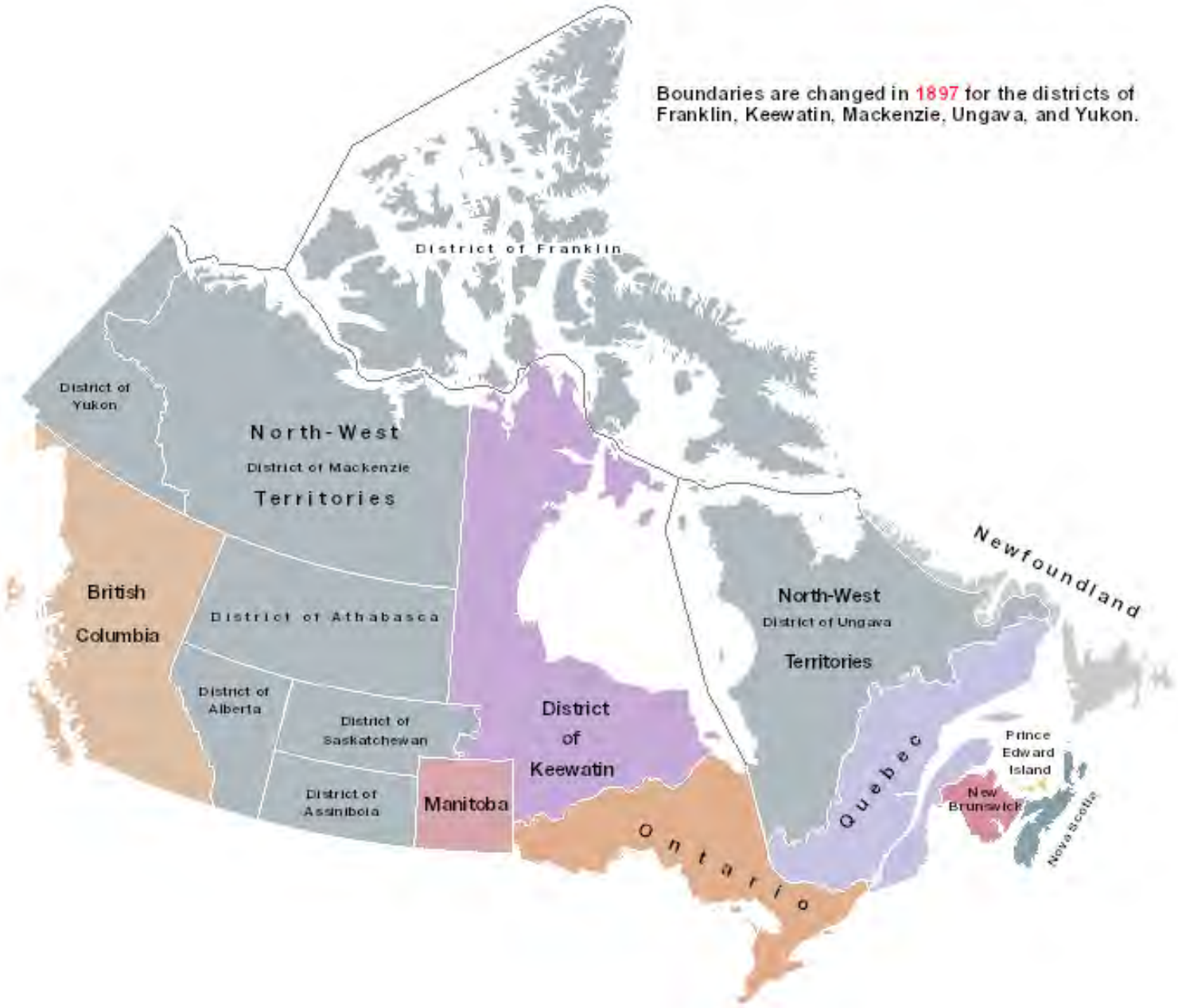


The provisional districts of Assiniboia, Saskatchewan, Athabasca, and Alberta are created in 1882. As people continued to settle in the North-West Territories (partly because the railway was being built), the federal government found it had to create new districts to govern the territories.


The southwestern boundary of Keewatin District is adjusted in 1886 to conform to the boundaries of the districts created in 1882.
North-West Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
District of Keewatin
Manitoba
Disputed Area MAN/ONT
Ontario
North-West Territories
Quebec
Newfoundland
Prince Edward Island
New Brunswick
Nova Scotia

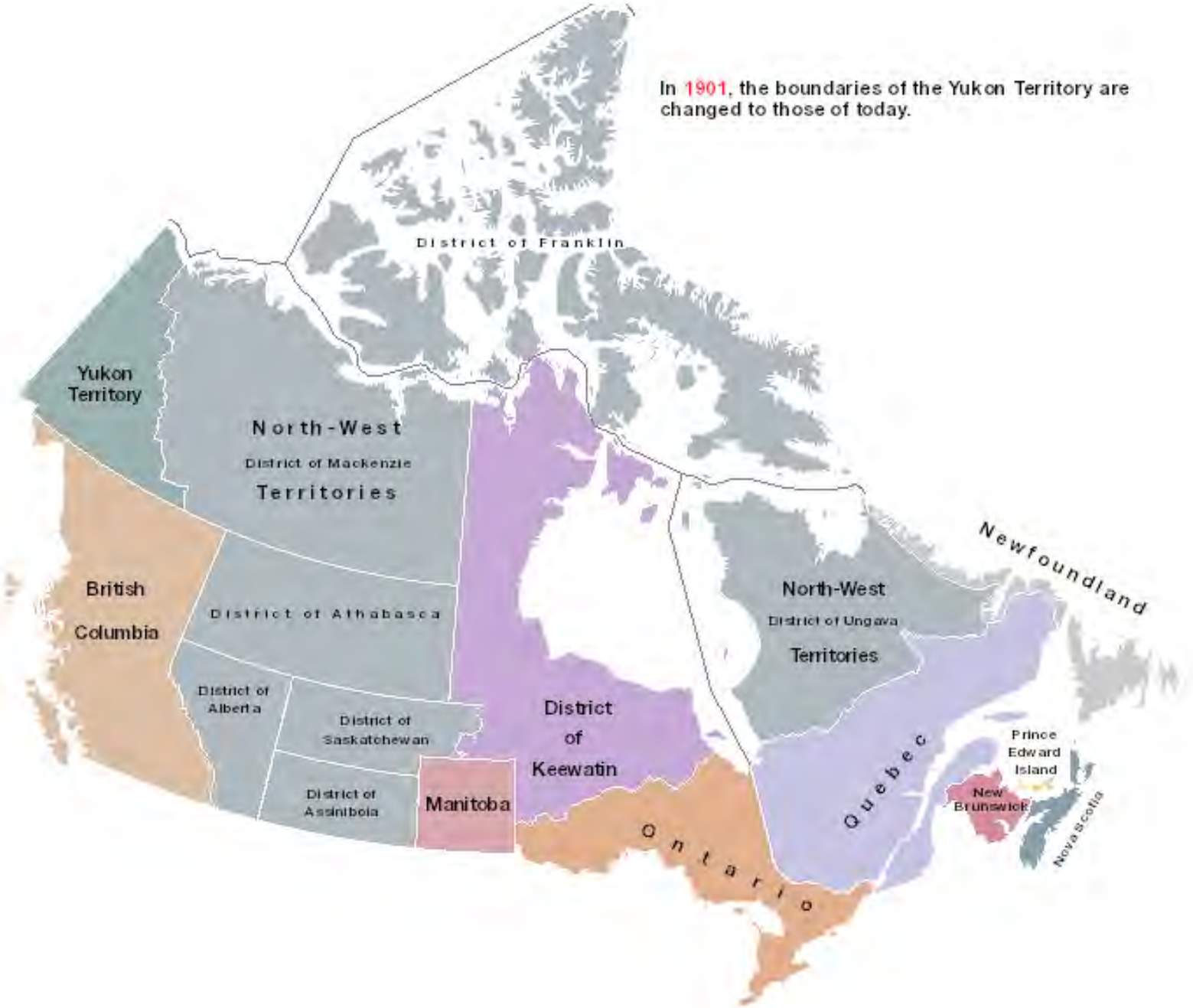

In 1889, the Ontario-Manitoba boundary dispute is settled by the Ontario Boundary Act. Ontario is enlarged west to Lake of the Woods and north to the Albany River.
North-West Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
Manitoba
District of Keewatin
North-West Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


The districts of Ungava, Mackenzie, Yukon, and Franklin are established in 1895 as additional districts in the North-West Territories. The districts of Athabasca and Keewatin are enlarged.
District of Franklin
District of Yukon
North-West
District of Mackenzie
Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
Manitoba
District of Keewatin
North-West
District of Ungava
Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


Boundaries are changed in 1897 for the districts of Franklin, Keewatin, Mackenzie, Ungava, and Yukon.
District of Franklin
District of Yukon
North-West
District of Mackenzie
Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
Manitoba
District of Keewatin
North-West
District of Ungava
Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


In 1898, the District of Yukon is separated from the North-West Territories to become the Yukon Territory with the boundaries as assigned to the district in 1895. The boundaries of Quebec are extended northward to the Eastmain River.
District of Franklin
Yukon Territory
North-West
District of Mackenzie
Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
Manitoba
District of Keewatin
North-West
District of Ungava
Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


Canada in 1899
Yukon
Prince Edward Island
British Columbia
Northwest Territories
Manitoba
Ontario
Quebec
New Brunswick
Nova Scotia
Treaties
Treaty 8
Arctic Ocean
Greenland
United States of America
Davis Strait
Hudson Bay
Pacific Ocean
Atlantic Ocean
United States of America
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada - Territorial Evolution
1867 - 1999


In 1901, the boundaries of the Yukon Territory are changed to those of today.
District of Franklin
Yukon Territory
North-West
District of Mackenzie
Territories
British Columbia
District of Athabasca
District of Alberta
District of Saskatchewan
District of Assiniboia
Manitoba
District of Keewatin
North-West
District of Ungava
Territories
Newfoundland
Quebec
Prince Edward Island
New Brunswick
Nova Scotia
Ontario


In 1905, Alberta and Saskatchewan are created as provinces with the boundaries they have today. The District of Keewatin is transferred back to the Northwest Territories.
District of Franklin
Yukon Territory
District of Mackenzie
North-West Territories
British Columbia
Alberta
Saskatchewan
Manitoba
District of Keewatin
District of Ungava
Newfoundland
Quebec
Ontario
Prince Edward Island
New Brunswick
Nova Scotia


Canada in 1906
Alberta
Saskatchewan
Yukon
Prince Edward Island
British Columbia
Northwest Territories
Manitoba
Ontario
Quebec
New Brunswick
Nova Scotia
Treaties
Treaty 9
Arctic Ocean
Greenland
United States of America
Davis Strait
Hudson Bay
Pacific Ocean
United States of America
Atlantic Ocean
Indian and Northern Affairs Canada
Affaires indiennes et du Nord Canada
Canada - Territorial Evolution
1867 - 1999

Alberta's Creation: A Historical and Legal Analysis

Dr. Kent McNeil, BA, LLB, DPhil (Oxford), FRSC
Distinguished Research Professor
Osgoode Hall Law School, York University, Toronto
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The provinces of Alberta and Saskatchewan were created out of the Northwest Territories, a part of Canada owned and governed by the federal government. In order to understand the context and implications of Alberta's potential secession from Canada, it is necessary to examine the history of the region and discuss the law that may be relevant to this question.

1. The History of the Canadian Prairies prior to Confederation in 1867

Prior to the expansion of the fur trade into what are now the Prairie Provinces, the region was inhabited exclusively by Indigenous nations that occupied and used the lands in accordance with their own ways of life. They were socially and politically organized, with their own governmental and legal orders. In the area that became Alberta, the principal nations were the Siksika (Blackfoot), Kainaiwa (Blood), and Piikani of the Blackfoot Confederacy, and the Sarcee, Nakota (Stoney), Gros Ventre, Assiniboine, Cree, Beaver, Chipewyan and Slavey.[1]

European presence on the Prairies prior to the 19th century was limited to fur traders, starting with French traders operating out of Montreal in the 18th century. The French fur trade expanded onto the Prairies in the 1730s,[2] without reaching directly into what is now Alberta.[3] After French Canada was ceded to Britain in 1763, the Montreal traders, organized as the North-West Company, extended the fur trade into what is now Alberta, establishing Fort Chipewyan at the west end of Lake Athabasca circa 1778. The Hudson's Bay Company, operating under the Rupert's Land Charter of 1670, established posts on Hudson Bay and relied mainly on Indigenous traders to bring furs to these posts prior to late in the 18th century. It

[1] See June Helm, ed., *Handbook of the North American Indians*, vol. 6, *Plains* (Washington: Smithsonian Institution, 1981); Raymond J. DeMallie, ed., *Handbook of the North American Indians*, vol. 13, *Plains* (Washington: Smithsonian Institution, 2001).
[2] Harold A. Innes, *The Fur Trade in Canada*, revised ed'n (Toronto: University of Toronto Press, 1956), 92-118.
[3] Fort La Corne, near the confluence of the North and South Saskatchewan Rivers in what is now Saskatchewan, appears to have been the most western French trading post: see Arthur J. Ray, *Indians in the Fur Trade* (Toronto: University of Toronto Press, 1974), map at 56.

established Edmonton House in 1795 and Chesterfield House on the Red Deer River in 1800.[4] The Nort-West Company amalgamated with the Hudson's Bay Company in 1821, leaving it as the sole British presence in what is now Alberta.

The Rupert's Land Charter purported to provide the Hudson's Bay Company with title to all the lands within and a fur-trade monopoly over the entire Hudson Bay watershed, which includes most of southern Alberta.[5] In addition, the Company was granted extensive governmental authority over this vast region, which it exercised in the Red River Settlement at the confluence of the Red and Assiniboine Rivers and over its fur trading posts and employees. After absorbing the North-West Company in 1821, it was the sole European authority in what is now Alberta. However, as the Company's Governor, Sir George Simpson, testified before the UK Select Committee of the House of Commons on the Company in 1857, it exercised no authority over the Indigenous peoples.[6] They remained, in Simpson's words, "perfectly at liberty to do what they please."[7] In other words, the Indigenous nations retained the complete independence they had enjoyed prior to the arrival of European traders, with whom they maintained diplomatic and commercial relations for their mutual benefit.

2. Confederation and the Transfer of Rupert's Land and the North-Western Territory to Canada in 1870

Canada, as created by an Act of the British Parliament (the *British North America Act, 1867*, now the *Constitution Act*, *1867*[8]), consisted of only four provinces: Ontario, Quebec, Nova Scotia and New Brunswick. Section 146 of the Act nonetheless provided for the admission of other provinces and territories:

> 146. It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any one of them, into the Union, and *on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the*

[4] E.E. Rich, *The Fur Trade and the Northwest to 1857* (Toronto: McLelland and Stewart, 1967), map at 71.
[5] The Milk River in the extreme south of the province flows south to the Missouri River.
[6] *Report of the Select Committee in the Hudson's Bay Company* (London: House of Commons, 1857), Minutes of Evidence at 91. In response to Lord Stanley's question, "You exercise no authority whatever over the Indian tribes?", Simpson replied: "None at all."
[7] *Ibid.*
[8] 30 & 31 Vict, c. 3 (UK).

> *North-western Territory, or either of them, into the Union*, on such Terms and Conditions as in each Case are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; *and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.* [emphasis added]

Pursuant to this provision, the Parliament of Canada acted rapidly to secure admission of Rupert's Land (the territory granted to the Hudson's Bay Company in 1670) and the North-Western Territory (apart from British Columbia, the territory to the west and north of Rupert's Land, presumably up to the Arctic Ocean, including all of what is now northern Alberta).[9] By an Address to the Queen, dated December 16 and 17, 1867, the Parliament of Canada requested admission of these two territories into Canada so that political institutions and law and order could be established there. Parliament undertook that, "upon the transference of the territories in question to the Canadian Government, the claims of the Indian tribes to compensation for lands required for purposes of settlement will be considered and settled in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the Aborigines."[10] Canada thus appears to have committed itself to the provisions of the Royal Proclamation of 1763, which prohibited any acquisition of or settlement on Indigenous lands prior to a surrender of Aboriginal title to the Crown.[11]

The British Colonial Secretary replied that "the requisite powers of Government and legislation cannot, consistently with the existing Charter of the *Hudson's Bay Company*, be transferred to *Canada* without an Act of Parliament."[12] The UK Parliament accordingly enacted the *Rupert's Land Act, 1868*,[13] empowering the Company to surrender all its rights and powers to the Crown and empowering the Crown to admit Rupert's Land into Canada on Address by the

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[9] See Kent McNeil, *Native Claims in Rupert's Land and the North-Western Territory: Canada's Constitutional Obligations* (Saskatoon: University of Saskatchewan Native Law Centre, 1982), 4-5. The British Crown granted a trading licence in the North-Western Territory to the Hudson's Bay Company when it merged with the North-West Company in 1821: in *Parliamentary Papers, House of Commons* (UK), No. 547, at 22.

[10] Address to Her Majesty the Queen from the Senate and House of Commons of the Dominion of Canada [1867 Address], Schedule A to the Order of Her Majesty and Council Admitting Rupert's Land and the North-Western Territory into the Union, 23 June 1870 [Rupert's Land Order], in RSC 1985, App. II, No. 9 at 8.

[11] On the Proclamation, see Brian Slattery, *Aboriginal Title and the Royal Proclamation of 1763: Origins and Illusions*, online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=3500145>. The text of the Proclamation can be found in RSC 1985, App. II, No. 1.

[12] April 23, 1968, printed in *Journals*, *House of Commons* (Canada), vol. 1, 1867-68, at 12.

[13] 31 & 32 Vict., c. 105 (UK), printed in RSC 1985, App. II, No. 6.

Parliament of Canada, confirming section 146 of the *Constitution Act, 1867.* Negotiations between Canada and the Hudson's Bay Company on the terms of the transfer then took place, with the Colonial Secretary imposing terms after the parties failed to reach an agreement. These terms, which Canada and the Company accepted, are contained in Schedule B to Rupert's Land Order.[14]

Canada did not get Rupert's Land for nothing. It was obliged to pay the Company £300,000 – a considerable sum at the time. In addition, it had to grant the Company up to 50,000 acres in the Red River Territory and around its posts, as well as up to one twentieth of the lands set out for settlement in the Fertile Belt. Canada also had to pay for the Company's telegraph lines and allow the Company to carry on its trading activities without imposition of any exceptional taxes. The Company also got to retain its posts in the North-Western Territory. As far as Indigenous rights were concerned, Canada agreed that "any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government, in communication with the Imperial Government, and that the Company shall be relieved of all responsibility in respect of them."[15] So the Company was entirely off the hook in that regard.[16]

Following this agreement, the Parliament of Canada sent a second Address to Her Majesty, dated May 29 and 31, 1869, asking her to admit Rupert's Land into Canada on the terms agreed to with the Hudson's Bay Company and to admit the North-Western Territory on the terms expressed in Parliament's first Address to the Queen in December 1867.[17] In addition, the second Address contains a commitment by Canada that "upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer."[18] On November 19, 1869, the Company executed a Deed of Surrender of its rights and powers to the Crown, subject to the terms that had been agreed to.[19] By the Rupert's Land Order, dated June 23, 1870, the Queen transferred Rupert's Land and the North-Western Territory to Canada as of July 15, 1870, the former on

[14] *Supra* note 10 at 10-11.
[15] *Ibid* at 11.
[16] For more detailed discussion of the negotiations and terms, see McNeil, *supra* note 9 at 6-12.
[17] Rupert's Land Order, *supra* note 10, Schedule B [1869 Address], at 13-15.
[18] *Ibid*, Schedule B, at 14.
[19] *Ibid*, Schedule C, at 15-21.

the terms agreed to and the latter on the terms expressed in the Parliament of Canada's first Address to Her Majesty.[20]

We have seen that section 146 of the *British North America Act, 1867,* provided that "the Provisions of any Order in Council in that Behalf [i.e., admitting Rupert's Land and the North-Western Territory into Canada] shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland." This meant that those provisions, including Canada's obligation to settle any Indigenous claims for compensation for lands required for settlement in Rupert's Land in communication with the Imperial Government and, in the North-Western Territory, in conformity with the equitable principles followed by the British Crown in its dealings with the Indigenous peoples, have constitutional force in Canada.[21] This is confirmed by the inclusion of the Rupert's Land Order in the Schedule to the *Constitution Act, 1982*,[22] as section 52 of that Act provides that the Acts and orders referred to in the schedule are included in the Constitution of Canada.

3. Negotiation of the First Eight Numbered Treaties, 1871-1899

Canada took its constitutional obligations under the Rupert's Land Order seriously.[23] Soon after acquiring Rupert's Land and the North-Western Territory, it began entering into negotiations with some of the Indigenous nations living there. Treaties 1 (1871), 2 (1871), and 3 (1873) were entered into in and beyond the small province of Manitoba (its boundaries were extended to their present locations in 1881 and 1912[24]).[25] Treaty 4 (1874) was the first treaty to reach into what is now Alberta, taking in a small area up to the western extremity of the Cypress Hills in the present southeast corner of the province. During the negotiations, Alexander

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[20] *Ibid* at 4. See *Caron v. Alberta*, [2015] 3 SCR 511, where a majority of the Supreme Court decided that the Rupert's Land Order did not include a constitutional guarantee of French language rights because, unlike the promise to settle Indian claims, language rights were not explicitly mentioned in the 1867 Address, *supra* note 10. The delay between execution of the Company's Deed of Surrender and the Crown's acceptance of it and transfer of the two territories to Canada was due to the Riel Resistance and the necessity to negotiate the creation of the province of Manitoba, which was accomplished by the *Manitoba Act, 1870*, 33 Victoria, c. 3 (SC 1870).

[21] For more detailed discussion, see McNeil, *supra* note 9, especially at 13-26.

[22] Schedule B to the *Canada Act 1982*, (UK) 1982, c. 11.

[23] E.g. the *Dominion Lands Act,* 42 Vict. c. 31 (SC 1879), s. 43, provided: "None of the provisions of this act respecting the settlement of agricultural lands, or the lease of timber lands, or the purchase and sale of mineral lands, shall be held to apply to territory the Indian title to which shall not, at the time, have been extinguished."

[24] Norman L. Nicholson, *The Boundaries of the Canadian Confederation* (Toronto: Macmillan Company of Canada, 1979) at 121 (map), 141-42, 146.

[25] Records of the negotiations and the texts of the first seven Numbered Treaties can be found in Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories* (Toronto: Belfords, Clarke & Co., 1880).

Morris, the head treaty commissioner, told the Indigenous leaders that "the Queen always keeps her word, always protects her red men."[26] He promised that "the promises we have to make to you are not for to-day only but for to-morrow, not only for you but for your children born and unborn, and the promises we make will be carried out as long as the sun shines above and the water flows in the ocean."[27] Similar promises were made in Treaty 6 (1876), covering what is now central Alberta, Treaty 7 (1877) in what is now southwestern Alberta, Treaty 8 (1899) north of Treaty 6, and Treaty 10 (1906-07) extending into northern Alberta from Saskatchewan. Canada had the obligation, and continues to have the obligation, to ensure that the terms of these treaties are respected.[28] Since at least 1982, when section 35 of the *Constitution Act, 1982* recognized and affirmed existing Aboriginal and treaty rights, this obligation has been constitutional. In addition, article 37 of the United Nations Declaration on the Rights of Indigenous Peoples, which Parliament has undertaken to implement fully,[29] provides that "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements."[30]

4. Canada's Administration of the Northwest Territories, 1870-1905

As mentioned earlier, when Treaties 4 to 8 were entered into the provinces of Alberta and Saskatchewan did not exist. Upon the transfer of Rupert's Land and the North-Western Territory to Canada in 1870, the small province of Manitoba was created out of these territories by the *Manitoba Act, 1870.* The rest of the acquired area was given a new designation, the North-West Territories, by a Canadian statute, the *Temporary Government of Rupert's Land Act*.[31] That statute made "temporary provision for the Civil Government of such territories until more permanent arrangements can be made by the Government and Legislature of

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[26] *Ibid* at 95.
[27] *Ibid* at 96.
[28] See *The Queen v. The Secretary of State for Foreign and Commonwealth Affairs,* [1981] 4 CNLR 86.
[29] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c. 14
[30] United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on September 13, 2007, online.https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf. On May 10, 2016, Canada became a full supporter of the UN Declaration, without qualification: https://www.canada.ca/en/indigenous-northern-affairs/news/2016/05/canada-becomes-a-full-supporter-of-the-united-nations-declaration-on-the-rights-of-indigenous-peoples.html.
[31] 32 & 33 Vict., c. 3 (SC 1869). This Act was continued if force by the *Manitoba Act, 1870, supra* note 20, and *An Act to Make Further Provision for the Government of the North-West Territories*, 34 & 35 Vict., c. 16 (SC 1871), online: file:///C:/Users/kmcneil/Downloads/b71c16_1100100010213_eng.pdf.

Canada."[32] It provided for the appointment of a Lieutenant-Governor who was empowered to govern the North-West Territories and "make, ordain, and establish all such Laws, Institutions and Ordinances as may be necessary for the Peace, Order and good Government of Her Majesty' subjects and others therein."[33] This Act was replaced in 1875 by *An Act to Amend and Consolidate the Laws Respecting the North-West Territories*,[34] which continued the office of the Lieutenant-Governor and a council with executive and limited legislative powers. Ottawa nonetheless retained close control over the North-West Territories, as the Act provided that "the Lieutenant-Governor shall administer the government under instructions from time to time given him by Order in Council, or by the Secretary of State of Canada."[35] In particular, control over lands and natural resources remained in the firm hands of Ottawa by virtue of the *Dominion Lands Act*,[36] first enacted in 1872 and amended many times up to 1928.[37]

In 1882, a federal Order in Council provisionally divided the southwestern area of the North-West Territories into the districts of Assiniboia, Athabaska, Saskatchewan, and Alberta.[38] Norman Nicholson explains that "[t]hese districts were created for federal, administrative, and postal purposes and were rarely referred to in the local legislature at Regina."[39] The boundaries of the Districts of Saskatchewan and Alberta, as defined by the Order in Council, did not correspond with the two provinces that were created in 1905.[40] The northern half of what is now the province of Alberta was included in the District on Athabaska (from about the 55th to the 60th parallel) and a substantial eastern slice was included in the Districts of Assiniboia and Saskatchewan. The District of Saskatchewan not only

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[32] 32 & 33 Vict., c. 3 (SC 1869), Preamble.
[33] *Ibid*, s. 2.
[34] 38 Vict, c. 49 (SC 1875), online: https://caid.ca/NWTAct1875.pdf.
[35] *Ibid*, s. 2. On governmental authority in the North-West Territories, see Lewis H. Thomas, *The North-West Territories 1870-1905* (Ottawa: The Canadian Historical Association Booklets No. 26, 1970), online: https://cha-shc.ca/wp-content/uploads/2022/08/5c38aaeff0d76.pdf.
[36] 35 Vict. c. 23 (SC 1872).
[37] See Kirk N. Lambrecht, *The Administration of Dominion Lands, 1870-1930* (Regina: Canadian Plains Research Center, University of Regina, 1991), especially at 81-82.
[38] Order in Council, 8 May 1882, in Douglas R. Owran, ed., *The Formation of Alberta: A Documentary History* (Calgary: Historical Society of Alberta, 1979), 52-55. Unlike the names of the other three districts that came from local Indigenous nations and languages, "Alberta" was chosen by the Marquis of Lorne, Governor-General of Canada at the time, who named it after his wife: see Princess Louis to J.D Higinbotham, 18 September 1924, in Owran at 55. The name has no connection with the people or geography of the region: see a disparaging editorial comment in the *Edmonton Bulletin*, 1 July 1882, printed in Owran at 55-56.
[39] Nicholson, *supra* note 24 at 116.
[40] See maps, *ibid* at 127, and Owran, *supra* note 38 at 54.

included part of what is now the province of Alberta but also extended north of the then province of Manitoba as far east as Lake Winnipeg.

Political pressure for more local autonomy in the North-West Territories led to the creation of an elected assembly in 1888 when Parliament amended the *North-West Territories Act*.[41] Although the assembly got some control over the expenditure of revenues in 1897, Ottawa still held the purse strings. Moreover, "the paramount issues for the region were regulated wholly by the federal government. These issues included Indian treaty negotiations, railway construction, immigration, and deeding land to settlers."[42] Inadequate funding and lack of local autonomy were the major issues driving the campaign for provincial status that got underway in the 1890s.[43]

5. Creation of the Provinces of Alberta and Saskatchewan in 1905

The provinces of Alberta and Saskatchewan were created in 1905 by statutes enacted by the Parliament of Canada[44] that have constitutional force due to the *British North America Act, 1871* (now the *Constitution Act, 1871*).[45] Section 6 of that Act prevents even the Parliament of Canada from amending those Acts. Obviously, the provincial legislatures of Alberta and Saskatchewan cannot amend those federal statutes either. Section 2 of both the *Alberta Act* and the *Saskatchewan Act* describe the boundaries of each province, which remain unaltered to the present day. Any change to those boundaries would require a constitutional amendment.

Several options for the creation of provinces out of the North-West Territories were considered in the years leading up to the creation of the provinces of Alberta and Saskatchewan.[46] Frederick Haultain, who was then the Premier of the North-West Territories, favoured one big province. Prime Minister Wilfrid Laurier, with whom the decision rested, preferred two provinces because he

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[41] 51 Vict., c. 19 (SC 1888). See T.L. Herbert, *The Struggle for Responsible Government in the Northwest Territories, 1870-1897* (Toronto: University of Toronto Press, 1956).
[42] Gerald Heinrichs, "North-West Territories Act", in *The Encyclopedia of Saskatchewan* (Regina: Canadian Plains Research Center, University of Regina, 2005), 658.
[43] See Bill Waiser, *Saskatchewan: A New History* (Calgary: Fifth House, 2005), 4-5. On the funding issue, see correspondence between F.W.G. Haultain, Premier of the North-West Territories, and Clifford Sifton, federal Minister of the Interior, January-October 1899, in Owran, *supra* note 38 at 114-17.
[44] The *Alberta Act*, 4 & 5 Edward VII, c. 3 (SC 1905); the *Saskatchewan Act*, 4 & 5 Edward VII, c. 42 (SC 1905).
[45] 34 & 35 Vict., c. 28 (UK).
[46] See J. William Brennan, "The 'Autonomy' Question and the Creation of Alberta and Saskatchewan, 1905" in R. Douglas Francis and Howard Palmer, eds., *The Prairie West: Historical Readings* (Edmonton: Pica Pica Press, 1985), 362 at 366-68.

thought "one large western province would upset the balance of Confederation," but his greater fear "was that one province would give Haultain a tremendous power base, especially given the current rate of western immigration."[47]

The actual location of the boundaries of the new provinces of Alberta and Saskatchewan has been described by prominent western historian Bill Waiser as "totally arbitrary" and reflecting "little understanding of the geography of the western interior."[48] Various options for the location of the boundaries were discussed, but Laurier opted for a line drawn at 110 degrees west latitude because he wanted the two provinces to be roughly the same size.[49] The geographical extent of these provinces bore scant resemblance to the smaller, pre-existing territorial districts of Alberta and Saskatchewan.[50]

The boundaries of the new provinces took no account of the existence of Treaties 4, 6 and 8, as the Indigenous nations that signed those treaties now found their peoples and territories separated by these boundaries. This meant, for example, that the Indigenous peoples who entered into Treaty 8 would be subject to different provincial and territorial laws, depending on their geographical location within the treaty territory in Alberta, Saskatchewan, British Columbia, or the remaining North-West Territories. This would include provincial laws in relation to hunting and trapping, in many instances their prime sources of food and income, despite the fact that these treaties had guaranteed their right to pursue their avocations of hunting, tapping and fishing throughout the treaty area. The Treaty 8 people in particular would not have entered into the Treaty if their hunting and fishing rights would be curtailed. In their Report on the negotiations, the Commissioners wrote that "we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it."[51] And yet, when public lands and natural resources were transferred to the province of Alberta in 1930 (more on this below), paragraph 12 of the Alberta Natural Resources Transfer Agreement (like the equivalent provision

[47] Waiser, *supra* note 43 at 7-8.
[48] *Ibid* at 8.
[49] See Sir Wilfrid Laurier, Speech introducing the Bill to create the Province of Alberta, *House of Commons Debates*, 21 February 1905, 1421-67 [Laurier, Speech], in Owran, *supra* note 38, 275-88 at 277-78; Nicholson, *supra* note 24 at 129-36.
[50] See James G. McGregor, *A History of Alberta* (Edmonton: Hurtig Publishers, 1972), 186-87.
[51] Report of Commissioners for Treaty No. 8**,** 22 September 1899 [Commissioners' Report], online: https://www.rcaanc-cirnac.gc.ca/eng/1100100028813/1581293624572.

in the Manitoba and Saskatchewan Agreements) provided that "Canada agrees that the laws respecting game in force in the province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the province hereby assures to them, of hunting, trapping and fishing game and fish *for food* at all seasons of the year on all unoccupied Crown lands and on any other land to which the said Indians may have a right of access."[52] This meant that commercial trapping, which had been a mainstay of Indigenous economies since the commencement of the fur trade, would henceforth be subject to different provincial laws.[53]

6. Ownership of Public Lands and Natural Resources

When the provinces of Alberta and Saskatchewan were created, Canada retained ownership of public lands and natural resources,[54] as it had done when Manitoba was created in 1870.[55] When he introduced the Bill for the creation of Alberta on February 21, 1905, Sir Wilfrid Laurier explained the rationale for the federal government's position in this regard in a passage that is worth quoting at length. On behalf of the new provinces, he said that

> [i]t was represented that as a matter of law and equity, the public lands in these two provinces should belong to their governments. This plea was no doubt suggested by the fact that at the time of confederation, all the parties to the original contract, that is to say, the provinces of Nova Scotia, New Brunswick, Ontario and Quebec, each retain her own lands; and when at a later day the province of British Columbia was admitted to the dominion, she also retained her lands. But, Sir, the cases are not at all parallel. When the provinces which I have named came into confederation they were already sovereignties. I use that term, because

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[52] Alberta Memorandum of Agreement [Alberta Agreement], Schedule 2 to the *British North America Act, 1930*, 20 & 21 George V, c. 26 (UK), now the *Constitution Act, 1930* [emphasis added]. Because confirmed by an Act of the UK Parliament, this Agreement has constitutional force. See Kent McNeil, *Indian Hunting, Trapping and Fishing Rights in the Prairie Provinces of Canada* (Saskatoon: University of Saskatchewan Native Law Centre, 1983), 20-45.

[53] See *R. v. Horseman*, [1990] 1 SCR 901; *R. v. Badger,* [1996] 1 SCR 771. For critical commentary, see Brian Calliou, "*Natural Resources Transfer Agreements*, the Transfer of Authority, and the Promise to Protect the First Nations' Right to a Traditional Livelihood: A Critical Legal History" (2007) 12:2 *Review of Constitutional Studies* 173; Kerry Wilkins, "Unseating *Horseman*: Commercial Harvesting Rights and the Natural Resources Transfer Agreements" (2007) 12:2 *Review of Constitutional Studies* 135.

[54] *Alberta Act, supra* note 44, s. 21; *Saskatchewan Act, supra* note 44, s. 21. For detailed discussion, see Frank J. Tough, "The Forgotten Constitution: The Natural Resources Transfer Agreements and Indian Livelihood Rights, ca. 1925-1930" (2004) 41 *Alberta Law Review* 999.

[55] *Manitoba Act*, 33 Vict. c. 3 (SC 1870), s. 30.

> barring their dependencies as colonies they were sovereignties in the sense of having the management of their own affairs. Each had a department of government called the Crown Lands Department, which was entrusted with the power of dealing with those lands either for revenue or for settlement. But the case of these new provinces is not at all similar. They never had ownership of the lands. Those lands were bought by the Dominion government and they have remained ever since the property of the Dominion government and have been administered by the Dominion government. Therefore I say the two cases are not in any way parallel; they are indeed absolutely different. When the provinces which I have named came into confederation they retained the ownership of their lands; but when the two new provinces came into the Dominion, it cannot be said that they can retain the ownership of their lands, as they never had the ownership.[56]

Laurier's statement that "[t]hose lands were bought by the Dominion government" no doubt referred to the fact that, as we have seen, Canada purchased Rupert's Land from the Hudson's Bay Company for £300,000.

Retention of public lands by the federal government was a major cause of discontent in the Prairie Provinces prior to the Natural Resources Transfer Agreements of 1930.[57] By those Agreements, the federal government transferred valuable lands and natural resources to these three provinces without compensation.[58] This included lands in the Treaty 8 territory, where the population was mainly Indigenous, that were known to contain extensive forests and oil sand deposits.[59] The transfer to Alberta was expressly made so that it would "be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources."[60] As with the creation of

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[56] Laurier, Speech, *supra* note 49, Owren at 278-79. It is worth noting that when the Congress of the United States created new States in the West in the latter half of the 19th century, it also retained most of the public lands and natural resources: see Richard White, *"It's Your Misfortune and None of My Own": A New History of the American West* (Norman: University of Oklahoma Press, 1991), 137, 565. Unlike what happened in Canada when the Natural Resources Transfer Agreements were entered into in 1930 (see Alberta Agreement, *supra* note 52), in the 1970s and '80s attempts, known as the Sagebrush Rebellion, to have federal lands transferred to these western States failed: White at 567-58.

[57] See Chester Martin, *"The Natural Resources Question": The Historical Basis of Provincial Claims* (Winnipeg: University of Manitoba, 1920); Tough, *supra* note 54 at 1006-18.

[58] In addition, by paragraphs 20-21 Canada agreed to make half-yearly payments to Alberta in lieu of payments it was required to make by s. 20 of the *Alberta Act*, *supra* note 44.

[59] Commissioners' Report, *supra* note 51: "The country along the Athabasca River is well wooded and there are miles of tar-saturated banks."

[60] Alberta Agreement, *supra* note 52, Preamble.

Alberta in 1905, the obvious understanding was that the province would remain in Canada and use its lands and natural resources to contribute to the Canadian economy. No thought whatsoever would have been given to Alberta leaving Canada, as that would have been inconceivable. The transfer of public lands to Alberta would never have taken place if it was ever thought that Alberta might one day attempt to leave Canada and take the public lands and natural resources with it.

7. Canadian Constitutional Law

We have seen that, on accepting the transfer of Rupert's Land and the North-Western Territory in 1870, Canada undertook in its 1867 Address to settle any Indigenous claims for compensation for lands required for settlement "in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the Aborigines."[61] In its 1869 Address, Canada also promised that "upon the transference of the territories in question to the Canadian Government it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer." [62] Recall as well that section 146 of the *British North America Act, 1867* provided that the provisions of any Order in Council transferring Rupert's Land and the North-Western Territory to Canada "shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland."[63] This provided the Order in Council and the commitments incorporated into it upon which the transfer took place with constitutional force.

Canada did settle Indigenous land claims in Alberta when it entered into the treaties discussed earlier. There are, however, outstanding issues regarding interpretation of these treaties, in particular the efficacy and extent of the clause by which the Indigenous parties agreed to cede and surrender their rights to the land.[64] Some First Nations claim, for example, that they did not intend or agree to surrender mineral rights to the Crown.[65] Where Treaty 8 is concerned, there is doubt over whether the Indigenous parties even understood and agreed to the

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[61] Above at note 10.
[62] Above at note 18.
[63] Above after note 8.
[64] In *R. v. Badger, supra* note 53, Cory J. stated: "when considering a treaty, a court must take into account the context in which the treaties were negotiated, concluded and committed to writing. The treaties, as written documents, recorded an agreement that had already been reached orally and they did not always record the full extent of the oral agreement." See also *R v Marshall*, [1999] 3 SCR 456.
[65] E.g. see *Wesley v Alberta*, 2024 ABCA 276 at para 6. No decision on the merits of this claim was made because the Alberta Court of Appeal decided that it was barred by a limitation period.

surrender of their lands to the Crown.[66] They were most concerned to preserve their rights to hunt, trap, fish, and move freely over the land, and not have their traditional way of life interfered with. The Treaty Commissioners assured them that the Treaty would preserve their rights and way of life.[67]

In the 1869 Address, Canada undertook a "duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer." This duty would be fiduciary, given that the interests of those tribes were subject to the Canadian government's discretionary power over them flowing from section 91(24) of the *Constitution Act, 1867*, which provides the Parliament of Canada with legislative authority over "Indians, and Lands reserved for the Indians."[68] Canada reneged on this duty when it entered into the Natural Resources Transfer Agreement with Alberta in 1930, as the Agreement interfered with their interests and well-being by taking away their treaty right to trap for commercial purposes.[69] Moreover, paragraph 1 of the Agreement provided that Alberta received the public lands and natural resources "subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same."[70] In *St. Catherine's Milling and Lumber Company v. The Queen*, the Privy Council decided that the same words in section 109 of the *Constitution Act, 1867* meant that the public lands of the four original provinces of Canada were constitutionally burdened by Indigenous land rights because those rights are an "interest" within the meaning of that section.[71] Likewise, in 1930 Alberta would have received the public lands and resources in the province subject to any Indigenous land rights, which would include First Nation hunting, trapping and fishing rights.[72] Were Canada to agree to Alberta's independence, that would be a serious dereliction of Canada's constitutional and fiduciary obligations, as the Indigenous peoples would become entirely subject to the governmental authority of that new nation-state.

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[66] See *Re Paulette and Registrar of Land Titles (No. 2)* (1973), 42 DLR (3d) 8, reversed on other grounds by the NWTCA and SCC.
[67] Above at note 51.
[68] See *Guerin v. The Queen*, [1984] 2 SCR 335; *Blueberry River Indian Band v. Canada (Department of Indian Affairs and Northern Development)*, [1995] 4 SCR 344; *Wewaykum Indian Band v. Canada*, [2002] 4 SCR 245.
[69] See cases cited in note 53 above.
[70] Alberta Agreement, *supra* note 52 at 14.
[71] (1888) 46 App. Cas. 46 at 58.
[72] In the common law, these rights would be equivalent to real property rights in the nature of profits à prendre: see Bruce Ziff, *Principles of Property Law,* 5th ed'n, (Toronto: Carswell, 2010), 394-95. Note as well that Indian reserves and national parks were expressly retained by Canada by virtue of paragraphs 10 and 14 of the Alberta Agreement.

There is also the matter of section 35(1) of the *Constitution Act, 1982*, providing that "[t]he existing aboriginal and treaty rights of the aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." Alberta, like the federal and other provincial governments, is currently subject to this constitutional guarantee. Were Alberta to separate from Canada, this would no longer be the case. Moreover, even were Alberta to agree in negotiations with Canada to include an equivalent provision in the constitution it would need to create, there would be nothing to stop if from reneging on that promise after it became independent.

Nothing in the Constitution of Canada permits provinces to separate. However, in the *Secession Reference,*[73] the Supreme Court decided that, if Quebecers were to vote in favour of separation by "a clear majority on a clear question", Canada would be required to negotiate with Quebec to determine the terms on which separation should take place. The negotiations would be political in nature, taking place outside the realm of law. However, negotiations would need to be conducted in the context of four foundational constitutions principles that are fundamental to our system of government, namely "federalism, democracy, constitutionalism and the rule of law, and respect for minority rights."[74] The Court noted that

> [t]he negotiation process would require the reconciliation of various rights and obligations by negotiation between two legitimate majorities, namely, the majority of the population of Quebec, and that of Canada as a whole. A political majority at either level that does not act in accordance with the underlying constitutional principles we have mentioned puts at risk the legitimacy of its exercise of its rights, and the ultimate acceptance of the result by the international community.[75]

Regarding the principle of respect for minority rights, the Court took special account of the rights of the Indigenous peoples, observing that section 35 of the *Constitution Act, 1982*

> recognized not only the ancient occupation of land by aboriginal peoples, but their contribution to the building of Canada, and the special commitments made to them by successive governments. The protection

[73] *Reference re Secession of Quebec*, [1998] 2 SCR 217.
[74] *Ibid* at para 49.
[75] *Ibid* at para 152.

> of these rights, so recently and arduously achieved, whether looked at in their own right or as part of the larger concern with minorities, reflects an important underlying constitutional value.[76]

As we have seen, secession of Alberta would put the rights of the Indigenous peoples of the province at serious risk and therefore violate one of the principles that the Court said are foundational and must be respected.

The *Secession Reference* addressed the question of whether Quebec has a legal right to unilaterally secede from Canada, either as a matter of Canadian constitutional law or international law. The answer in both legal systems was "no". Regarding Canadian law, the Court concluded that "the secession of Quebec from Canada cannot be accomplished by the National Assembly, the legislature or government of Quebec unilaterally, that is to say, without principled negotiations, and be considered a lawful act. Any attempt to effect the secession of a province from Canada must be undertaken pursuant to the Constitution of Canada, or else violate the Canadian legal order."[77] Regarding international law, the Court found that Quebec does not have a right to secede internationally because a right to external self-determination is limited to "situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development."[78] The Court concluded that Quebecers do not qualify under this requirement, so it left aside the question of whether they are a "people" for the purposes of self-determination.[79]

As the *Secession Reference* addressed the specific issue of whether Quebec has a unilateral right to secede from Canada, it did not deal with the issue of whether any other province would have such a right. Quebec is unique because Britain acquired it by conquest during the Seven Years' War and the cession of French Canada by the Treaty of Paris in 1763. This history is relevant to any claim by Quebec to self-determination, along with the fact that it joined Canada when the country was created, rather than being created out of territories that were already part of Canada, as was Alberta. Francophone Quebecers also share a language and culture that make Quebec society distinct. If these features are not sufficient to

[76] *Ibid* at para 82.
[77] *Ibid* at para 104.
[78] *Ibid* at para 138.
[79] *Ibid* at paras 123-25.

provide Quebecers with a legal right to secede, *a fortiori* Alberta cannot have such a right either.

8. Conclusions

Unlike the four original Canadian provinces or the provinces, such as British Columbia, that joined later, Manitoba, Saskatchewan and Alberta were carved out of the North-West Territories that were already part of Canada. At the time of their creation, it would have been unthinkable that any one of the Prairie Provinces would have had the right to separate from Canada. Likewise, when Canada transferred public lands and resources to the Prairie Provinces in 1930, it would have been on the clear understanding that they would remain in Canada and contribute to the national economy. Alberta cannot simply walk away and take all this with her.

Moreover, Canada and Alberta both owe constitutional obligations to the Indigenous peoples of the province, including obligations to respect and protect First Nation treaty rights. If Alberta were to become independent, the treaty territories of most of the First Nations in Alberta would be severed by international borders, restricting access to constitutional hunting and fishing rights. First Nations would also lose the rights they now have under the UN Declaration on the Rights of Indigenous Peoples because Alberta has not adopted the Declaration and would be under no obligation to do so.

A unilateral declaration of independence by Alberta would be illegal. In the *Secession Reference*, the Supreme Court decided that the Constitution of Canada does not permit provinces to secede. The Court found as well that Quebecers do not have a right to self-determination that would allow them to leave Canada without a negotiated agreement grounded in Canada's foundational constitutional principles of "federalism, democracy, constitutionalism and the rule of law, and respect for minority rights", despite the fact that Quebec is a distinct society with its own culture and language. Respect for minority rights includes the rights of the Indigenous peoples of Canada. If Quebec does not have a legal right to secede from Canada, *a fortiori* Alberta does not either.



Professor Kent McNeil

THE DENE DECLARATION

General Assembly, Indian Brotherhood of NWT (i.e., Dene Nation),
Fort Simpson, 19 July 1975

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Historical Introduction

1. The situation, historically and today, has been to the disadvantage of the Dene Nation. Industry, and government have said one thing to the people and done another. It is time for us to speak the truth.

2. Take, for example, the Treaties. The Indian people signed the Treaties in good faith, believing them to be no more than treaties of peace and friendship. When we had doubts and refused to sign, the Government was not above forging signatures. Since that time the Government has said that the Treaties were land cession treaties, and absurdly insisted that we sold our land for $5 a year each.

3. Our land, first slowly and now more rapidly, has been overrun by explorers, traders, developers and government officials. They are the agents of a European system, and they have come to exploit the land and resources for the betterment of the few who control industry and big business. The nature of the industrial culture that increasingly penetrates the North is such that a few will profit while the majority of the people, whether native or white, are kept powerless.

4. In the beginning our people saw little harm in letting the early explorers and traders come to the North, for the goods that they brought somewhat compensated for their being here. But more and more people came. The level of interference with the old

ways increased. We can no longer let things go on because very shortly we will not be able to live off the land as we have from time immemorial.

5. We no longer have any alternative but to take over control of developments in the North. We must have the right to decide not only when development occurs, but what kind of development takes place and for whose benefit.

6. Since the coming of the whiteman, and industrial development, the Dene have been encouraged to join in his system of competition. But this nation has withstood the pressure. We have not adopted this alien system that puts one person against another because we have our own ways of sharing wealth and resources. Always we have taken care of the young, the old and the disadvantaged. We intend to maintain our sharing and egalitarian society.

7. We are a nation, a people with a long history and a whole culture, a culture which has survived the invasion of our land. Although this is a fact of which all of us are aware -- since we are the people of the Dene Nation -- we still must make this statement because others do not know or admit of our existence as a nation.

8. We make this statement because some of our young, being educated in a foreign educational system, are getting confused and are unaware of how they can contribute to our people. Also, some of our people who are becoming involved with industry and government are slowly coming to believe in their ways and are forgetting where they came from. They need clear direction.

9. We have lost control of our own lands. The present legal system, the Territorial and Federal Government systems, the educational system, the industrial economy -- all are foreign and oppressive in their present forms. Real power lies with a handful of large companies who operate with the full co-operation of both the Territorial and Federal governments.

10. These same companies operate in other parts of the world, in the poor countries known as the Third World. The companies go in and exploit the non-renewable resources of these countries to serve the purpose of making profits for themselves and providing resources to the already rich and developed countries. Some of the people in the poor country get jobs, but they are locked into a factory system and a consumer, society where they are powerless and where they have to strive to better themselves as individuals rather than work for the benefit of the masses of people.

11. There are many lessons for the Dene to learn from the development of the Third World countries. As colonies of the imperial powers, they everywhere failed to develop. Their prospects necessarily improved to the extent that they were successful in gaining independence. But even after formal political independence, many have had trouble developing because the power of the so-called multinational corporations, with their base in a small number of highly developed industrial

societies, has denied their genuine economic independence. Only with tremendous effort from the people can an economy independent from outside controls be built.

12. Our situation in the North is the same as that of the peoples of the Third World who were until recently subjugated. As aboriginal people within a white society, we are a part of the Fourth World. We have been made Canadians by decree and not by our free choice.

13. Understandably our first choice would be to be once again a sovereign people. But we are realistic and know the whiteman is powerful. At the same time, we native people are still the majority within the North. We are in a unique situation in North America and we should take advantage of our situation before it is too late.

14. Our survival as a people compels us to assert our right to maximum independence within Canada. We must develop our own economy and must acquire political independence for the Dene nation within the Canadian constitution. We must be able to govern our own lands and resources.

15. Thus our land claim must include not only the surface of the land, but the animals, the fish, the birds, the rivers and streams and the minerals underneath. And, most important of all, we must have our own system of government by which we can control and develop our land for our benefit.

16. Our aboriginal rights are meaningless if they do hot mean the exclusive right to hunt, fish and trap. And that right, in turn, will have little meaning in the long run unless Indian people are allowed to stop the damage to their land that results from present unplanned developments.

17. Where developments, as in mining, have already taken place, or for future development which we would be prepared to tolerate, we are entitled, as owners of the land, to receive royalties. Thes royalties could be paid cut of the profits of the companies and need be no burden on the Canadian people. We would, in turn, use these royalties to fund community economic development that will last after the companies have exhausted the non-renewable resources.

18. We must develop plans to start our ovm economy at the community level. The present colonial pattern of development attempts to integrate us into a wage economy, as employees of companies over which we have no control. We want to strengthen our traditional land-based economy and at the same time create viable enterprises in the communities under the collective control of Indian people. That way our young people will have the chance to remain in the community rather than always having to move away, and even risk losing their identity, to find employment.

19. We must become involved in the education of our children in communities where Dene are in the majority. Local schools must be controlled by our people. In cases

like Yellowknife, or hostels where we are not the majority, we must have involvement -- or start our own schools.

20. Where outside governments have a continuing role after a land settlement, there must be a clear recognition of our rights as a distinct people, particularly at the local level. For example, native communities must have very clear powers with respect to control of alcohol.

21. In the communities, power should lie with the band council and, in the future, with the Dene Council.

22. Territorial Council must operate in such a way as not to infringe native rights. The same must be true if the day should come when a white majority in the North successfully demands provincial status.

23. Without in any way abrogating our rights as the original inhabitants of the land, we recognise that non-native residents of the North who choose to make the North their home and respect our rights are themselves entitled to greater rights, in territorial and local elections, than are those who are merely transient

24. Our own native organizations must themselves evolve so as to be able in due course to assume these new functions. In their operations and structures, they must become examples of our ideals.

25. To achieve all of this will not be easy. There is much work ahead of us, internally and externally. It will take effort from all the communities. A united effort is required on all issues involving the step-by-step achievement of our long term goals of maximum independence for the Dene Nation. Unless we are united among ourselves, we have little hope of winning a struggle so difficult as the one we are now engaged in.

26. We must unite our people at all levels -- between communities, between families, between Treaty, non-status and Métis, between young and old, between the traditionalists and the non-traditionalists, between regions, between tribes, between men and women. We must be prepared to identify and deal with enemies within as as well as enemies without.

27. We must have strong leadership supported by the communities. It is the duty of leadership to lead the way for development of the people and to support directions. But the leadership must always listen to the people and be prepared to build on creative energy of the people. It must always be accountable to the people through open and honest dialogue.

28. Although a united front is expected and required from all the communities on issues that have been sanctioned at general assemblies and have survived deliberation at the community level, this does not at all mean that people must remain quiet about those things that are remiss. Quite the contrary. Community people must make it

their responsibility to confront our leadership either at the local level or at its highest level in those cases where justice has not prevailed. The more people demonstrate their true feelings and desires to the leadership, the greater the ability of the leadership to avoid errors and to implement what is in priority with local needs and desires.

29. With strong leadership, we must have clear ideals and goals for our people. The people's true needs and desires must be reflected in the goals and action. Communities must be thoroughly involved at every level of this total development. At no time should any goal or action be beyond thorough examination and not fit the ideals of the nation. Goals and ideals should be revised by the people as situations change requiring new directions.

30. Externally, we must again become a people making our own history. We must become actors, not just be acted upon by companies and government. The highway, proposed pipeline and dams, indeed, even the layout of our communities — all are other people's plans to which we have been allowed at best only to react. We must become actors, planners, in control of development within our communities and our land. We must develop our own plans for development that will benefit our communities and all our people.

31. To be able to make our own history is to be able to mould our own future, to build the new Indian society of the North that preserves the best of our past and our traditions while enabling us to grow and develop as a whole people. We want to build a society in which there is equality of all Dene people, and a society free of exploitative relationships between people. We are not opposed to change, but it must be on our terms under our control. To assert that right is to assume a great task, one at which we cannot afford to fail.

32. We know that there are powerful forces arranged against us. That is why we have not hesitated to appeal to others to support us in our just struggle. We ask that there be no major developments, like a pipeline, before a land settlement acceptable to us. We ask that we be allowed, in negotiating with the government toward a land settlement, to put forward our demands as they stand. We ask that our rights as a people for self-determination within Canada be respected.

33. The great majority of people in Canada are like ourselves in being relatively powerless in the face of big companies and by governments. In the face of our assertion of our rights, the choice that others must make is between ourselves, on the [one] hand, and the outside developers that are increasingly accountable to no one, on the other hand. By joining us in our struggle people can begin as well to liberate themselves.

34. We, the Dene, must all work together to a successful land claims settlement. This will be a big achievement in itself. It then becomes the means to achieve our real needs.

Those needs are a land base and the political controls to determine what happens on our land. Above all, independence within Canada.

Examples of Specific Declarations

Declaration on Development

1. What other people may call development is not necessarily development for Indian people. Only Dene people can say what development means for the Dene nation. For example, many people say that the Mackenzie Valley Pipeline is "development," but this is not true for the Dene people. The pipeline may not only damage our land, but it might destroy our way of life as a nation. True development can only strengthen our nation and our way of life.

2. The people of the African country Tanzania were, like the Dene people, also invaded by a white colonial government. Today they are independent and they say this about development:

   > "Any action which does not increase the people's say in determining their own affairs or running their own lives is not development and holds them down, even if the action brings them a little better health and a little more bread."

   In other words, we cannot, call development any activity which takes away control from our people. True development must give us more control and greater independence.

3. True development means growth in Indian communities … not only economic development but cultural, social, political and spiritual development … and the sum of these is greater than the parts.

4. True development means building on the past, by strengthening traditional pursuits, by drawing on the community's experience, and by building on traditional skills.

5. True development means that development is implemented in a way that fits the Indian way of doing things (which is not the same as the government's way or the companies' way).

6. True development means a process which unites and builds up the community's sense of self and the sense of self of all its members.

7. True development means development by the community rather than by outsiders. It means development by the community as a whole wherever possible, rather than by individuals within the community for their own benefit.

8. True development means not participating, even as workers, in activities you cannot control. If such developments go ahead anyway (such as large resource developments), Indian people, as owners of the resource should benefit from royalties, and the political rights of Indian people (which would be threatened by an influx of white workers) would be protected by entrenching them as part of the land settlement.

9. True development means learning by doing so that development becomes an on-going, self-reinforcing process.

10. True development means getting expertise when it is needed in the form of short-term technical assistance without giving up ownership (even of the joint venture variety).

11. True development means communities cooperating with each other, regionally, and in the Mackenzie District as a whole (unity means power).

12. True development means long-term planning and setting priorities (since it's impossible to do everything).

13. True development means keeping our egalitarian and sharing society.

14. True development means setting an example for Canada.

Declaration on the Role of Native Organizations

The following should be the most important goals of our organizations:

1. To re-establish control of our independent Dene confederacy.

2. To assert the common identity of our people -- Dene concept.

3. To obtain for every Dene community an adequate economic base to preserve its independence.

4. To be a vehicle for providing the solid support of the Dene people to band councils, Métis locals, and other Dene groups in their efforts in social, cultural, educational, spiritual, and economic development. To speak as one voice for the Dene people on major political issues, and work with other native organizations.

5. To fight racism,
    - by helping to overcome the ignorance in white society with regard to Dene peoples,
    - by working to overcome economic inequality,

- by overcoming cultural and political domination through strengthening Dene culture and independence.

6. To be an example of our ideals in operations and structure.

7. To create a continuing dialogue between leadership and the Dene people, so that all benefit and develop using each others understanding and experience.

8. To establish ties, to support, and cooperate v/ith other movements and efforts which contribute to the goal of independence and freedom for all people.

9. To build a society in which there is equality of all Dene people, and a Society free of exploitative relationships between people.

We can best achieve these goals in the following ways:

1. By making a good land settlement our first priority.

2. By abolishing colonial controls. This means forcing the government to recognize the authority of our chosen political structures, whether the Band Council/Métis Local or Indian Brotherhood/Métis Association. It also means involving ourselves only in developments we can control. Finally, it means reducing our dependence on government funding, because this kind of funding gives the government too much control.

3. By political and cultural education. It is the duty of leaders and people to learn about our nation and about the nature of the rest of the world -- e.g, the oil companies, Canadian Society, colonialism. We should not keep our ideas to ourselves but meet with each other to discuss and exchange our understandings. This kind of dialogue contributes to true development.

4. By building a communal economy where the benefits of development are shared by the whole community according to need and where no individual benefits at the expense of his community.

5. By cooperation and sharing between communities in economic development.

6. By improving communication amongst our people: between leaders and people, between communities, between individuals.

7. By keeping maximum control in the hands of each community while maintaining a strong united front to the outside world.

8. By reducing inequalities amongst our people, especially in our organizations. By creating democratic and egalitarian organizations of our own and rejecting the white

way with a boss at the top with all the control and workers at the bottom with no control.

9. By eliminating discrimination because of age or sex. Young and old, man and woman must participate as equals in rebuilding our nation.

Statement on Strategy and Organizing for Achievement of Our Goals

1. Our goal is maximum independence and self-determination of the Dene Nation within the Country of Canada through a just and equitable land settlement.

2. The struggle for achieving our goals involves organizing and strategy on two fronts: The external front and the internal front.

3. Our struggle is like a war, but a peaceful one. On each front there is an enemy. On each front there are allies.

4. On the external front the enemy is those not a part of the Dene Nation who resist and deny the achievement of our goals such as the government and other people who do not want to see the recognition and self-determination of the Dene Nation

5. On the internal front the biggest enemy is ourselves, our disunity and lack of organization.

6. There are also Dene who are the enemy. There are Dene who would betray and are betraying their brothers in the struggle for their goal. These are Dene who work for the enemy against their brothers. These are traitors to the cause of the Dene Nation. We must learn to identify such persons.

7. There are also Dene who hold back the cause by forgetting who the real enemy is. These are Dene who prefer to fight amongst themselves rather than against the real enemy.

8. There are Dene who have not yet learned who the real enemy is. It is the duty and responsibility of Dene who have learned to recognize the real enemy to educate their brothers.

9. The struggle involves then the simultaneous battle on two fronts, internally and externally. While we organize and plan to build a strong organization and unity of all our people we must also organize and plan to defeat the enemy without.

10. Organizing and planning on the internal front means building unity and strength. It means breaking down that which divides us and educating our people and organizing so as to defeat the enemy without.

11. In fighting the enemy without we must at all costs keep a united front whatever our differences. We must always keep our differences to ourselves and solve our differences amongst ourselves. We must never fight amongst ourselves before the enemy.

12. We must accept that there now are real differences amongst us and always will be differences. But if we remain committed to our goal our differences will not defeat us. If we constantly remember that defeating the enemy is more important than our differences, we can solve the problems created by our differences.

13. Our differences are real. The most serious differences are between the Treaties versus the Non-Treaty and Métis and between the young and the old.

14. As long as we remember that there are differences between Indian and Métis, but that it is more important to remain united against the enemy than to fight amongst ourselves, we will be in a position to solve our differences ourselves.

15. The old people are our strength and wisdom. They are our roots to our history, tradition and cultures. The young people bring energy and knowledge of the enemy to the struggle. They are the link to the future. But the experience of the young people is much different to that of the old people. Often the old people do not understand and respect the young people. Often the young .people do not understand the old people. What we must always strive for is an understanding and respect of the young for the old and the old for the young. Without that understanding and respect, we will fail, for the past will become separated from the future. In fighting the enemy on the external front we must always remember that the way of the European is different from that of the Dene. We must always remember that the situation is constantly changing. Each one of us must bear the burden of keeping ourselves informed on each change so that we can easily adapt and change our strategies so as to defeat the enemy.

The Dene Manifesto

We the Dene of the Northwest Territories insist on the right to be regarded by ourselves and the world as a nation.

Our struggle is for the recognition of the Dene Nation by the Government and people of Canada and the peoples and governments of the world.

As once Europe was the exclusive homeland of the European peoples, Africa the exclusive homeland of the African peoples, the New World, North and South America, was the exclusive homeland of Aboriginal peoples of the New World, the Amerindian and the Inuit.

The New World like other parts of the world has suffered the experience of colonialism and imperialism. Other peoples have occupied the land -- often with force -- and foreign governments have imposed themselves on our people. Ancient civilizations and ways of life have been destroyed.

Colonialism and imperialism are now dead or dying. Recent years have witnessed the birth of new nations or rebirth of old nations out of the ashes of colonialism.

As Europe is the place where you will find European countries with European governments for European peoples, now also you will find in Africa and Asia the existence of African and Asian countries with African and Asian governments for the African and Asian peoples.

The African and Asian peoples -- the peoples of the Third World -- have fought for and won the right to self-determination, the right to recognition as distinct peoples and the recognition of themselves as nations.

But in the New World the Native peoples have not fared so well. Even in countries in South America, where the Native peoples are the vast majority of the population, there in not one country which has an Amerindian government for the Amerindian peoples.

Nowhere in the New World have the Native peoples won the right to self-determination and the right to recognition by the world as a distinct people and as Nations.

While the Native people of Canada are a minority in their homeland, the Native people of the Northwest Territories, the Dene and the Inuit, are a majority of the population of the Northwest Territories.

The Dene find themselves as part of a country. That country is Canada. But the Government of Canada is not the Government of the Dene. The Government of the Northwest Territories is not the Government of the Dene. These governments were not the choice of the Dene, they were imposed upon the Dene.

What we the Dene are struggling for is the recognition of the Dene nation by the governments and peoples of the world.

And while there are realities we are forced to submit to, such as the' existence of a country called Canada, we insist on the right to self-determination as a distinct people and the recognition of the Dene Nation.

We the Dene are part of the Fourth World. And as the peoples and Nations of the world have come to recognize the existence and rights of those peoples who make up the Third World the day must come when the nations of the Fourth World will come to be recognized and respected. The challenge to the Dene and the world is to find the way for the recognition of the Dene Nation.

Our plea to the world is to help us in our struggle to find a place in the world community where we can exercise our right to self-determination as a distinct people and as a nation.

What we seek then is independence and self-determination within the country of Canada. This is what we mean when we call for a just land settlement for the Dene nation.

DENE NATION: AN ANALYSIS

a report to the
royal commission on aboriginal peoples

by Antoine Mountain
& Susan Quirk

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DENE NATION: AN ANALYSIS

Abstract

This report, presented in four parts, is a descriptive and analytical history of a major aboriginal organization north of the Canadian provinces. The first, introductory section, outlines the approach to the study and the presentation of its findings. This part emphasizes the requirement that researchers who report on the activities of people marginalized from mainstream politics and society account for our perspective. Because this report is about and by an organization set up to represent and protect the rights of marginalized people, such an accounting is crucial.

The second part of this report was written by an aboriginal researcher, one of the thousands of people whom the organization studied represents. This part describes the following four key events that mark the organization's history:

- the circumstances in the late 1960s that prompted leaders from different cultures to form a single organization to protect aboriginal rights

- the strategies that, by the mid-1970s, led to a change by federal officials to settle unfulfilled Treaty issues for the people through a land "claim" procedure

- the growth in the organization's diversity and initiatives, until drastic funding cuts in the mid-1980s

- the final years of the single land "claim" being negotiated, and the impact on the organization as it resisted federal limitations within the "claims" policy

The third part of this report is an analysis of the scope and effectiveness of this organi-zation, in order to assess the role of the Indian Brotherhood/Dene Nation in capacity building for self-determination. For decades, Dene leaders have joined other Elders and Chiefs in declaring self-determination (ie, the ability of Indigenous Peoples to live their lives as they and not outsiders determine) as the goal of self-government. Dene, as Indigenous Peoples have always had the capacity to be self-determining: the challenge for them during the past 25 years has been to persuade non-Dene governments that they can be self-governing and self-determining within the state of Canada and by modern standards. The history of the Indian Brother-hood/Dene Nation has happened in a time when public perceptions about aboriginal citizen participation have evolved to the

point where the discussion now is over the degree of autonomy a First Nations can have under self-government.

Like other community membership-based groups, the Dene central organization has faced the challenges of balancing responses to membership needs against responses to demands by the external funding sources on which the Dene Nation relies. Despite external obstacles, this organization has increased in political acuity and has contributed to the overall capacity of Dene leaders to support local aspirations for determining the future of their communities. This increased confidence has shifted attention more to local issues and development, and away from the central organization that nurtured this growth in capacity. A vital challenge through its brief history C one that remains C is for the aboriginal leadership to find effective ways to inform their people about the complex issues presented by external agencies, while sustaining authentic approaches and maintaining high levels of local participation for consensus building to deal with these issues. The next 25 years are sure to be just as interesting as the past 25 have been.

NOTE: This report may be cited as
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DENE NATION: AN ANALYSIS

Executive Summary

In the past 25 years, many Canadian aboriginal associations C the Dene Nation among them C have been advocating changes in the nature of participation by aboriginal citizens in the public administration of their development. Essentially, they have reasoned that, since non-aboriginal administrations are poorly equipped to handle aboriginal socio-cultural and economic circum-stances, aboriginal organizations should be given the authority to do so.

For more than 2 decades, aboriginal political organizations have lobbied governments and the Canadian public to accept their reasoning, to recognize the return to aboriginal gov-ernance for aboriginal self-determination. Lobbying has focused on legal arguments about rights, land settlements and Treaty fulfilment, and constitutional development: the details of which remain largely unfamiliar to most Canadians, aboriginal and non-aboriginal. The details, which are complicated and have increased in complexity throughout the past 25 years, have been the daily preoccupation of First Nations Chiefs and their representative political organizations. These organizations, which exist outside the authorities described in the *Indian Act*, have been funded by the federal government C through the Secretary of State's Native Representative Organization Program C precisely because the mainstream polity has not sufficiently represented aboriginal thinking, values, and issues.

In the western Northwest Territories, Dene Chiefs united to set up a formal structure to represent their interests when Indian Affairs officials informed them about federal plans for their people through the 1969 White Paper. From 1969 to 1983, the formative years of the Indian Brotherhood/Dene Nation reflected strong citizen activisim. The most prominent activities included promoting Dene cultural nationalism, lobbying to have Dene land entitlements under Treaties 8 and 11 fulfilled equitably, opposing the proposed construction of a gas pipeline up the Mackenzie Valley, and lobbying to get funds for Chiefs and Band management (until 1974, these were not available for NWT First Nations). From 1983 to 1986 C with land settlement talks taken over by the Dene/Métis Negotiations Secretariat C Dene Nation staff focused on organizing the Pope's visit and operating programs related to environmental and socio-economic impacts from the building of the Norman Wells oil pipeline. Since major funding cuts in 1986, the National Office struggled unsuccessfully to complete a single land settlement agreement for the entire Dene homeland consistent with the peoples' wishes, and has become project-oriented in continually dwindling program areas.

Life in the Dene homeland since mid-century has been marked by very rapid change. For the past 2 decades, the Dene have organized themselves politically to challenge federal and Territorial government plans to assimilate them into a modern northern state. Not only have the Dene resisted these plans, they have proven accomplished at making and carrying out strategies for their own alternates to government modernization C the integrated development of their

communities on their own terms. The key approach for the Dene has been learning about and analysing government policies and intentions, then communicating the analysed awareness as widely as possible in order to devise strategies based on informed responses from the Dene membership. This approach worked fairly well until the volume and complexity of issues increased, thereby reducing the feasibility of handling of them from a central office, and until government narrowed, first, the activities the organization could undertake and, second, the amount of funding available.

The individuals who formed the Indian Brotherhood spent many hours discussing the ways they could communicate issues and promote their analysis. Every aspect of their organization was considered, including regular Nation-wide Assemblies, so that two-way communication would become the vital means whereby the National Office could represent the Dene member-ship. But abstract EuroCanadian ideas and technical details of government regulations say little to local Dene preoccupied by the socio-cultural and economic circumstances of their lives. In 1993, the communication between aboriginal organizations and the citizens they represent of complex ideas and issues drawn mostly from mainstream Canadian life remains a great challenge to the effectiveness of Dene political movements in the western NWT and in Canada.

Maintaining excellent communications between the Yellowknife office and the widely scattered Dene First Nations has been inconsistent. Newsletters and radio broadcasts were among the earliest efforts of the Indian Brotherhood staff, which soon became independent and expanded as the Native Communications Society. Recognizing its need to continue such communications on its own, Dene Nation revived production of its own newspaper and tapes in the Dene languages for broadcast on community radio. Fieldworker programs associated with research and community development projects were also a focal point for distributing information and strategic approaches. These efforts, however, were inconsistent throughout the 25 year history
because the external sources of funding for the Dene political association have been inconsistent.

Government officials have continually thwarted efforts by the political organization to fund programs that would meet needs expressed by the Dene membership. Losing its charitable status meant that staff had to devote more of their decreasing human and financial resources to raising funds and, once approved, to complying with the funding criteria, which often limited the scope of programs and the way they could be run. Loss of funding in the mid-1980s for communications unfortunately coincided with one of the most crucial times for the organization, when detailed information about the negotiated land settlement agreement needed to be conveyed to potential beneficiaries. Core administrative funding, from which communications spending has since had to be taken, has been steadily reduced.

In 1991, Dene Nation's core administrative funding was transferred from the Secretary of State's Native (now: "Aboriginal") Representative Organization Program to DIAND C although the funding for comparable provincial organizations has not been transferred. A finding of this study is that the purposes of the federal government's program to fund aboriginal organizations in order to enhance aboriginal citizen participation have been altered by DIAND, thereby diminishing the scope and effectiveness of the Dene Nation, as defined by its own membership. Throughout the existence of the Dene political organization, the style of decision making and the authority of the

decision-making body C the National Assembly C have gone unrecognized by non-Dene governments, which evidently expect the organization to reflect EuroCanadian hierarchical characteristics. Concerns and discussions about representivity, decision-making styles and authority, and the nature of leadership have been as abundant among the Dene as they have been throughout Canada among aboriginal peoples C and recently among non-aboriginal citizens.

Whereas in the early 1970s Indian Affairs was trying to transfer as many federal responsi-bilities as possible to the Territorial administration, in the early 1990s, the influence of DIAND is everywhere in the NWT. DIAND is directly responsible for the public government and administration of the NWT (ie, GNWT) but also for First Nations Councils. DIAND is responsible for northern economic (but not social) development but also for sustainable environ-mental development. DIAND is responsible for protecting indigenous peoples' interests through Canada's fiduciary obligation, but also for negotiating land settlements, self-government, and aboriginal land and resource use, as well as for funding aboriginal consultation and C since 1991 C the funding for northern political organizations. Too many contradictory mandates are held by DIAND in Canada's north. Too often, DIAND policies or actions contradict legal responsi-bilities and court interpretations of its fiduciary duty, such as those offered by the decisions in *Sioui*, *Flett*, and *Sparrow*.

Fairness has not been a characteristic of the relationship between DIAND and the Dene political organizations. Efforts by Indian Brotherhood/Dene Nation to determine and represent alternate views from Dene members have been muffled by external influences that have sought control not only of the political organizations but also of aboriginal contributions to northern media. For their part, northern media in the earlier years appear to have recognized the Indian Brotherhood/Dene Nation as a "newsmaker" but no longer do so. Inequities in political power and influence persist and affect alleged partnerships and consultations, and negotiations and agreements between aboriginal organizations and mainstream government administrations. If Dene self-government and self-determination are to have a validity, the contradictory perceptions about how the Canadian north ought to be developed must be resolved. If development continues based on mainstream Canadian visions and values, it will deny the evident interest among Dene in all cultural regions in learning from their Elders, in revitalizing Dene ways of thinking and doing things for more authentic approaches to their future.

Until the funding cuts of the mid-1980s, the Dene National Office remained committed to training staff and local fieldworkers in the principles of the most highly participatory forms of community development combined with the growing interest throughout aboriginal Canada in holistic healing; together, these ways of thinking and working in communities are evolving as the Dene means to their self-determination. The National Office continues to pursue the recognition of the inherent right to aboriginal self-government, while efforts to sustain holistic healing and participatory community development are now pursued more actively by local First Nations. Most recently, the Dene regional cultures and the First Nations within them are developing their discrete visions of Dene self-government for self-determination. A major challenge for Dene communities is balancing care for traditional Dene principles and ways of getting things done with government requirements for EuroCanadian organizational principles.

The scope of the goals established by the individuals who set up the united Dene political organization was very broad. It has been narrowed more by external influences, especially government funding sources, than by internal change. The effectiveness of the Indian Brother-hood/Dene Nation was extraordinary during the formative years. While the efficacy of the National Office has waned in recent years, the long-term effectiveness of people involved in Dene Nation initiatives since they have returned to their cultural regions and communities is likely to prove the enduring legacy of the unified political organization.

A history can be only an interpretation of past events. The recording of a history is only a moment in time. At this time, rapid change continues to mark life in Denendeh and the struggles of the Dene are far from over. For the Dene, the major differences between 1969 and 1993 are two. One difference is that many more Dene C not just a handful of Chiefs and National Office staff C are aware of the ways in which the mainstream government works and the impacts that EuroCanadian public administration can have on their lives. The other major difference is that many Dene have regained the confidence to question mainstream government control over their lives and are supporting their leaders' aspirations for the return to Dene self-government and self-determination.

Policy Recommendations

- that the federal and provincial governments, and their delegated administrations, recognize aboriginal governments, and recognize the leaders and decision-making bodies chosen by aboriginal memberships, their styles of reaching decisions, and the authority of decisions reached by them

- that the Royal Commission on Aboriginal Peoples explore the nature and meaning of aboriginal "citizenship" within the state of Canada

Policy Recommendations, continue

- that arm's-length funding be provided to representative aboriginal organizations

- that the scope, authority, and representation of aboriginal governments must be determined by members of the Nations to whom the governments are responsible

- that the Royal Commission on Aboriginal Peoples address the recognition and implementation of aboriginal title C that is, ownership of traditional lands in perpetuity C so that the basis for land settlements, Treaty entitlement, jurisdiction over land and resource use, and conflict resolution regarding aboriginal rights can be established equitably for all First Nations throughout Canada

- that the federal government establish a permanent mechanism for administering issues related to Treaties with Canada's aboriginal Nations

- that the federal government complete negotiations for aboriginal governance with First Nations in the NWT before Territorial constitutional development is negotiated, and before further devolution of province-like powers to the Territorial administration

- that the customary cultural-economic activities of northern aboriginal peoples be recognized, supported, and directly related to Treaty and aboriginal rights, rather than simply as "business ventures" that succeed or fail according to market conditions C this includes training programs and more flexible schooling to encourage transmission from Elders to younger people of the skills, environmental knowledge, principles, and values needed to sustain our customary cultural-economic livelihoods

- that the NWT Indian Affairs Branch be separated from the Northern Development Branch before the proposed dismantling of DIAND begins and that mandates from other federal ministries (such as Environment Canada) be handled north of the provinces as they are in the provinces, and that
  - no devolution or transfers take place without the consent of NWT First Nations,
  - there be no transfer to Territorial public administration of any federal fiduciary obligations to NWT aboriginal peoples

DENE NATION: AN ANALYSIS

part one

About This Report

Research Perspective
Research & Report Approach
Terms Used in This Report

by Susan Quirk

About This Report

This report presents both a selected chronological and an analytical history of an aboriginal organization: the Indian Brotherhood of the Northwest Territories, later renamed as the Dene Nation. This Canadian aboriginal organization, like many others, was formed because some of their people who were able to assess what was happening felt that their people were being deliberately and systematically marginalised C not only from Canadian mainstream society but from aboriginal peoples in the provinces. No study of this organization can neglect this factor. Before the 1960s, northern aboriginal peoples were virtually ignored except for a handful of anthropologists, and minimal attention from the Indian Affairs Branch. Many observers assume that Dene and Métis had made little effort to acquaint themselves with public matters, although minutes of a meeting of Mackenzie and Athabascan Chiefs with Indian Affairs officials in 1957 certainly demonstrates spirited concern for their people and a perceptive grasp of administrative conduct: many Chiefs arrived with prepared briefs, and all the Chiefs gathered the day before to prepare motions of their own to present at the official meeting (Indian Affairs 1957). Language differences and literacy restrictions limited the record keeping of earlier gatherings by Dene, although Elders remember many of the strong speeches about issues of value to them.

The activities, scope, and effectiveness of this Dene organization are important reflections on the efforts northern aboriginal peoples have made to resist adverse public administrative aspects, to communicate their views as widely as possible, and to advocate their own remedies to begin addressing matters of significance to them rather than those defined by outsiders. An analysis of this organization, through interpretations drawing on Dene views, can provide much insight for similar aboriginal associations, as for non-aboriginal Canadians wondering about the ascendancy of organizations that have captured and held public attention for the past two dozen years in ways they did not before.

Research Perspective

Researchers trained within the Western or EuroCanadian worldview rarely account for their methodological perspective. For most research, it is not required. But study in a cross-cultural context presents a scholar, or one who is raised and trained in one worldview, with the necessity of saying so and of declaring the ways in which the recognition of another cultural worldview likely affected the research methods and report. Cross-cultural studies in which alternate worldviews are perceived and accepted C and in which one or more researchers are representatives of an alternate worldview C call for examination, and perhaps expansion, of conventional notions of research objectivity and validity.

DENE NATION: AN ANALYSIS

This study was commissioned by the 1993 Royal Commission on Aboriginal Peoples under a contract held by the organization itself. The contract was not granted without consid-erable resistance by the Commission's research division. Academic conventions of objectivity prefer an arm's length relationship between researcher and research subject. Aboriginal peoples C and this organization has been particularly vocal in the past on this matter C prefer not to have outsiders study and interpret them. Commission research officials may have had concerns regarding bias or mediocrity in the study methods or a lack of political neutrality in the report content. Dene Nation, however, had no intention of damaging the credibility of this report; neither did the organization want to risk having an outsider misinterpret its past activities nor give open access to its administrative records. An independent researcher with suitable creden-tials was hired to co-ordinate this study. With some misgivings, the Commission's research division permitted Dene Nation to hold the study contract. Perhaps the quality of this report may dispel some of the initial misgivings. This preliminary accounting for the research perspective and approach may clarify remaining concerns.

Handling Administrative Archives

Maintaining confidentiality while examining the administrative archives of any organization is a dual challenge for a scholar: both to sustain the trust that the organization has placed in the researcher and to persuade study report readers that high academic standards have been preserved in the literature review. Examining the administrative records of Dene Nation is problematic in that the organization C like many other aboriginal organizations in Canada C has had inconsistent support for staffing and managing its archives. In the mid-1980s, with the change of federal governing parties, support in general for aboriginal libraries and archives was dropped. Since then, if an organization had no charitable status, raising funds for managing the increasing amounts of information pouring into and generated by the aboriginal organization has been severely limited.

The administrative records of the Indian Brotherhood of the Northwest Territories / Dene Nation (Indian Brotherhood/Dene Nation), along with part of its library and some records of this Dene/Métis Negotiations Secretariat (Negotiations Secretariat) are mostly stored at the Denendeh National Office in Yellowknife. Other Indian Brotherhood/Dene Nation records and library documents are stored in other locations, and the records of the Negotiations Secretariat have been stored in two separate places. The organization has prepared innumerable proposals for gathering all of its records in a single location and the arranging and cataloguing them, but sufficient funds have never been raised. In the summer of 1992, a graduate student requested permission to study community development documents held by the Denendeh National Office; in subsequent discussions, an agreement was reached whereby the student would assist in the arrangement and evaluation of the library/archives in exchange for full access to the materials. This student became the research co-ordinator for this study.

To maintain confidentiality of the organization's records, this report does not quote from but may refer to a specific unpublished document to substantiate a point. All documents reviewed

specifically for this study, as well as other materials that contributed contextual information, are listed at the end of this report. While considering a single document or particular information within it, scrupulous care was taken to place the document in the context of events occurring and activities being undertaken by the organization at the time it was produced, as well as to ascertain the relative perspective of the person who had prepared the document (ie, aboriginal staff? personal opinion? non-aboriginal resource person on staff? outside consultant? internal critic? unsolicited information received? professional opinion contracted?). The context of a document was determined through complementary documents or through verifi-cation with long-time Dene staff. This kind of painstaking archival work had been going on for some months before the Royal Commission requested that a report be done of the history of the Dene Nation as an organization. Without this prior work, the Commission study could not have been conducted in only three months.

An Aboriginal Perspective

The issue of perspective, in the sense of methodological worldview, arises in cross-cultural research because most reports about aboriginal peoples in Canada (and elsewhere) are analyses and interpretations by non-aboriginal observers. As learned as such trained observations may be, they are nevertheless interpretations filtered through a cultural worldview that differs from that of the people. Ethnographers and other social scientists are familiar with the debates about the merits and limitations of views that profess to be "outside" or "inside" a society being observed; specialists use such words as "emic/etic" and Töennies's "gesellschaft/gemeinschaft" to describe these perspectives. Such distinctions, however, may be too definite in cross-cultural settings. Where, for instance, can researchers place themselves if they were educated in the ways of the mainstream society but were raised within a culture that is marginalised from the mainstream? For example, is an aboriginal researcher who has attended a Canadian university more of an "insider" if she or he chooses to conduct studies of his or her own culture? Is an aboriginal researcher an "outsider" if he or she conducts research within mainstream society? A fuller consideration of research perspective seems to be called for.

Whether social science research is mostly quantitative or qualitative, the perspectives of researchers become significant with regard to the validity of information sought and selected, as well as the analysis of that information. In cross-cultural studies, general issues about perspect-ive might be raised in the choosing of culturally appropriate research methods, the ethics of taking community information out of its local context and using it in a different context, the ethics of building a personal reputation and academic career from studies that required consider-able contributions from non-academic research participants, the interpretation of personal observations without sufficient cultural context, the most appropriate people to decide who "key informants" are, the interpretation of statements by people speaking or translated into a language (such as English) that cannot convey cultural meaning, and the analysis of documents expressing the thinking of a persistently oral culture written in a language belonging to the mainstream (and mostly literate) culture as if they are

comparable to mainstream publications. A thoughtful and caring researcher working with aboriginal peoples will want to be sensitive to these and related issues, whether the researcher is aboriginal or not.

Aboriginal perspectives generally have not been recorded in Canadian public records until very recently. Even now, much of the published literature about aboriginal issues is being produced by non-aboriginal scholars and commentators, and questions about the interpretative approach of these scholars are legitimate. Because EuroCanadian or Western conventions of academic publication prefer third-person writing styles, readers often have to sift the content, the tone, the choice of references, and the argument presented to determine each writer's perspect-ive. In other words, the convention of researcher objectivity has in part encouraged scholars to suppress their personal perspective. While critical thinking, analysis, and interpretation are assumed to be part of the training of scholars, relatively few of the works devoted to research method describe these vital processes. Yet, they determine how an individual researcher views the information and observations studied in order to present the findings or conclusions. For these reasons, readers rightly have more than simple curiosity about the perspective of a researcher undertaking cross-cultural study. With a multitude of ethical issues being raised about the ways in which aboriginal peoples in Canada have been interpreted, well-intentioned scholars could demonstrate both courtesy and integrity by accounting for their approach at the outset of their reports.

Awareness of aboriginal perspectives can be learned and expressed by non-aboriginal researchers, just as educators expect aboriginal students to become aware of non-aboriginal thinking within mainstream Canadian society. Gaining such awareness does not necessitate a full understanding of another culture, in the sense that only rare individuals can successfully traverse more than one cultural worldview C although that seems to be what non-aboriginal policy makers have expected aboriginal peoples in Canada to do. Assimilation, it seems, is a different matter, as it involves disrupting the mechanisms of cultural transmission so that individuals must take extraordinary measures to sustain their cultural thinking. Reporting research information with an aboriginal perspective does not mean diminishing the significance of a mainstream approach: instead, it means balancing the public record to include aboriginal views. It also means selecting information with a sense of fairness: listening to the other side. A non-aboriginal researcher, then, needs to be knowledgeable and respectful of inter-related aboriginal issues in a multidisciplinary milieu, and be willing to assess information from a much more expansive notion of validity than is customary in research conventional to mainstream study.

By 1993, when the opportunity to produce a history of this organization was offered, Dene Nation had gained sufficient confidence in me that I had been asked to prepare policy analyses and respond to requests for information in addition to the archival work I had been contracted to do. Along with my familiarity with the Dene Nation archives and my academic credentials, in the summer of 1993, I co-ordinated a collaborative study with the Yellowknives Dene First Nation on the situation of aboriginal peoples on the urban lands of the NWT capital. My competence to conduct a study through accepted academic and scholarly standards, combined with my ability to express aboriginal

perspectives, had been demonstrated enough to ensure the Denendeh National Office staff that I could be trusted to handle the Dene Nation history.

My initial task was to plan the research approach, described next, for myself and a Dene colleague. The Integrated Research Plan of the Royal Commission emphasised the potential for increased aboriginal research opportunities by supporting collaboration between trained and untrained researchers in the production of findings for the Commissioners to consider. To comply with this plan, the Dene Nation requested that this study contract include provision for a Dene researcher to work with me. Antoine Mountain, a Sahtú Dene who worked in the Fort Good Hope archives and has some formal archival and library training, was hired as researcher for this study. Now an accomplished self-employed artist, Antoine Mountain has experience as a radio broadcaster and newspaper columnist, who began his communications career with the Native Communications Society when it was formed by the Indian Brotherhood: he was the first employee of Indian Brotherhood. At the time the study began, Antoine Mountain had no formal involvement with the Dene organization. He possessed the skills to review a great deal of written material, conduct interviews, and write a concise report.

My analysis may disappoint some Dene readers because it reflects the thinking of a non-aboriginal outsider. However, I do not pretend to disinterest, as I work with Dene in full support of community aspirations for self-determination. Therefore, the sense of objectivity to which I adhere is the presentation of documentary and interview evidence in fairness, as my training in scholarship has taught me. The context for my analysis is my personal awareness of and efforts to understand Dene perspectives. I do not regard my approach as any more biased than that of researchers who embrace and report support for more conventional or mainstream perspectives. My Dene colleague's presentation is more coloured by his personal recollection of events and contextual circumstances for the formative years. However, for the later years of the history, he relies more heavily on documented or interview records. Readers may notice that his distinctive voice is softer for his chronology of events in later decades.

Validity: Objectivity of Research Information

Validating information in any research study is a vital part of gathering data: careful researchers assess the nature and source of any information. They confirm which data are acceptable, relevant, or useful by reference to other reliable sources, and present in a report only information that has been suitable substantiated. Validation of qualitative information, such as statements made during interviews, may require testing in further interviews or confirming through written documents. For this study, several persons whom the two researchers decided were "key informants" were interviewed. While recognising that the memory of people raised in an oral-aural society is formidable, the two researchers nevertheless treated statements made in interviews to the same validation process as we did archival materials. For example, statements in interviews about the organization's funding were checked against financial docu-ments stored in the archives. All information about people holds socially generated significances: one reason why accounting for

research perspective and approach is crucial.

Qualitative studies can investigate rich sources of information, drawing on people's direct experience for impressions beyond the interpretations written by trained observers. Social studies researchers who work with marginalized from mainstream society C such as commune residents, street people, prisoners, radical feminists, or aboriginal cultures C come to recognize that conventional ideas about the validity of information need to be expanded, and reasons for doing so may need to be explained to research colleagues unaccustomed to moving beyond main-stream thinking (Kirby and McKenna 1989). To avoid misinterpreting information "from the margins", researchers must be alert to the ways in which information is perceived by the people giving it. To do so, the people in the study cease being research subjects and become research collaborators, resulting in much more active involvement than in conventional research. Rather than diminishing the objectivity of research information, this shift in participation can give a research greater validity of views from people not consistently reported in public records. It can also provide deeper insights into the restrictions imposed by mainstream society and the peoples' ability to cope with them. Rather than describe an observed situation, such a report can project the circumstances that the people involved want to change.

Objectivity: Interpretation by Researchers

When mainstream or conventional academic notions of objectivity prevail, cross-cultural studies are likely to be misperceived unless researchers conducting them account for their own approach and that of the participants. Accounting for participants is essential in community-based collaborative research. It is just as necessary for this study since the organization that is the subject of the research has itself advocated that researchers consider the issues raised in this introduction. The two researchers agreed that the individuals who formed, staffed, and guided the Dene Nation as an organization exhibited abundant critical awareness about the ways in which the Dene and their culture, knowledge, customary governance, socio-economic circum-stances, and development are perceived and influences by non-aboriginal people and by policy makers whose decisions directly affect the lives of their people. The views of these individuals C while admittedly opinionated and promoting the interests of their people C are vital for appreciating the initiatives and strategies of this organization at any time during its evolution. They are essential for gauging the specific validity of particular events, and for assessing the effectiveness of the organization in arranging or responding to these activities.

For the researchers, a study is a learning process in which they gain increasing awareness of the study subject C but in a haphazard and arbitrary way. During analysis of validated views and information gathered, the researchers seek patterns of meaning that make sense; for a cross-cultural study, the meanings must include those that make sense to the people participating C the people whose reality is so rarely recorded. A report of cross-cultural research must reflect conclusions that are as meaningful to the culture at the centre of the study as to the researcher-as-outsider.

Researcher objectivity blurs when the information expressed by people from one culture is interpreted by people from another. During analysis, researchers assess their findings to present them in the study report. A cross-cultural study report can be successful when researchers strive to report their analysis so that their accumulated awareness unfolds for readers in a more coherent way than the researchers gained it. Readers can learn about the study participants in a more orderly way than the researchers have, and can perceive the reality of the participants more clearly than the researchers could at the outset of their work.

Cross-cultural studies present researchers with a special opportunity for self-actualization, that is to learn about themselves as well as the people with whom they share this learning experience. Dene Elders characterize learning as a life-long self-actualization process, in which individuals continually test their skills and demonstrate their gratitude by sharing them with others. This report is offered in this spirit.

Research & Report Approach

The research plan devised for this study proposed an extensive literature review based on selected documents in the Dene Nation Library/Archives as well as scholarly publications about the organization or issues relevant to its activities (ie, federal assessments reviews of proposed development projects, aboriginal rights, land settlements, constitutional development). The materials consulted are listed at the end of this report.

Interviews were proposed with such key informants as former and current heads of the organization, the executive director of the Dene Cultural Institute (DCI), early and long-time staff, and Dene Elders involved with the organization. One former president, the DCI executive director, and several Elders identified for interviews were not available during the research period. Wherever possible, for cultural appropriateness, the comments for response from interviewees were not phrased as questions. Interview comments for response were prepared jointly by the two researchers and, for structured parts of interviews, were sent to the participants before the scheduled time. Interviews of organization heads consisted of two parts: the first, a series of identical questions asked of each individual in the same order, and the second, unstructured further comments to clarify and add to responses in the first part. Interviews with staff were wholly unstructured, in order to pursue specific matters while individuals were on staff and to augment discussions with matters pertinent to each person's term of office. Dene Elders are often familiar with the long interview research method and, therefore, respond well to unstructured interviews. Literate individuals were provided with a transcript of their interview for verification, and validation followed the returned verification. Finally, we are aware that different individual's views of the same events often differ, and we allow such differences.

DENE NATION: AN ANALYSIS

The research plan recognized that a comprehensive history of the Dene nation as an organization could not be conducted at this time. Owing partly to difficulties in gaining access to many of the administrative archival records and owing to the insufficient time and funds to interview the many people who have been involved with the organization C this study is necessarily selective. The challenge was to propose a study within these limitations that would follow accepted academic methods and would constitute a fair presentation of this northern aboriginal organization. In consultation with the executive and staff at the Denendeh National Office, it was decided to try two different approaches. One could focus on describing four clusters of key events in chronological order. The second could assess the scope of initiatives and the effectiveness of the organization across all the issues and events of the past 25 years. During data gathering, we decided that these approaches would work, and we proceeded to draft the report incorporating both of them.

Part Two of this report presents the four clusters of key events, which are:

- the circumstances in the late 1960s that prompted leaders from different cultures to form a single organization to protect aboriginal rights

- the strategies that, by the mid-1970s, led to a change by federal officials to settle unfulfilled Treaty issues for the people through a land "claim" procedure

- the growth in the organization's diversity and initiatives, until drastic funding cuts in the mid-1980s

- the final years of the single land "claim" being negotiated, and the impact on the organization as it resisted federal limitations within the "claims" policy

In Part Two, we have relied partly on histories and lists of events C which we refer to as chronologies C recorded by former staff members and filed in the Dene Nation archives. Readers can find a comprehensive chronology for Indian Brotherhood/Dene Nation to 1993 in Appendix C of this report.

Part Two was written by Antoine Mountain. Throughout the study process, we spoke often about specific documents, the interviews we held together, our growing conclusions, and research complications. When the time came for writing, we were not surprised to discover that each of us thinks and writes quite differently. Any attempt to edit our two variant styles would inevitably crush one voice and one way of thinking; therefore, we agreed to present our thinking about this study separately. Our reasoning was that any individual reporting the history of this organization would to some degree be presenting her or his personal interpretation, and we felt our distinctive voices should be heard to underscore the expression of our individual thinking.

Part Three of this report, written by myself, is an analysis of the scope and effectiveness of Indian Brotherhood/Dene Nation from 1969 to 1993. In conducting this highly qualitative analysis,

I pulled certain threads to assess the role of the organization in raising awareness, building capacity, and in making and carrying out strategies in relation to its mandate. I remained especially aware of the different ways in which Dene and DIAND perceive and try to present the organization: Dene see Indian Brotherhood/Dene Nation as a political organization struggling to protect Dene rights and to promote self-determination, whereas DIAND continually tries to reduce the role of the organization to a land "claims" mouthpiece. This tension stands at the core of all initiatives the organization has undertaken to address both internally and externally generated issues. Therefore, an assessment was needed of the challenges posed by external efforts to control the organization through funding limitations to complete this analysis.

Part Four is a brief summary of Parts Two and Three. The report closes with supple-mentary materials, including three appendices (the lengthy and important 1988 Assembly motion regarding improvements delegates wanted made to the Agreement-In-Principle; Dene Elders guidelines for incorporating Dene values in modern Dene institutions and work; and a more detailed chronology of Dene history), a list of persons contributing to this study, and a list of written materials consulted for this study.

When this report was submitted to the Royal Commission research staff, it contained no Executive Summary or Policy Recommendations. These were not requested in the original contract under statement of work, but were asked for later. The authors did not feel it was appropriate for them simply as researchers to make policy recommendations for the Dene Nation. Unfortunately, the request was made after the Dene Nation Assembly for 1993, and there was no opportunity for the National Office to gather policy recommendations from the Chiefs. National Chief Bill Erasmus, drawing on his understanding as the chief executive officer of what the Chiefs might suggest, compiled the policy recommendations. Because they were added afterward and were not written by the authors, it was decided that they should accompany the Executive Summary rather than be placed within the research report.

No study can be as comprehensive as participants or readers would like. Like other studies, this one has limitations. This is not a history of the Dene as Nations of Indigenous Peoples, even though many Dene regard "the Dene Nation" in this broadest of contexts. It is a report on the Denendeh National Office as representative of those Nations. No Chiefs C that is, board directors C were interviewed: observations by most of the elected chief executive officers only are reported. Few of the many staff members who have served this organization were contacted. Given the time constraints, we have had to rely more on written documents in the administrative archives than on the memories of the people most involved. Few observations are reported from what might be termed "professional observers" C that is, non-aboriginal scholars and consultants who have collaborated over the years with their Dene colleagues. Some readers might have preferred detailed evaluation of, for instance, spending patterns, or comparisons of leadership styles, or the experiments with organizational structures. To some extent, we have pursued our personal preferences within the time available. It is our hope that few readers will find these limitations unbearable.

DENE NATION: AN ANALYSIS

About Terms Used in this Report

In this report, we call the chief executive officer of the Indian Brotherhood/Dene Nation by the title as it was at the time we are reporting. At first, this position was called "President", and later, "National Chief". At the request of staff at the Royal Commission, we have reduced the number of acronyms in the text of the original final report. Therefore, the organization is referred to as Indian Brotherhood/Dene Nation when we refer to it in general, although we call it either "Indian Brotherhood" (before 1975) or "Dene Nation" (after 1975) for specific events or initiatives. In references, we use IBNWT/DN.

The word "Dene" in this report refers to Peoples Indigenous to their homelands, as well as to those peoples who have requested membership in the Dene Nation but who are not located within the invisible but official boundaries of the NWT. Presidents of this organization told us that they characterized the "Dene Nation" as:

> all of the Dene people coming together as a collective to represent themselves to the world as a people to be recognized C as are all other people in the world C by the long historical background; by common languages; by a common worldview, a territory, and with institutions that have survived a colonial past. (1993 OCT: interview)

> the collective that brings together our people in the communities. It doesn't mean only the NWT communities. Dene Nation is a collective of people ... in Alaska, in Yukon, in NWT of course, northern parts of the provinces from BC to Manitoba, the Apache, the Navajo, those other people in the States like the Hoopa: they're all Dene and they're part of the Dene Nation. But in the North here, when we say "Dene Nation" we normally mean all of the communities who choose to call themselves different things that make sense in their own language. ... So, Dene Nation is not ... the National Office, but I think in some people's minds that is the Dene Nation. We've tried a number of times to try to make it clear to people, by calling this the Denendeh National Office, for example, so that they realize it's just an office, it's a facility to assist people in the communities who really are the Dene Nation.
>
> (1993 SEP: interview)

As well, one of the presidents told us that, in his view, the Dene Nation means only the National Office. We have no wish to deny the recognition that other Dene are located throughout North America. This report, however, represents the history of the organization established to represent certain of the Dene within the western subArctic of Canada. The words "Dene people" are not used, since the word "Dene" means "the people" and the repetition is redundant. Dene communities with membership in this organization include:

- Gwich'in Dene, from the region of the Deh Cho (Mackenzie River) delta; Treaty 11 Dene

here, who are related to Gwich'in throughout the Yukon and Alaska (and have been called "Loucheux" and "Kutchin" by anthropologists), coexist with Inuvialuit who live with and north of them

- Sahtú Dene, from regions north and west of Great Bear Lake; Treaty 11 Dene here, also known collectively as "North Slavey" in reference to the classification of their language, actually include several distinct cultures
- Deh Cho Dene, including several cultures living along the Mackenzie, Liard, Nahanni, and Keele rivers as well as on lakes throughout the region; Treaty 11 Dene and Treaty 8 Dene in Xat□ o Deh (Hay River) belong to this region, also known collectively as "South Slavey" in reference to the classification of their language
- T□□ Cho Dene, also known as Dogrib, from the region between Great Bear Lake and Great Slave Lake, east of Deh Cho; Treaty 11 Dene in this region share one language and culture
- Treaty 8 Dene, including Weledeh Yellowknives Dene, Denesu□ ine (Chipewyan), and Cree who were signatories to Treaty 8 south, east, and north of Great Slave Lake, and east of Deh Cho; Dene from Manitoba (Tadoule Lake) and northern Saskatchewan have asked for membership in this region [Note that, through persistent administrative errors, Treaty 8 signatories Weledeh Yellowknives Dene have been classified with Treaty 11 T□□ Cho Dene by federal and Territorial officials; until they moved their membership into the NWT Treaty #8 Tribal Council, they were included in the "North Slave Region".]

The word "Métis" for the purposes of this report refers to NWT people who identify and affiliate themselves under political representation by Métis organizations, rather than the Indian Brotherhood/Dene Nation. Persons government identifies as Métis were given a choice about taking *scrip* or Treaty status by the Treaty 11 Commissioner, whereas relatives and descendants (identified by government as Métis) of Dene who signed Treaty 8 were not given this choice (Fumoleau 1973: 207B210; YDB 1993). Many people government regards as Métis consider themselves to be part of the Dene Nation. The tension between the way governments identify people and the way they identify themselves has caused considerable discomfort C particularly over the sensitive issue of who is eligible to be a land settlement beneficiary C and some discord among organizations representing northern aboriginal residents.

In the NWT, the federal department responsible for Indian Affairs has since 1966 also held responsibility for the administration of the northern territories under the *Department of Indian Affairs and Northern Development (DIAND) Act* (for text, see: Hawley 1993: 144B146). The name of the ministry has changed, but in NWT it is still referred to as DIAND. (The relation of the *DIAND Act* to the federal *Northwest Territories Act* or to the *Indian Act* is unclear, except perhaps to the most senior federal and Territorial administrators.) In deference to the general familiarity of the acronym "DIAND" and as a reminder of the ministry's responsibilities north of the provinces, this report refers throughout to this federal ministry as DIAND.

The Territorial administration has come only recently to the NWT since that land area has come to be defined mostly by the 60th parallel. Before 1967, the NWT Council was for the most

part an appointed body of federal employees located in Ottawa, as a branch of a federal ministry. Although the council and public administration were established in Yellowknife in 1967, some legislative representatives were still appointed until the late 1970s. Federal influence C and financial control C over the government of the NWT remains pervasive. Despite increasing numbers of aboriginal Members of the Legislative Assembly, many Dene do not regard this EuroCanadian administration as a government that represents them or their interests. Dene Chiefs in particular maintain that the Territorial Council is competing for jurisdictional authority with First Nations. Throughout this report, then, we refer to the government of the NWT C Council and public service C as the "Territorial administration".

DENE NATION: AN ANALYSIS

part two

Key Events in Dene Nation's History

Beginnings
The Mid-1970s: Settling the Land Issue
The 1980s: Growth & Funding Cuts
Conflict Over the Claim

by Antoine Mountain

Key Events in Dene Nation's History

Beginnings

We Dene have always revered our Elders. We make a special effort to learn as much from them as we can before they pass on. One of the guiding principles of our Dene Nation remains the spiritual foundations our Elders emphasize. People are not long for this world, so we must approach all of our doings with the proper respect and humility. Our Mother the Earth was left to us by our ancestors to, in our turn, take care of her as we would a living person for our future generations. We feel that we are in paradise while we are here in Denendeh, the name we give to our homeland.

A recurring image associated with the Dene National Office C in fact, the logo C was designed by Gerry Antoine, formerly a Chief and currently Deh Cho Grand Chief. The image has to do with the Dene holy man, Yamoria. To help us clearly visualize this central theme of Dene Nation's existence, we quote one of our revered Elders, George Blondin:

Many years ago, before the White man came into this country, a special man C Yamoria C travelled into this land. He put everything into its rightful place. The animals and human beings were separated from each other. Whatever was harmful to people was gotten rid of. By doing this, he had set laws for our people to follow. Until this very day, we are still holding onto them.

This story had come about when there were large beavers living in Great Bear Lake (Sahtú).

The beavers were harmful to the people living in this area. People that lived in this area would travel across the lake by canoe to hunt the caribou. The beavers did not like them to travel across the lake, so they would get as close as possible and splash their tails hoping to tip the canoes over. When Yamoria heard about that, he went to Bear Lake and told the people that he would be chasing the beavers away.

Yamoria started chasing the beavers around the Lake. The big beavers immediately went down to Bear River. The younger ones were harder to chase towards the river. During the time that Yamoria was chasing the younger ones around the lake the bigger beavers had built a dam on the river and that's where the Bear River rapids are to this very day. Yamoria got the younger ones to head down to Bear River and then chased them all down the river to where Fort Norman is now situated.

At the confluence of the two rivers, Bear River and Dehcho, he killed two medium beavers and one small one. The larger ones continued down the Great River.

After killing the three beavers, he stretched and nailed the three hides on the south face of Bear Rock Mountain. You can still see them to this very day.

While he was doing that, the two larger beavers that continued down the Great River (Dehcho) had built two more rapids.

After he had finished with those beavers that he had killed at Fort Norman, he then continued on chasing the other two larger beavers down the Great River (Dehcho).

From the top of Bear Rock Mountain, he shot two arrows at the confluence of the two rivers and he said "as long

as this earth shall last you shall call them Yamoria's arrows". Still to this day you can see two big poles sticking out of the river. Even after each spring when the ice goes there always are two big poles sticking out of the river.

After shooting the two arrows into the river he brought the beavers that he shot with him up the Great River (Dehcho) about 20 miles from the confluence. There he slept, and where he had cooked the beavers, the grease that had drizzled from the beavers started to burn and to this very day that fire continues to burn.

There are some legends that state that during your travel at night by that site, if you can see the fire coming out you would live a very long life. This they say, that it's not always visible to everyone, just a few.

According to Stanley Isaiah of Fort Simpson, the symbol of the three beaver pelts on Bear Rock Mountain and the forever burning fire up river from that mountain are signs of the land set there as a reminder of the teachings of the legends. Stanley said that, if we remember the teachings of the legends and live them, if we take the sign set on the land for us as our symbol, we will never have any trouble surviving as a nation. (Dene Nation 1992: Annual Report)

These stories of the Dene are just that C stories C unless we are to understand properly that we Dene have, at heart, an oral tradition. The reason these legends have survived for the 30 000 years of our history is because of the medicine power described by our Elders. This form of spiritual energy from our Creator would be passed on to future generations, to guide our Nation on the good red road. This contact with the Creator continues to be a matter of survival for the Dene. We regard ourselves essentially as of this earth. People in the past relied moreso on this medicine power than we do today. The teachings were used as a basis for Dene laws. Elders believe that today our leaders are not as widely recognized, nor as respected, because of the loss of this medicine power (SEP 1993: interview with George Blondin).

Non-Dene Pressures

The Dene in southern Denendeh made Treaty 8 in 1900. The federal government at the time was concerned about protecting the routes to the Klondike where gold had recently been discovered (Fumoleau 1974). For the next 20 years the Dene faced hardships and disease beyond belief. Epidemics, changing social patterns, an influx of white trappers, traders and prospectors had a greater impact on our people than the meagre assistance of the government could mitigate. But it was not until oil gushed from Dene land at Fort Norman in 1920 that Ottawa showed any concern and a second Treaty was hastily prepared and made (Fumoleau 1974; World Council of Churches 1977). Treaty 11 was made in 1921 and 1922 with our people to the north and west of Treaty 8

The Dene have always regarded the Treaties as peace and friendship pacts, not as tools to extinguish their land rights. The Treaties also protect the resource harvesting rights of the Dene, which have since been enshrined in the Canadian constitution. Some provisions of the Treaties to do with traditional Dene lands and aboriginal rights for the protection of the Dene way of life have never been fulfilled, which continues to be an ongoing political issue.

The federal government maintains a different version of the Treaties. They view the Treaties as having extinguished any land rights the Dene may have had. Any residual rights to areas such as resource harvesting were viewed as subject to restrictions of general legislation, according to

the government. These interpretations have been proven not to have been understood by our people, based on oral evidence of Elders collected by Dene who later worked for the Indian Brotherhood, on testimony given in a court case brought by Dene Chiefs (*Caveat* 1973), and on thorough historical research (Fumoleau 1974). The first head of the NWT Indian Brotherhood mentions that we regarded Treaties 8 and 11 as: "a sacred promise ... . People knew what the Treaties were supposed to be. They still had hopes, faith that the Treaties would be fulfilled. They also saw the Treaties as a kind of security, a guarantee. All they wanted was to get them settled" (1993 SEP: interview with founding interim President).

For the next 40 years, the administration of the north was so indifferent, so filled with broken promises, so contrary to the best interests of the Dene, that the terms of the Treaties were barely fulfilled and lands for the use of the Dene were never set aside. So many promises were made and broken, especially as regards the rights to hunt, fish, and trap that hardships without parallel were heaped on our people. Dene resistance to outside influences is not new nor a recent phenomenon. An example of the Dene response to this colonialism comes from a Yellowkives Dene Elder, Chief Joseph ("Susie") Drygeese, who vividly reminded the officials sent to pay Treaty of the meaning and intent of the peace and friendship Treaty we had made:

"Do you remember what you promised us before? The time they began the Treaty, they kissed the Bible and everything. Why do you lie to us? Why do you do this? Why do you change now? You gave us money and paper; now you want to change the law. We will give you back all the money. We did without it long before. You can't pay us to be the boss of us. Why do you tell us how to run our land? We did not give it to you."

(translated and reported in Fumoleau 1974: 126)

The western culture brought in by churches and RCMP further encroached on our Dene way of life. Our small family units spent much of our time in the bush, where it was difficult for us to learn what was happening. These changes represented an end in a way of life that had sustained the Dene for as long as they had existed. The discovery of oil at Fort Norman, gold at Yellowknife, and uranium at Port Radium dug at the very heart of the Dene Nation. Strangers came to use the land in ways such as mining that were destructive, ways that our people did not use our land. The perception to most non-Dene was that we watched in silent amazement as our land and culture were endlessly violated (described in World Council of Churches 1977: 11); a more accurate description might be that our people were not yet accustomed to the ways in which government and resource industries worked. The colonial process enacted in other places followed the historically familiar pattern here in Denendeh.

There was the pacification of the Dene by the traders and missionaries. Our people were made to depend upon the tools and ideals of these strangers in our midst. The missionaries especially severed our spiritual link with the land. They promised a better tomorrow, in exchange to submission to new ways. All of this foreign influence contributed to the destruction of Dene societies (IBNWT 1977). Many of our people felt a deep-seated resentment borne of helplessness and official neglect.

DENE NATION: AN ANALYSIS

Fewer and fewer people remembered that the original purpose of the Treaties was to protect the Dene. By the mid-1960s, many Dene families had been moved from our land by the government to spend most of the year in the non-Dene communities. Consistent with the long-held policy of assimilation, the government embarked on a campaign of universal, compulsory education. The resultant shift to year-round settlement in government-created communities completely altered the rhythm of Dene life. New economic relationships in the settlements were not fully thought out before moving our people there, as there were never enough jobs or wages to support all of our families. The attempt to make us rely on wages undermined the traditional values and principles that were the very foundation of Dene society (Dene Nation 1984d: 21-23; 1993 SEP: interview with Dene Nation President). Many young educated Dene, even though they had grown up without the consistent guidance of our Elders, had an uneasy feeling that things were just not right.

The way the young Dene had been educated was one reason: "The children were taught to forget their history, their values, their heritage and their traditions" (Fumoleau 1980). "Taught" to forget? "Forced" was more like it. We were given a number and were called by that number. Our heads were shaved bald and we were all dressed the same. Our daily schedule included rounds of prayer and French Canadian songs. Our mail was read and censored. We were strapped for speaking our own languages and humiliated for any natural act. To a person who actually went through the residential school experience itself, any study on the subject hardly serves to convey the reality to the reader. It was a process we were put through, like animals to the slaughter, only the process was slower, a daily agony. I am one of the survivors of that colonialist experience, still recovering in a different age. I can still remember the day in September of 1959, being taken from our fish camp along with my little sister, to be led off, hundreds of miles away to school. My grandma standing on the shore, getting smaller.

This was only the beginning of a harrowing journey through the dreaded school years Dene children at the time were subjected to. All the innocent children wondering what was happening. I learned simply to withdraw emotionally, not to expect a better tomorrow. Even to this day, some 25 years after having gone through this "educational" process, I still carry a certain deadness inside, deep resentments, caused by an uncaring system. Mine was the last Dene generation born on the land and then put through a system that was geared for failure. Ironically, it also gave us ways to find out what had been happening to us and to our land.

All Native tribes in North America have grown familiar with the tactics of the intruding White culture, a process of playing two sides against the middle. A fragmented opposition makes for easy prey. In Denendeh, the government was dealing with a trusting people. Until quite recently the Dene simply could not imagine the government being anything but fair and reasonable in its dealings with our people. But the federal government through the *Indian Act* identifies some people as Treaty "Indians", thereby separating them from non-Treaty "Indians", non-status, and Métis. Interpersonal, family, tribal, and national relations were affected in negative ways. At a time when

the people needed to be reassured and organized, we found ourselves being pulled apart by these schisms caused by the *Indian Act* and by other government policies. In a single Dene family one could find the entire spectrum of northern society, with members being legally defined as Dene, Métis, non-status, and White. Children suffered from the loss of their Treaty rights. To further place the political mood of the times, we can refer to the stance that Prime Minister Pierre Trudeau took in regard to aboriginal rights. The federal government was definitely not going to respect the "grievances of native people who felt that they had been misled by Treaty negotiations" (Braden 1976: 100).

It was not until the late 1960s that the Dene began to reassert our way of life and remind Canada that there were overdue debts to be paid, especially in regard to our land. The Church lost the influence it once enjoyed. Dene learned to believe in ourselves again, to question outside influences, to stand up for ourselves. Some of the damage was irreversible. Colonialism, we discovered, had created a communications and learning gap between Dene youth and Elders. The end of an era, described by young Dene leaders as the "colonialist years", had been painfully reached. We were beginning to listen to our Elders again, rediscovering our traditional knowledge, proclaiming sovereignty over our lives and our land. It was time to organize ...

Speaking at a Chiefs Meeting in Yellowknife in 1993, former President of the Indian Brotherhood James Wah-shee defined the Colonialist Experience of the early 1960s here in the north. He explained that the federal government was running everything, all the programs and services. Federal employees, in the form of area and community administrators, ran the communities and, in 1967, the Territorial administration had just moved to Yellowknife from the federal office in Ottawa (Dene Nation 1993: meeting transcript). At the School of International Law in the Hague, Netherlands, the Territorial administration is studied as the best example of the colonial system (Fumoleau 1980). Few Dene in 1967 could foresee the full impact these arrivals would have on the Dene homeland.

In fact, the year of 1967 marked the Centennial year for the country of Canada. For a people who have been in North America for some 30 000 years, the Dene, this celebration deserved but scant notice. The Dene were brought together to celebrate in the communities and in true Dene fashion used the occasion to exchange concerns about their situation (Dene Nation chronologies, histories). In a fit of typically bureaucratic illumination, the commissioner of the Territorial administration launched a campaign to proclaim everyone in the NWT, regardless of race or Treaty rights, as "northerners". Overnight everyone was supposed to be moulded into "a new race, the northern race" (Fumoleau 1980: 11). The policies and attitudes of the Territorial administration proved to be major pressures that led the Dene Chiefs to unite.

But perhaps the greatest pressure that led to the formation of the Indian Brotherhood of the NWT in 1969 came from the infamous White Paper: "A Statement of the Government of Canada on Indian Policy". The White Paper proposed to repeal the *Indian Act* and to transfer all responsibilities for "Indians" from the federal government to the provinces and territories. This, of

course, raised some questions as to how much importance or value the federal govern-ment placed on the Treaties made with the First Nations and its other legal obligations (Dene Nation 1984c). According to the first interim President, Mona Fox, this White Paper also served to motivate the Dene Chiefs to develop an organization that became the Indian Brotherhood of the NWT; she told us: "it might have been one of the greatest things that happened because it forced people to organize. It was a very definite threat" (1993 SEP: interview). It caused a lot of fear amongst the Dene and "Indian" people throughout the country. The threat was assimilation, that people would be integrated into the mainstream and cut off from our Treaties, our Treaty rights. The Dene feared our Treaties would not be fulfilled.

Needless to say, the White Paper sparked outrage amongst "Indians" throughout Canada, people who were constitutionally entitled to special status under the *BNA Act*. Although the White Paper was officially withdrawn, certain aspects of it were already in process in Denendeh (Dene Nation 1984c). In Denendeh, federal and Territorial policies encouraged Dene to abandon our way of life on the land, to move into permanent settlements, and to prepare ourselves to participate in a wage-labour economy based on the development of the north's rich mineral and petroleum resources (Dene Nation 1984d: 24). The Dene wanted to deal directly with Canada nation to nation, a right accorded us through the Treaties. We wanted to deal with Canada's representative, Indian Affairs, and we wanted nothing to do with the Territorial administration.

Formation of the Indian Brotherhood of the NWT

In 1969 the 16 Dene Chiefs went to Fort Smith for the annual meeting of the Advisory or Regional Council, a body set up by the Indian Affairs Branch to exchange information between Ottawa and the Dene (Braden 1976; Dene Nation histories and chronologies; 1993 SEP: interview with IBNWT founding interim President). The Chiefs were informed that C as part of the White Paper policy C the Indian Affairs Branch would shut down in the NWT and responsibility for status "Indians" would be given to the newly formed government of the NWT. In fact Indian Affairs did withdraw from the NWT for a few years. During the Fort Smith meeting, the Chiefs held a separate meeting and formed a temporary council of their own. (See Dene Nation Annual Reports, histories, and chronologies.)

It was widely felt by the Dene Chiefs and other concerned people that the time had come to take direct action and assume responsibility for solving some of the accumulating Dene problems. This temporary council of Chiefs attracted volunteers for an ad-hoc executive and a steering committee; this fledgling organization called itself the Indian Brotherhood of the Northwest Territories (IBNWT). Mona Jacob (now, Fox), who in 1969 had been working with a Métis organization in Fort Smith, was the founding head of the ad-hoc executive. She was succeeded after a few months by the late Roy Daniels, who served as interim President until a formal selection

process had been agreed on. Mona Fox told us:

> [W]e formed as an organization very quickly: in a way, we built on the existing structures that were there, because we wanted, you know, representatives from each community and the Chiefs that were there did legally represent the people of their community; so, you know, we built on that. We didn't have any staff. ... the people working for Dene Nation, they were volunteers primarily. Some of the people that became, you know, leaders of the organization started out as volunteers. ... We all volunteered our time because there wasn't any money for the organization at the beginning. And I think that they C all those people C became very quickly politicized. I think they were probably leaning in that direction through their work with the Company of Young Canadians [and] saw greater opportunities for Dene Nation in the organization, and they've certainly proved that through their contributions that followed. (1993 OCT: interview)

Mona Fox remembers that a good part of the meaning of the Dene Nation at that time had to do with gaining the power to change things as a group and developing the consciousness to do so. She recalled the importance of getting the Dene politically out of existing government structures, and starting to make our own goals and our own plans (1993 SEP: interview).

The NWT Brothehood was formally incorporated in February 1970. It was set up as a "political but non-militant corporation", consisting of all the Treaty Indian People of the NWT. Its stated intention was to "speak and act formally for a people previously disorganized and disunified; to communicate their voice to the Government of Canada and all concerned" (IBNWT 1970: Objectives; IBNWT 1973a: incorporation documents). The objectives or mandate of the newly formed NWT Brotherhood were stated in its Constitution:

> a) To uphold the rights and interests of the Indian People of the N.W.T., in reference to their Treaties and otherwise
> b) To develop, discuss and promote policies for the Indian People of N.W.T.
> c) To conduct, foster, and support programmes and policies for the economic, social, educational, social health, and cultural benefit of the Indian Peoples of the N.W.T.
> d) To give voice to the opinions of the Peoples of the N.W.T.
> e) To cooperate with other organisations of similar or friendly purpose (IBNWT 1973a: 1-2)

A later version of the Dene Nation Constitution replaces the word "Indian" with "Dene". Also in section (d) the word "peoples" is narrowed down to "Dene peoples". The NWT Brotherhood (later renamed "Dene Nation") is here to take care of the concerns of all the different cultures of our people, the Dene. In 1975, with the Dene Declaration, there was a concerted effort to be recognized as native to Denendeh and not to follow official misnomers such as those in the *Indian Act*. The original mandate of the NWT Brotherhood also included securing funds "to operate, return the Department of Indian Affairs into the North, and unite all the Indian communities within the Mackenzie District" (IBNWT 1974: Annual Report). Thus, the Chiefs provided political guidance as the Brotherhood's Board of Directors, and the office staff carried out the Chiefs' strategies and direction.

All these objectives reflected the thinking of the founders of the NWT Brotherhood in that the Treaties and their proper interpretations would once again form the basis of their dealings with

the federal government. Left to government devices and the manglings we would receive at the hands of the new Territorial administration, it would be fair to say that we certainly would not have the hard-fought recognition that we have achieved for ourselves as Dene today. Also, there were definite government policies already in place that the early Dene organizers at the time were aiming to correct, including social policies, many of which were regarded as highly discriminatory. The founding interim President of the Brotherhood explained it this way:

> there were attempts to assimilate people, as you know, through the education system, through the residential schools, and through streaming people into the trades. ... [I]nstead of encouraging people to stay in the academic stream, they were streamed into being carpenters and bulldozer operators and nurse's aides ... rather than ... the more professional areas, or areas where they had a better chance of making a living. Or reinforcing some of the traditional occupations; that was never done.
>
> And also, there was no kind of employment equity; all the benefits in employment went to people in the south. And people in the north, you know, had to pay for their own housing and utilities ..., whereas people from the south got isolated post allowances. They got housing subsidies, their utilities were paid, their education, ... and so on. You know, some of the Treaty people did get their health and dental care and drugs and so on, when they needed it, but they only got it if they were actually declared indigent C which was like a means test rather than a right. And the Métis and non-status, of course, were ignored, even. (1993 SEP: interview)

Dene Elders also urged the young educated Dene to seek their identity and to strive for unity in their work with the Brotherhood. One of the first staff members recalled that becoming involved in the original organization was a different kind of a venture from what Dene ordinarily aspired to at the time, such as getting a government job or something to do with industry (1993 SEP: interview). This Brotherhood staff member talked of leaving a secure teaching job to take on a position with the new native organization: "I had to examine why I had gone into the field of education in the first place. Education was one of the big factors in the cultural erosion and the situation that many Dene were faced with at the time" (1993 SEP: interview). One of the main functions of the Brotherhood was to protect who the Dene are and what we represent.

I am one of the people affected by the situation this Dene staff member was speaking of. Two years before joining the staff at the Brotherhood I had refused to write the final exams in high school and demanded to be sent home from the boarding school residence at Fort Smith. I was told that I had to find my own way home, some 700 miles to the north. This was all a part of a new awakening to life in the real world. I began working for the Indian Brotherhood in the spring of 1971. We operated out of a tiny office at the back of a Yellowknife clothing store, the Tog Shop, where the mini-mall is now. The office resembled a drop-in centre. I had just completed a two-year radio and tv arts course at a southern technical school. While I began by doing some paperwork for the Brotherhood, eventually I ran the Radio Department, producing a weekly show and training some young people.

Communications was central to the early activities of the NWT Indian Brotherhood. They wanted to inform our people in the communities, to tell them what they had learned about government policies for our people. They also wanted to educate the non-Dene, to try to win their

support and perhaps attract contributions of money or other assistance. In keeping with its constitutional objectives, the NWT Brotherhood contacted other native organizations to share similar experiences, hopes, and plans for future action (Dene Nation histories & chronologies; Braden 1976; Federation of Natives North of 60E 1972-1975; Russell l977: 163-173).

But, most important of all was the intention to have as many of our people as possible involved in making the decisions about what was to be done. Communicating through radio and newsletters was important, but providing face-to-face explanations in our own languages was vital. So, many of the early days of the NWT Brotherhood were spent raising money, holding meetings to share information and plan strategies, and training fieldworkers to spread information and strategies throughout our communities. Brotherhood staff recognized the central significance of sending its messages to our people about how we could collectively change the colonialist experience in our communities.

Decolonisation

The Dene colonialist experience did not end once the NWT Indian Brotherhood was formed. In 1970, Parks Canada intervened onto traditional Dene lands at □utsel K'e, in the east arm of Tucho (called in English the Great Slave Lake). Over the years there have been repeated attempts for the people of □utsel K'e to acquiesce to government plans to set parts of their traditional lands aside for parks. In 1970, Parks Canada arbitrarily withdrew 7407 square km of this Dene land for a new park, over the adamant rejection of the community of □utsel K'e. The people were deeply suspicious of parks, largely because of perceived violations of our rights in the Thelon Game Sanctuary. The Thelon Game Sanctuary had been established without the consent of the aboriginal peoples whose custom it has been for generations to hunt and trap on these barrenlands; in fact, in the 1920s and 1930s, some Dene hunters had been charged for following their traditional pursuits inside the Thelon Game Sanctuary.

In 1970, a large delegation of bureaucrats from Parks Canada descended upon the tiny community of □utsel K'e for a meeting with the Chief. The Chief at the time, Pierre Catholique, insisted on consulting with other Dene Chiefs on this important matter. Parks Canada agreed and contributed financially to enable the 16 Dene Chiefs to meet with them. Chief Pierre Catholique stated:

> Never again will one Chief sit down with many government people. From now on, if twenty-one government people come to a meeting, twenty-one Indian leaders must come and sit across from them. From now on, we the Chiefs must talk with the Government only when we are all together.
>
> (Griffith 1987: 26)

A delegation of Dene Chiefs, Elders, and NWT Brotherhood staff also went to Ottawa to discuss this matter further, a sign that perhaps governments were beginning to take Dene leaders more seriously

and were recognizing the need to settle our land issues.

The process the Dene were beginning was something that some political scientists call "decolonisation". This was a process of removing the impact of the colonial past, a process being experienced by indigenous and other peoples in the world. This process of decolonisation was described by a Dene spokesperson at a conference in Geneva, Switzerland as "an awesome challenge" (IBNWT 1977). The young Dene just out of the school system had experienced some real freedom and were beginning to question realities back home. We were seeking the right to control our lives, to run our affairs and to have the appropriate political, economic and cultural institutions to maintain that position (Dene Nation 1984c). In order to regain our identities we had to recover our history (IBNWT 1977), and the Elders are the key to our history.

As for the Territorial administration, it had to be continually challenged. The President of the NWT Brotherhood at that time points out that one of the first steps involved in the decolonisation process had to do with members being able to analyze their situations to uncover northern realities, one of which involved the Territorial administration:

> At the beginning we ignored them. We found them quite pitiful. And, you know, they were going around trying to convince everyone that they were the legitimate government of the people and it was so ironic that you would have a government full of non-native people from the south flown into the north C they didn't know anything about the north C trying to convince both the Inuit and the Dene and Métis that they were the legitimate representatives, that they were the ones making life-meaning decisions for us, and somehow they had a mandate to do that, simply because, you know, they would call an election every few years. So, at the beginning, there were openly hostile kinds of relationships that existed. And I guess the most bitter fight was over the Mackenzie Valley pipeline; we took opposing positions on that.
>
> (1993 OCT: interview)

The Territorial administration was immediately recognized for not having constitutionally autonomous jurisdiction. Unlike First Nations, it operates without the right to self-government. Its existence is derived from the *Northwest Territories Act*, a statute of the federal government. In fact, when the Territorial administration was left out of the Meech Lake Accord ratification procedure, the NWT Legislature tried to take the federal government to court; but the court threw the case out on grounds that, since the Territorial administration is not a "government", it could not take the federal government to court (related 1993 SEP in an interview with a Dene Nation President). Dene delegates to the 1990 National Assembly in Dettah passed a motion (#51) declaring that the Territorial administration is still not regarded as the legitimate government of the Dene.

As a part of this decolonisation process, in 1971 the Dene Chiefs, as the NWT Brotherhood Board of Directors, asked the federal government to "correct the unconstitutional, illegal practice of transferring Federal responsibilities for Dene people to the Territorial Government of the NWT" (reported in Dene Nation 1984c). For instance, education is clearly spelled out in the Treaties as a federal responsibility to the Dene but it has been transferred to the Territorial administration. Dene inherent aboriginal rights supported by the Treaties should serve as a basis for our negotiations with the Canadian government. The Dene Chiefs and Brotherhood staff felt that developments such as

the proposed Mackenzie Valley highway and pipeline should only happen with our consent, following a settlement of our land based on our aboriginal rights (IBNWT 1974: Dene Rights Fieldworkers Kit, "The Meaning of Aboriginal Rights" 5). Part of the basis for a Dene position here in Denendeh had to include political rights, as George Barnaby contended: "Laws are made by people from the south that do not make sense to us, but which we have to live by. These laws are to serve the system of the south. They are not laws to protect the Dene way of life" (IBNWT 1976c: lV, Paper 3).

Another of the NWT Brotherhood's early activities was to convince the Department of Indian Affairs that its Indian Affairs Branch office should be re-established in the Territories. In April 1972 the Indian Affairs Branch reopened an office in Yellowknife (IBNWT 1972, 1974 Annual Reports; 1973d & 1973e; Dene Nation histories & chronologies). The reopening of the NWT Indian Affairs Regional Office was further proof of the effectiveness of united action by the various Bands in Denendeh through the Brotherhood to establish and maintain our rights. It meant recognition of Dene Band Councils and Treaty rights. It was intended to assure Treaty people that the federal government was carrying out its responsibility for them. Dene Bands in the NWT had the right to the same programs under the *Indian Act* as Bands in the rest of the country (Braden 1976: 127). As a specific proposal to put this into action, in 1972 the IBNWT proposed a Band Development Program for Band Council funding (IBNWT 1973d), which finally became available by April 1974. Before then, the Chiefs and Band Councils in Denendeh had no operating funds: "In most communities there was no Band offices, and there was no Band Chief staff; at most, there was a box with a little file in it from Indian Affairs that the Chief carried around in a paper bag" (1993 JUL: interview with former President).

During the earliest years, two vital facts were becoming clear to the individual members of the Dene Nation:

- the Dene homeland consisted of 450 000 square miles of land, and

- the federal government, industry, and developers knew that a strong, unified NWT Indian Brotherhood could interfere with proposed uses for some of our land

With typical divide and conquer tactics, the governments and developers would continue to approach Dene Bands separately to try to make deals with them. The biggest Dene struggle would be to keep the people together. Perhaps the most succinct statement on the matter of the Dene land settlement comes from a former Brotherhood President:

> People are using the word "claim". ... that's something that the government would really like us to believe C that we have a claim. Our problem has been that the government of Canada has a claim on our land. We have no claim. The land belongs to the Dene. ... Our problem is that non-Dene have come on our land, and they say that they have rights here. Our problem is that the Government, the non-Dene are claiming our land. They are making decisions on our land. They are developing our land. We are dealing with the problems of non-Dene claiming our land and our rights.
>
> (Dene Nation 1978: Assembly transcript: 117)

This reawakening C this process of decolonisation C was closely linked with the objec-tives of the newly formed NWT Brotherhood. All the Presidents of our organization emphasized that the influence of our Elders has been and must continue to be an integral part of our search for a true Dene identity and the rights to our land. One remarked that:

> the Elders to me were very, very important and that was one of the reasons why I wanted the kind of meetings we used to have changed, because previously it was just the Chiefs coming together. To me, it was very important that, at each of our meetings, we did political education. If, in fact, we were taking about decolonisation, we would have to learn from the Elders in many ways, even how to conduct meetings themselves. Because it seemed to me that we would have to operate the meetings in a system that was understandable to the average Dene and the more traditional the Dene were, the more they could understand the operation of our meetings.
>
> (1993 OCT: interview with former President)

This former President pointed out that the Dene have to build on what the Elders have done, particularly our making of Treaty with Canada. There seem to be two versions of history, the federal government's version and the Dene understanding. Dene Elders and leaders agreed that the Dene definitely did not surrender any rights to Dene lands (IBNWT 1974: Dene Rights Fieldworkers Kit, "The Meaning of Aboriginal Rights"). To make sure that our understanding of what people had in mind for us, we have to have our Elders involved (1993 JUL-OCT: interviews with former and current heads of IBNWT/DN). The knowledge held by the Elders about the making of Treaty 8 and Treaty 11 is vital to a fair sharing of our land with the newcomers. The Treaties had to be understood according to their original intent, and the government was to be taken to task to uphold its responsibilities.

The Dene have always had a powerful connection to the land. Formally, this link was recognized by the federal government in the Treaties, especially in the guarantees that the Dene would forever enjoy our rights to hunt, to trap and to fish without restriction in Denendeh. Just as the annual spring hunt reaffirms the individual Dene ties and commitments to Denendeh, so this Dene reawakening through the formation of the NWT Indian Brotherhood stirred long dormant feelings among the young Dene of a unique status within the country called Canada.

The Mid-1970s: Settling the Land Issue

In March of 1973 the Indian Brotherhood's Board of Directors, our Chiefs, met in Fort Rae to discuss the Treaty research collected by its fieldworkers conducting interviews with our Elders, as well as the opinions of its legal advisors. The leadership decided on an approach for presenting this evidence to the federal government and to the Territorial administration (IBNWT 1973 meeting minutes; Braden 1976). A month later, the Chiefs applied to register a *caveat*, a prior interest in the land representing the Dene ancestral homelands.

The Dene Go to Court

The Land Title Registrar refused their application, and the Chiefs took their request to the Supreme Court of the NWT. In the landmark case, called *In re. Paulette et al.*, the Dene Chiefs presented their *caveat* to declare our prior interest in the 400 000 square miles of Denendeh (Caveat 1973). (The land area was raised to 450 000 square miles when the case was appealed in the Alberta Court of Appeal and the Supreme Court of Canada.) The amount of land the government was saying the Dene could have on reserves under its version of Treaty 8 and Treaty 11 was 2600 square miles. The *Paulette* case was the first major test of the strength of the newly formed Dene unity. With the rumblings of the proposed Mackenzie Valley gas pipeline already heard, the court case cast the first doubts on the validity of major resource development projects on Dene land proposed without our consent (IBNWT 1974d?). The purpose of filing this *caveat*, in part, was to stop any transfer of land without permission of the Dene, to verify our Elders' understanding of the Treaties, and to demonstrate our aboriginal title to Denendeh.

The judge for the *Paulette* case, Mr Justice Morrow, travelled to the communities to hear Dene testimony, much as Berger would later. This approach to resolving conflicts and sharing information was acceptable to the Dene: it is our custom to go to the people to resolve conflict and to make major decisions. Elders who remember the Treaty making of 1900, 1920, 1921, and 1922 contradicted the government's contention that our rights to our land had been legally extinguished. Julien Yendo of Fort Wrigley described how his name on the Treaty was a forgery, because he had in fact been away when the Treaty party came through (*Caveat* case testimony 1973; also reported in Fumoleau 1974 and IBNWT 1976c). The research to support the *caveat* came from the work since 1968 of the original Dene volunteers with the Company of Young Canadians and continued by the Brotherhood staff. Eventually the judge ruled, giving one of the clearest definitions of aboriginal rights in Canada:

> I am satisfied that those same indigenous people ... are prima facie owners of the lands covered by the caveat C that they have what is known as aboriginal rights. That there exists a clear constitutional obligation on the part of the Canadian Government to protect the legal rights of the Indigenous peoples in the area covered by the caveat.
>
> (Caveat 1973; IBNWT 1976c)

This historic decision further ruled that the Treaties had not extinguished the Dene title to our lands (*Caveat* 1973: judgment).

This *caveat* case decision dramatically altered the federal government's position on the land settlement of the northern Dene (Braden 1976). The Indian Brotherhood of the NWT, backed by a legal judgment, forced the government to acknowledge the rights of Treaty Dene to the 450 000 square miles of their homeland. The Brotherhood also gained recognition that the small amount of land mentioned in the government's version of the Treaties was not suitable for our way of life (Dene

Nation chronologies). However, rather than fulfil our Treaties fairly, the federal government switched to suggesting the Chiefs, through the Brotherhood, pursue a land settlement under the federal Claims program C as if our Treaties had not been made. (Please refer to Table 1, for an outline of the major events of the Indian Brotherhood of the NWT/Dene Nation under the evolving Claims policies.)

The negotiating position of the federal government was that the Dene accepted the Claims policy as if we did not have our Treaties. The first step of a Claim procedure is for the "claimant group" to provide evidence that they have occupied the land they are "claiming". As a result, the Dene had to provide researched evidence of our "claim" that we have occupied our own homeland, even though the government had been trying to decide what to do about our lands since 1900. NWT Brotherhood staff then began negotiations to shape the research in a way that would be appropriate and to get the funds for it. Phoebe Nahanni was hired to organize on behalf of the Brotherhood the study of the maximum extent of our land use (described in Nahanni 1977). This research took the form of the Dene Mapping Project. A second research project was the collection of Elders testimony and published articles by academics, resulting in over 2000 pages of materials printed as the Dene Rights Series (1976c).

Initially, both the Dene and Métis organisations appeared to be preparing a joint land settlement ("claim") based along the lines of the Alaska model. It would have involved land grants and a substantial cash settlement including royalties from future resource development. However, their emphasis shifted shortly after research and preparations began. The new theme for the settlement became "land, not money" (Braden 1976: 130-131). As mentioned earlier, the founding members of the NWT Brotherhood had received inspiration, support, and rationale from other native organizations. Part of this link to and with other groups was the Federation of Natives North of 60, formed in the early 1970s. (The formation of this organization is discussed in Part 3 of this report.) Some of the reasons for setting up the federation included the need for more recognition of aboriginal rights in the north, to study land settlements already in progress, to formulate strategies, and to present a generally united front. The land settlements being negotiated at the time involved peoples in the Yukon, James Bay, and Alaska. One of the

PART TWO: KEY EVENTS IN DENE NATION'S HISTORY

Table 1 Chronological Overview of Dene/Métis Land Settlement Procedures

1900-1972 Discussions between government officials and Dene Chiefs about land entitlements under Treaty 8 and Treaty 11 in NWT (2600 sq. mi.)

1968-1972 Treaty research with Dene Elders (by CYC and IBNWT staff)

1970-1973 IBNWT prepares for *caveat* case, *In re. Paulette et al.* (450 000 sq. mi.)

1974-1976- DIAND abandons Treaty entitlement, offers Claim procedure, which starts with research to provide land occupancy evidence of "claim"
- IBNWT conducts Dene Mapping Project & Dene Rights research, while preparing communities for Berger Inquiry hearings; Chiefs prepare Dene agreement in principle as framework for content of "claim" negotiations

1975-1979- intermittent negotiating between DIAND and Dene/Métis on eligibility of Métis and non-status Dene, funding, and content (ie, amount of land, self-government, extinguishment) of land settlement negotiations
- DIAND settlement offer in 1978 rejected by Dene and Métis
- Dene & Métis organizations try to resolve internal conflicts to meet DIAND terms: agreement reached that Dene to negotiate for both but two organizations to remain separate

1980-1983- DIAND & Dene/Métis agree to negotiate; funding loans are reinstated; very intermittent negotiating meetings on content of negotiations C Dene & Métis stop in 1981 when DIAND announced the proposed construction of the Norman Wells oil pipeline despite the lack of a land settlement, but returned to table when DIAND agreed to a 2-year delay and multi-million dollar mitigative funding package to prepare for this project
- setting up of secretariat to negotiate "claim" at arm's length from Dene & Métis organizations; by 1983, agreement reached on process for enumerating "claim" beneficiaries

1984-1988 Dene/Métis Negotiations Secretariat completes a series of separate mini-agreements by 1988, when Chiefs initial an Agreement-in-Principal (AIP) presented to Joint Assemblies in Hay River (land area = 70 000 sq. mi.); Joint Assemblies pass motion for sweeping improvements to AIP

1988-1990- lobbying to support motion for improvements to AIP, but Final Agreement presented for initialling without improvements being addressed
- majority of Dene delegates at Assembly refused to permit initialled Final Agreement to go to communities for approval or rejection, and Gwich'in Dene delegates leave, later requesting separate negotiation of a "claim" for their region alone
- federal Cabinet decides to stop negotiating single "claim" and agrees to negotiate with separate regions, based on initialled Final Agreement

Source: Compiled from Dene Nation histories, chronologies, Annual Reports, & Assembly transcripts.

benefits of keeping in touch with other organizations was sharing information and attitudes toward government policies, such as land "claims". Shushwap George Manuel, leader of the National Indian Brotherhood, noted in his address to the Berger Inquiry that there is a vast difference between Treaties made between sovereign Nations and agreements like the one completed with the Cree of James Bay:

> The James Bay Agreement deals with the surrender of title to the land. The government intends to use land settlement to implement the 1969 White Paper that was uniformly rejected by Indians everywhere. Land negotiations are being used to wipe out government obligations to Indian people.
>
> Treaties, on the other hand, recognize aboriginal rights. Indian title and aboriginal rights are not to be sold nor extinguished. Negotiations are only intended to establish agreements between the governments and Indian people on how the principles of Indian title and aboriginal rights will be developed and put into practice. A Treaty should be an instrument calculated to provide a permanent economic and political power ensuring the survival of the signators as a people.
>
> (reported in IBNWT 1976c, X, 9)

The Berger Hearings

One of the most pressing issues for members of the Federation of Natives North of 60E at the time involved the proposed Mackenzie Valley gas pipeline and the hearings the government decided to hold about it (1974: summarized minutes). Here is a description of the project and its impact, by a Church organization that supported the Dene:

> The Mackenzie Valley Natural Gas Pipeline planned secretly by a consortium of oil, natural gas and pipeline companies, most of them controlled by United States companies, was the largest of private enterprises ever planned for Canada. Estimated to cost more than $8 billion, its 2600-mile route would carry Alaskan gas across Canada to markets in the mid-western United States.
>
> For years it had the tacit support of the Canadian government and the wholesale backing of such giants of the energy industry as Exxon, and its Canadian subsidiary Imperial Oil, as well as Shell, Gulf and others. The pipeline would bring thousands of southern construction workers, wreak unknown damage on the fragile Arctic eco-system and leave the Dene even more colonized. In fact they were convinced they would never survive.
>
> (World Council of Churches 1977)

The role of the Brotherhood here was to organize the Dene so that our people could present individual views about the planned pipeline at the hearings arranged for our communities. This was a mammoth task. Our people needed to be informed about the project C which was unlike anything that had been here before C and to think about how it might affect our lives. The Brotherhood staff decided that face-to-face explanations by our community development fieldworkers would be the best approach. The former manager of the Brotherhood's Community Development Fieldworkers' Program explained that it was to help our people develop

> analytical skills, so that people in the communities would be able to understand the forces that were happening, what the federal government was doing, what big business was doing, to put in place historically the opening of the North, the impact

of it. The communities individually for a long time were thinking they were going through their own experiences by themselves. We then started a process where each of us started to learn that what was happening in Yellowknife was also happening in Rae, was also happening in Hay River, and so forth.

(1993 OCT: interview with former manager)

As well as informing and preparing their communities, the Dene and other northern aboriginal organizations decided to educate southern Canadians about the impact of the project in the north, mostly through the media. The aboriginal peoples of the north at the time stood virtually alone. To help educate southern Canadians, the NWT Brotherhood opened a small office in an Ottawa Dene's home. In fact it was only after they made their wishes known publicly that most Canadians even knew of our existence.

In 1975, Judge Thomas Berger started the inquiry to examine the terms and conditions concerning construction of a gas pipeline in the Mackenzie Valley. Finally here was a man who would listen to the aboriginal side of the story. He travelled to Dene/Métis and Inuvialuit com-munities, and listened to more than 1000 Dene testifying in our languages (Berger transcripts; Berger 1977, 1988). The judge heard the unending refrain "No Pipeline until Land Settlement". Among the most telling of statements to Berger were these:

It is for this unborn child, Mr. Berger, that my nation will stop the pipeline. It is so that this unborn child can know the freedom of this land that I am willing to lay down my life.

(1975: Chief Frank T'Seleie)

We do not wish to push our world onto you. But we are willing to defend it for ourselves, our children, and our grandchildren. If your nation becomes so violent that it would tear up our land, destroy our society and our future, and occupy our homeland, by trying to impose this pipeline against our will, then of course we will have no choice but to react with violence.

I hope we do not have to do that. For it is not the way we would choose. However, if we are forced to blow up the pipeline, I hope you will not only look on the violence of Indian action, but also on the violence of your own nation which would force us to take such a course.

(Phillip Blake, Fort McPherson)

In the face of all of this Dene and national opposition, the gas pipeline was delayed. The experience remains to remind us of our need for constant Dene vigilance in Denendeh. The essential lesson of the gas pipeline experience, then, was that the Dene wanted some solid control over our own lives and over our futures. A bureaucracy like the Territorial administration simply could not be trusted to act in the best interest of the Dene. The time would soon come when some real changes were to be proposed by us.

Unfortunately, the federal government did not share the sense of victory that the Dene felt. The Indian Affairs minister, Warren Allmand, had been conducting positive negotiations with Dene leaders. But, when the results of the Berger hearings were realized, "the federal government virtually went into punishment mode, changed the minister of the day and put forth a minister that was going

to be involved, really, in a process of punishing the Dene and, really, crushing the political unity and organization that had been created" (1993 OCT: interview with IBNWT President at the time). Facing both negotiations and funding cuts, the Brotherhood had to close its Ottawa branch office, lay off some Yellowknife staff and reduce salaries. But, rather than going on the defensive, the Dene planned an education campaign to encourage Canadian and European support, thereby making the situation of our people "highly political and highly visible" (1993 OCT: interview with IBNWT President at the time).

The Dene Declaration & Negotiations

The first Joint General Assembly of Dene and Métis was held in Fort Good Hope in 1974, to develop a land settlement position. Dene leaders had realized that court action alone would never define our rights. The Indian Brotherhood and Métis Association of the NWT announced that they would seek a single aboriginal rights settlement on behalf of all descendents of the Dene (Dene Nation 1979; histories and Board meeting minutes). In Fort Simpson, Dene delegates affirmed the Fort Good Hope decisions and passed a further motion to declare that:

> the Indian people of the N.W.T. have Aboriginal Rights to 450 000 square miles of land and do not wish to sell their Aboriginal Rights in the manner of previous land settlements, and instead of selling their land rights, the Indian people want their land rights recognized by the creation of a title to their traditional lands, these rights include title to all fish, game and to all renewable and non-renewable resources
>
> (Dene Nation National Assembly motion, 1974 JUN 29)

Funding proposals submitted in 1976 by Brotherhood staff to the federal government were based on the premise that communicating information about negotiations and getting the views of our people from the communities to the negotiators was of the greatest importance. For this reason, the Dene and Métis asked for moneys to set up regional offices, for our community field-workers program (to ensure face-to-face sharing of information would continue), and for joint Assemblies where many family representatives could gather to discuss these matters that would affect our lives and that of our children's children (budget submission included in DIAND 1975c). The reason given to DIAND by Brotherhood staff in a Land Claims Budget and Report to support the Dene approach in part said:

> The whole process, then, is one that starts from the grass-roots at the community level and builds up, through the regional level, to the [Denendeh-wide] level. It is clear from experience to date and from the demands of the people that a Land Claims Committee cannot function in any other way. At the same time, experience shows that this process, in fact, does work in terms of getting decisions made. (IBNWT 1975c: 3)

In Fort Simpson in July 1975 at another Joint Assembly over 300 delegates voted unanimously to adopt the historic Dene Declaration. This statement of rights states quite simply that the original people of Denendeh are a unique race and culture, and that we have always been a Nation within Canada with the right to self-determination. It also declared that the Dene must be

recognized as a Nation, with our own languages, values, history, laws, and worldview. It called for the people of Canada and the nations of the world to recognize these simple facts, and that the Dene were willing to negotiate a new relationship with Canada on the condition that the Dene Nation be given sufficient authority to be self-determining (Dene Nation 1975a). In response to the government's divide and conquer tactics, the Dene delegates to the Assembly recommitted themselves to the "Land and Unity" stance, stating that there was only one Nation and one people C the Dene C in Denendeh.

A contemporary analysis compares the Dene and the Nunuvat (ie, NWT Inuit) Declarations by praising the Inuit for devising concrete policies and a plan of action with deadlines, and by deploring the impractical and idealistic Dene approach. In this view, the Dene Declaration lacks objectives, guidelines, a timetable, and a clear list of responsibilities we wanted to be transferred from the federal government (Braden 1976: 207-208). The federal government was quick to answer this Dene call for international recognition. Minister of Indian Affairs Judd Buchanan called the Dene Declaration "gobbledygook" and suggested that it was a separatist notion, like that of Québec.

The formal name change from "Indian Brotherhood of the NWT" "to "Dene Nation" took place at a National Assembly in Fort Franklin. There, our constitution was also amended to open membership "to all those who have formally declared themselves under the Dene registry". The way was open for all descendents of the Dene, whatever the government considered them to be, to be members of the Dene Nation. And our people no longer had to think of ourselves as "Indians" or "Métis". We had formalized the earlier process of self-identification.

By 1976, the process of decolonisation had been firmly addressed in many quarters of the Dene Nation. People had a better idea of what our emerging Dene identities could consist of. The real meaning of the Treaties began to take shape. In many Dene leaders' minds, the Treaties represented a lasting bond with the intentions of our ancestors, the Elders who had insisted on these basic aboriginal rights. To give us an idea of Dene thinking at the time we have the words of George Barnaby of Fort Good Hope:

> Our life is part of the land. We live on the land and are satisfied with what we get from it. No one person owns the land, it belongs to all of us. We choose where we want to go and our choice is respected by others, whether in the settlement or in the bush. We have no word in our language that means "wilderness", as anywhere we go is our home.
>
> (Berger Inquiry Transcript: 22003-22004)

But despite the adamant opposition of many NWT Whites and the government, despite internal struggles, the Dene never wavered in our struggle. With our position about our land firmly in the minds of the Canadian public, as a result of the *caveat* case and the Berger hearings, the Dene turned to negotiations with the federal government.

The Dene Nation Chiefs spent two weeks in the summer of 1976 at Drum Lake, where they put together the Dene land settlement negotiating position. This preliminary framework became

known as our proposed agreement in principle (1976a). The Dene Nation President at the time recalled:

> it included things like, you know, if we are going to be a Nation, we wanted enough land to be self-reliant, to be self-determining, to be able to have enough land to live in a traditional way. We wanted to be regarded in Canada as a Nation of people. We wanted to be self-governing. We wanted to continue to be self-determining. And, politically, we felt that the NWT would have to be restructured, so that Dene government would become a reality recognized by the Canadian government.
>
> (1993 OCT: interview)

Later that summer, our leaders approached the Métis, with lengthy negotiations up to a week at a time, but no consensus was reached. Staff in the National Office prepared discussion papers to add to the Dene Rights research that had been produced (1976c). By fall 1976, we were ready to present our proposed position to Dene leadership as the grounds for negotiations with the federal government. At this point, the government cut off funding for the Assembly where the proposed agreement in principle would be presented for approval. The Anglican and Roman Catholic churches provided emergency funds for the Assembly and for our leaders to go to Ottawa to present the approved framework to the Indian Affairs minister.

Throughout the winter months, many face-to-face negotiations took place between the Indian Affairs minister and the Dene Nation President, during which the minister seemed to find the substance of our negotiating position acceptable. At this point, possibly supported by protests from the Territorial administration, the federal Cabinet changed Indian Affairs ministers and the new minister promptly reversed the apparent negotiations agreement that had been reached between the former minister and the Dene. The Dene Nation President at the time admitted that the Dene may have been "overconfident and overly aggressive", and possibly miscalculated the impact of the hostility that had developed between the Dene and the Territorial administration during the Berger hearings (1993 OCT: interview). Evidently, the NWT officials had felt that the previous Indian Affairs and Northern Development minister, who was also responsible for the affairs of the NWT as a whole, had been favouring the Dene.

For the next four years, relations between the Dene Nation and the Indian Affairs ministry were very difficult. Funding for land settlement negotiations were cut off or severely controlled (as discussed in more detail in Part 3) and delay after delay occurred, so that months would pass between negotiating sessions (ie, DIAND 1975b, 1978c). The Dene Nation President at the time stated that he felt the government was punishing the Dene for the unity we had dis-played during the Berger Inquiry and for the tough stand we had taken (1993 OCT: interview). Some of the reasons for the delays in negotiations included disagreements with the federal government over beneficiary eligibility and the terms and content of negotiations. Also there were disagreements with the Métis Association over who should negotiate for them. In its continuing divide and conquer tactics, the federal government sent its representative for land settlement negotiations to offer to deal with the Chiefs, without the involvement of the Dene Nation staff. This tactic was not well received by our Chiefs.

PART TWO: KEY EVENTS IN DENE NATION'S HISTORY

In January 1978, the federal government made the Dene an offer of a James Bay-like land settlement: $250 million cash, reserve-like status over 30 000 to 50 000 square miles of land for traditional economic use, with no rights or control over non-renewable resources or water, and no surface or sub-surface rights (IBNWT & Dene Nation histories). The Dene and Métis did not like the offer, so negotiations were discontinued and relations between the Dene and other parties C including the Métis, the Territorial administration, and the federal government C remained contentious until the early 1980s. Instead, the National Office staff put their efforts into cutting costs and keeping our support from the Berger Inquiry strong.

Dene Leadership

Negotiations between the Dene/Métis and the federal government re-opened in July 1980. A day later, the federal Cabinet gave its approval for the building of the Norman Wells oil pipeline, and the Dene/Métis negotiators cut off the discussions. Aware of the possibility that our funding and negotiations could once again be held for ransom if we opposed this project, the Dene met to assess the oil pipeline and to switch strategies (1993 OCT: interview with Dene Nation President at the time). Dene Nation's internal assessment of the Norman Wells proposed oil pipeline raised the fact that the we have never been opposed to the idea of development. Instead, the issue has always been the matter of asking for our consent and sharing with us the ability to limit the impact of industrial activity on our land and resources, on which our people have always relied spiritually and physically.

The Dene leadership compared the Mackenzie Valley gas pipeline and the Norman Wells oil pipeline proposals. This new pipeline was regarded as being an idea that the Dene could live with, given proper environmental and socio-economic impact safeguards. Dene companies and projects could be set up, if the construction of the pipeline was delayed for a year or two. The proposed oil pipeline was smaller and would cover only half of the area of the Mackenzie Valley gas pipeline. Also, the question of the ownership of the oil could be made a negotiating issue. With this assessment, the Dene leadership approached first the Métis Association, which agreed with the Dene strategy. Together, they approached the Territorial administration, which also agreed, and all three parties went to the federal authorities with a united request for a two-year delay so that northerners could prepare for the project (1993 OCT: interview with the Dene Nation President at the time; 1980 Dene Nation Leadership Meeting minutes).

The federal government agreed to provide certain funding C for instance, for socio-economic and environmental monitoring, for preparing our communities for the impact of the pipeline construction, and for training programs so that northerners could benefit from construction jobs. The federal authorities also promised the Dene and Métis progress on the negotiations of the ownership of the Norman Wells resources, with some kind of revenue-sharing agreement. Ultimately, many of these Dene-initiated conditions were only partially fulfilled (Hall 1984; Gorman 1987). (Norman Wells funding is discussed in more detail in Part 3.)

The Dene took a similar leading role on constitutional development in the NWT, first approaching the Inuit about establishing eastern and western constitutional organizations to handle our differing political needs and then getting the Territorial administration to join this initiative. The President at the time told us that "it was very, very interesting: the relationship changed. We were providing ... the leadership to the Territorial government like never ever before and they became allies with us" (1993 OCT: interview).

The 1980s: Growth & Funding Cuts

By the 1980s, the Dene Nation Executive and National Office staff had developed a considerable network for consultation, among other aboriginal organizations and among Canadian and inter-national non-aboriginal groups wanting to support our efforts to protect our rights. Programs that had been operating in the National Office, in order to meet policy direction from the National Assemblies and Chiefs meetings, included research into our rights, communications (including interpreters), education, health, a variety of programs that would now be called "environmental" (such as fire management, fisheries, lands and resources), and our ongoing commitment to community development. With funding for mitigative programs associated with the Norman Wells pipeline project, the National Office expanded. Until 1986, about 40 people were employed by Dene Nation.

The work that the Dene involved our selves with after the government attempt to limit the Dene Nation as a result of the Berger hearings began to come to light. People all over the world were now aware that the Dene, too, were standing up for our rights. For instance, the International "Russell Tribunal on the Rights of the Indians of the North and Latin America" found Canada guilty of crimes against its Indian peoples under international law. No matter what the federal government attempted to do, it eventually became clear that all was not well in Denendeh. The National Office used every opportunity to inform people everywhere about the situation of our people.

Examples of deliberate federal government interventions onto Dene lands and resources included laws passed without the consent of aboriginal peoples that would have profound effects on Crown (or federal government) lands. These laws, such as Bill C-48 and its regulations for the Canadian Oil and Gas Lands Administration (COGLA), were intended to make things easier for oil exploration and development. The Dene Executive and National Office staff found themselves in the position of fulfilling the mandate given to them by the National Assembly to negotiate for a better future but having to deal with such ongoing conflicts, which eroded our land settlement negotiations. Dene Nation's involvement with the Beaufort Sea environmental hearings into the impact of oil exploration and development brought up much the same issues as with the Berger hearings:

- that the Dene need to have greater control over the use of Dene lands and waters
- that the matter of ownership of this land C that is, Dene aboriginal title C be recognized and affirmed
- that COGLA be replaced by a single non-government agency with extensive representation by northern native people (Hall l984)

By 1983, matters between the Dene and Métis had been sufficiently resolved that a joint organization for negotiations C the Dene/Métis Negotiations Secretariat C was established for the Comprehensive Claims talks with the government. The Secretariat was intended to provide a forum for some of the major problems over negotiations caused largely by DIAND. It was to be responsible for negotiating aboriginal rights for both the Dene and the Métis, and to undertake research and develop positions on issues directly related to the land settlement. In 1983, negotiators independent from the Dene Nation and Métis Association were appointed to present Dene and Métis positions to the federal negotiators. For the most part, these negotiators conducted the land "claim" talks, working with resource people through the Secretariat.

At times, the Dene Nation and Métis Association Presidents joined the independent negotiators and lawyers. By 1986, regional negotiators were also appointed to join the Chief Negotiator at the table. One regional negotiator later became a Dene Nation President; he explained why he thought they had been needed:

> The reason they did that was the original format for negotiating was that there was a Chief Negotiator and he went to the table; there were some staff but the approach was very ad hoc. ... depending on the issue, different people went to the table C some people were there on one occasion and they wouldn't be back at the table for 6 months, either because the issue was not dealt with again right away or because [the person was] not available. So, there was a whole movement of people coming back and forth in negotiations and the only consistent people really were the Chief Negotiator, some of the lawyers C who were making really good money C and some of the staff. So community people were complaining that they didn't know what was going on ... they needed to change the structure. So there was a strong move to have regional negotiators instituted. (1993 SEP: interview)

Through the newly established Secretariat, a process was set up in 1983 through which Dene and Métis beneficiaries to the land "claim" could be identified. Delegates attending the Dene National Assembly in Fort Rae in 1984 unanimously endorsed a framework for negotiations, even though negotiations on a wildlife management agreement had already been underway. Interestingly, the Secretariat negotiators advised the Dene Assembly in Rae not to include programs and services in their framework agreement, as the Yukon Comprehensive Claim groups had. Apparently, the negotiators considered that we should negotiate programs and services separately from our land "claim" and the leadership at that time trusted their judgment in this matter.

Constitutional Development

With the Dene and Métis working together, our populations formed a majority in the western NWT and we decided to address some ways for our people to participate more fully in the governing

structures that were making decisions about us. At this time, Dene Nation and the Métis Association drafted the Denendeh constitutional proposal, called "Public Government for the People of the North" to address the political and constitutional changes (Dene Nation & Métis Association 1981). The Denendeh proposal was a "vision of a new society with a province-like jurisdiction in the Western N.W.T. based on the Dene political style and tradition, with respect for and co-operation with all northern people" (Dene Nation l984c). Some of the basic mechanisms proposed in the document to protect and promote aboriginal rights include the notion of a Dene Senate, guaranteed seats for aboriginal peoples on all legislative bodies, an extended residency requirement, and guaranteed representation on public committees (Dene Nation & Métis Association 1981).

Along the lines of this proposal to include community governments, the Dene community of Fort Good Hope replaced its Band and Settlement Councils with a unified Dene Community Council. The Council could then exercise both federal and municipal authority, by the addition of seats on Council for non-Dene councillors. Aklavik took similar action, and more communi-ties considered it. The community of Fort Good Hope took measures to secure a degree of local control over resource development. The community signed a precedent-setting agreement with the Minister of Indian Affairs which recognized its rights to negotiate with resource developers to ensure local people and businesses are employed, camp conditions are suitable to northerners, and any environmental hazard is mitigated. The Denendeh National Office accepted the Fort Good Hope agreement as a precedent for developing a national position for land settlement negotiations in relation to resource development (Hall l984: 26).

In February l982, the Constitutional Alliance was formed, as mentioned earlier, as a result of the Dene lead to deal with changes to the way peoples in the north could be involved in governing the NWT. Supported by the federal government, the NWT Legislative Assembly created the Nunavut and Western Constitutional Forums within the Constitutional Alliance. Dene Nation, Métis Association, and Committee for Original Peoples Entitlement (COPE, the Inuvia-luit land settlement organization) were parties to the Western Constitutional Forum, along with some Territorial MLAs; the Inuit organizations in the eastern NWT and some Territorial MLAs worked on the Nunavut Constitutional Forum (Dene Nation l984c; WCF 1987 provides an outline of events from 1982). At times, all parties and some academics who collaborated with them joined together C for instance, to discuss where a boundary between the east and west (ie, between Nunavut and Denendeh) might be, and how division of the NWT might take place. Efforts were then put forth to include our political rights not only through the land settlement process, but also constitutionally at the local level, as well as within Denendeh (Hall l984: 7-8; WCF 1987). Of course, the Dene were also working with other aboriginal organizations toward more active recognition of the inherent right to self-government in the Canadian constitution.

Dene Initiatives: Signs of Growth

The Denendeh National Office took a leadership role in negotiating nation to nation with the leader of the Vatican. We invited the Pope to visit with our people, many of whom are Catholic.

The main motive was to give comfort to some of our old people, especially ones who might not see the "claim" implemented. A further motive was to seek

> to force the Church to reconcile some of the things that have been done, by recognizing we're for real as well. The Church is not a force by itself; it has to accept that Dene leaders are legitimate and we're the organizers, we're going to control this issue, the visit itself. It forced us to work with the Church, you know, and the leaders of the Church; it was good experience that way, whereas before we never had that, it was always the Church dictating C sort of a power unchallenged C and all of a sudden they were forced to work and negotiate with us.
>
> (1993 JUL: interview with the Dene Nation President at the time)

The Papal visit was successfully realized in l987, after an attempt three years earlier that was cancelled when poor flying conditions prevented the Pope from coming north during his cross-Canada trip. The Papal visit certainly generated a lot of goodwill, and was a significant spiritual event for many of our Elders and their families.

The National Office had many people working on projects related to the Norman Wells pipeline construction or to communications. We had a cultural survival program, we worked with professional planners to produce our own socio-economic impact study of the pipeline, and we maintained an environmental monitoring program throughout construction, including the training of local Dene to do their own sample collecting. This was in addition to the joint Dene-Métis needs assessment and ongoing community development training programs. At that time, the Yellowknife headquarters had interpreting equipment and staff, who translated many govern-ment policies and Dene Nation discussion papers onto tape for circulation to our communities. Peter Hope's history of the Dene Nation in three parts was one sent out by the communications department in this way (Dene Nation 1984c).

In response to the animal rights movement, the Dene took the lead once again. We began to educate people about the rights of our hunters and trappers (or harvesters as they are now often called), who were suffering because of poor fur markets as a result of the animal rights campaigns. The Dene Nation contacted other organizations representing northern aboriginal peoples and suggested we form our own association to counter the impact of the animal rights people (1993 JUL: interview with Dene Nation President at the time). This organization became Indigenous Survival International, which continues to this day to protect trappers rights and to educate people about our continued need to pursue our way of life. Other important Dene initiatives of the 1980s were the formation of the Denendeh Development Corporation and the Dene Cultural Institute. It had become widely apparent that the kinds of work directly related to our Dene culture we had to do for ourselves. The school system has been ignoring our lang-uages, our culture, our history, and our legends. A gathering in ¯utsel K'e in 1986 discussed the founding principles for the Cultural Institute, which has been at arm's length from the National Office since its first year of operation.

Funding Cuts & their Impact

DENE NATION: AN ANALYSIS

Any initiative, no matter how justified, has to answer for the financial resources to carry it out. A Dene Nation policy analyst in 1984 described the frustration felt by staff:

> [Our] financial and human resources are very limited and the insecurity of working with pro-grams that may be terminated at the whim of government place severe limitations on our ability to compete with government and industry on the major policy issues which effect [*sic*] the lives of our people. Because of our lack of an economic base, we often must design our priority projects to fit the criteria of existing government programs, and any new initiatives which we instigate are often years in being realized due to government bureaucracy and red tape. (Hall 1984: 30)

As for funding to work with, we have learned through direct experience, that the axe does fall, often hard and without notice. In 1986, as a result of federal government funding cuts, twenty-one staff members were laid off at the Denendeh National Office, including all community development fieldworkers and the staff of the communications and interpreters departments, and the Lands and Resources department (Dene Nation 1987 Annual Report: President, Executive Director, & Finance reports). Funding for leadership meetings was also cut, reducing the number of Chiefs meetings that Dene Nation could hold. As a result of difficulties over receiving the funds for operating the Norman Wells programs in the National Office, the Dene Nation ended up with a deficit of $360 000 (Dene Nation 1987 Annual Report; 1993 SEP: interview with Dene Nation President at the time). In the same year, the National Office lost its charitable status, a means of obtaining funding for programs from non-government sources. (More details about funding are given in Part 3.)

Through these cuts, the National Office lost much of its ability to communicate with its membership. One result was that community access to such important information as the Dene position in land settlement negotiations was severely reduced, which in turn limited our people's understanding of what was happening at the negotiating table. The Dene/Métis Negotiations Secretariat was not very active in informing people about progress. The negotiators relied on the Chiefs to explain these complex matters in their communities, even though few Chiefs had the time or an efficient communications system in their communities to do this. Little effort had been made to convey the legal wording of the negotiated agreements into language that was easy to understand, and none of the materials was translated into the Dene languages. Had the Dene Nation communications department continued to exist, some of these things might have been done. This loss became crucial because the Dene/Métis negotiators were getting ready to present to our people negotiated "mini-packages" and, soon after, the Agreement-in-Principle (Dene Nation 1986/87 Annual Report: 9).

Conflict over the Claim

In 1988, after thirteen years of talks, the federal government and the Dene/Métis negotiators reached

an Agreement-in-Principle (AIP) on land settlement through Comprehensive Claims. The 1988 AIP was meant to be the blueprint for a land settlement for approximately l5 000 Dene and Métis in the Mackenzie Valley (DIAND 1988; 1990). It was initialled after approval by the Chiefs, but copies of the document were not available for study by community delegates until two weeks before the National Assembly at which it was to be discussed (Dene Nation 1988b: 206-207). Delegates to the Dene National Assembly gathered on the Hay River Reserve, and Métis delegates gathered in the town of Hay River for their own Assembly. The two Assemblies were scheduled to hold a joint Assembly after their separate meetings.

The discussions at the Dene Assembly are a major contribution to what is called the debate on extinguishment in Denendeh. Few delegates supported the AIP as it was presented to them: in fact, on the day that each Chief was asked to speak about it, only three said they supported it unconditionally and all the others wanted improvements made (Dene Nation 1988b: a verbatim transcript of the Assembly). There was a serious attempt to identify the problems that most of the delegates at both Assemblies saw with the initialled Agreement-in Principle.

Many Elders, delegates, and other speakers at the Dene Assembly said the AIP was too detailed, too hard for them to understand what it was saying, and they needed more time to figure out what was in it and discuss it once they understood (for instance, Dene Nation 1988b: 129, 134, 140, 145, 150, 151, 171-173, 203, 204-205, 206-207, 222, 224, 266, 301). One delegate wondered why they were in such a hurry, pointed out that young Dene are getting educated and maybe they could get a better deal later (Dene Nation 1988b: 289). One delegate reminded the Assembly that no Chief at any time had directed the negotiators to get rid of aboriginal and Treaty rights (Dene Nation 1988b: 207). Another noted that Dene Elders have never spoken about ceding rights (Dene Nation 1988b: 165).

Several delegates indicated that agreements should not be expressed in non-Dene ways nor in English, which they said was too open to interpretation (Dene Nation 1988b: 159, 204-207, 222-224, 269, 301). And many of the Elders who spoke were unhappy that this settlement was causing so much tension and conflict among their people; they urged the delegates to think about their spirituality, to come for quiet and respectful discussions to reach a united decision (Dene Nation 1988b: daily opening prayers, 129, 144, 155, 160-161, 204-205, 216-220, 211-212, 222-224, 230).

The Dene/Métis Chief Negotiator was deeply surprised by Assembly delegates' negative reactions to the AIP. He suggested that people did not understand the process of negotiations and that he would never have worked on anything he felt would harm people or was not in our interests (Dene Nation 1988b: 268-279). However, delegates from the joint Dene and Métis Assemblies passed a resolution demanding sweeping improvements to the AIP (reproduced in Appendix A). These extensive improvements included the outstanding issues of political rights, Dene/Métis lands, land and water management, renewable resources, general provisions, settle-ment corporations, and language (Dene National Assembly, Motion 87/88-#15).

DENE NATION: AN ANALYSIS

During the month following the Hay River Reserve Assembly, the Dene leadership, some-times accompanied by the Métis representatives, held several meetings directly with the Indian Affairs minister to encourage government support for the Hay River Joint Assembly motion. The minister at that time C just prior to a federal election C was willing to concede that the Agreement-in-Principle improvements mentioned in the Hay River motion could be discussed and negotiated for inclusion in the Final Agreement (1993 SEP: interview with the Dene Nation President at that time). On August 22, Dene and Métis representatives and the Indian Affairs minister signed this Memorandum of Understanding:

> It is understood that the Dene/Métis position going into final negotiations is as reflected in the motions of the Joint Assembly at Hay River July 10, 1988 and Leadership meeting at Yellowknife August 19, 1988 and the position of the Government of Canada is as reflected in the letters of Mr. Osborn July 29, 1988 and Mr. McKnight August 9, 1988.
>
> (MOU with AIP given to Dene Nation, SEP 1988)

At a joint leadership meeting, Chiefs and Métis Presidents agreed to sign the AIP on the basis of the commitment from the federal government expressed in this Memorandum of Under-standing: that is, to discuss and negotiate major changes to the land "claim" agreement. The AIP was signed during ceremonies in Rae by Dene and Métis leaders and the prime minister.

After the election, the new minister of Indian Affairs refused to recognize the agreement reached by his predecessor and threatened to break off negotiations if the final land settlement agreement was not completed by the end of October. The Dene and Métis persisted in having the negotiations include the matters addressed in the Hay River Joint Assembly motion (in the Memorandum of Understanding). In 1989, at a Chiefs meeting in Fort Simpson, Dene leaders expressed their great reluctance to let a land "claim" agreement over-ride Treaties 8 and 11, as the AIP section 3.9 does. Throughout this period, the Dene Nation President also informed the media regularly about the details of negotiating meetings with the minister, even though the government preferred to keep them quiet, away from the public (1993 SEP: interview).

Meanwhile, another Indian Affairs minister was appointed C the third during the nego-tiations between the 1988 Agreement-in-Principle and the 1990 Final Agreement. This minister, too, insisted that he did not have to follow the agreements made by previous ministers. The newest minister set the deadline for reaching a final Dene/Métis land settlement for March 31, 1990. On the evening of March 31, Dene and Métis leaders met to decide what they would do. The Métis and some Dene Chiefs wanted to accept the AIP as the final agreement, but a majority of the Dene Chiefs wanted to press for the improvements the government had said, in 1988 before the election, that it would consider.

On April 9, 1990, Dene/Métis leaders and representatives of Canada initialled the Final Dene/Métis Land Settlement Agreement in Ndil o , a Yellowknives Dene community, with assur-ances by the Indian Affairs minister that further issues were to be worked out. The promised improvements were never made. In June 1990, the Meech Lake Accord was to be approved and

the government's attention seems to have been on it. A few weeks after Meech Lake collapsed, the attention of the entire country was on the military standoffs at Kanesetake and Kanewake.

There are few differences between the AIP and the Final Agreement (ie, DIAND 1988; 1990). This Final Agreement is the one the majority of the Dene would not recommend sending to our communities for a ratification vote at the Assembly in Dettah in July 1990. The initialled Final Agreement is also the basis of the regional claims reached with the Gwich'in and Sahtú Dene and Métis. The initialled 1990 Final Agreement included specific terms for land and economic benefits. There are four kinds of land in the 1990 Dene/Métis Final Agreement:

- surface lands selected by the Dene/Métis to be owned by them collectively as "fee simple" but with the possibility only for leasing (not for buying) parts of these lands; improved selected lands were to be assessed for property taxes. Only the federal government can buy parts of these lands and, at that point, they become Crown lands. Ways for non-beneficiaries to get access to selected lands and ways for government to expropriate selected lands were also stated (DIAND 1988; 1990: lands, s. 21; access, s. 22; expropriation, s. 23; taxes, s. 11)

- a smaller percentage of surface and subsurface lands selected by the Dene/Métis with the same kinds of fee simple/lease and tax arrangements as described above (DIAND 1988; 1990: lands, s. 21; taxes, s. 11). The total amount of Dene/Métis selected lands would be about 70 000 square miles, which is about 18 percent of the total land settlement area.

- some properties in existing towns were selected as Dene/Métis lands; if any of these are sold, they are no longer owned by the Dene/Métis (DIAND 1988; 1990: s. 25)

- within the "land settlement area" (that is, the traditional Dene/Métis homeland within the defined boundary, which was not all of the 450 000 square miles), all land that was not selected to become Dene/Métis lands was to be released to the Crown. That is, the Dene/Métis were to extinguish (meaning "put out", like a fire) their rights to about 82 percent of the land and all of the waters within the land settlement area, so that the federal government can own the land (DIAND 1988; 1990: s. 3.10)

The Dene/Métis were also asked to extinguish parts of the written version of Treaty 8 and Treaty 11, including the paragraph that guarantees the pursuit of hunting, trapping, and fishing on Dene traditional lands (as guaranteed under the 1763 Royal Proclamation), lands that the government claims it owns through extinguishment (DIAND 1988; 1990: s. 3.9 and Schedule I, which quotes the parts of the Treaties to be extinguished by the "claim" agreement).

The section on self-government simply noted that it could be negotiated and, where Dene and Métis live in one community, the negotiations have to include the Territorial administration (DIAND 1988; 1990: s. 7). Economic benefits in the 1990 Final Agreement included cash com-pensation minus the loans paid to the Dene and Métis during negotiations, royalty sharing on

sub-surface minerals and metals, and certain economic activities that "claims" corporations can undertake (DIAND 1988; 1990: ss. 8-10, 12). A Wildlife Harvesting Agreement set out the conditions where we can hunt and trap within the entire settlement area C that is the Dene/Métis selected lands and the extinguished or Crown lands (DIAND 1988; 1990: s. 13). The 1990 Final Agreement allowed for several management boards to be set up to look after lands, water, resources, wildlife resources, and economic development; each of these boards was to have half Dene/Métis members and half government-appointed members, and the minister with legal authority for each board would have the final say over any decisions a board might make (DIAND 1988; 1990: ss. 12, 13, 28-31).

In 1988, the Indian Affairs minister had agreed to grant aboriginal title to the Dene/Métis C that is, to go beyond giving us fee simple ownership. He had also agreed to guarantee our Treaty hunting and trapping rights on our traditional hunting lands. What we did not get in the Final Agreement was an assurance that all of our existing constitutionally recognized rights would be protected. We tried to convince government that we want to entrench our rights and our place within Canada without giving up the rights we do have. Supreme Court of Canada judgments, such as *Sioui* and *Sparrow* had given strong support to our view. The *Sioui* decision upheld the rights set out by a 230 year-old Treaty, stating clearly that Indigenous Peoples are Nations and that we have a degree of sovereignty within Canada, which the judges felt ought to be clarified. The *Sparrow* decision stated that our aboriginal rights at the signing of the original Treaties are still in effect (summarized in Dene Nation 1989/90: Annual Report).

At the July 1990 Joint National Assembly in Dettah, the Gwich'in Dene delegates agreed to walk out, if other regions did not support the initialled Final Agreement: which is just what happened. An undisputed majority of Assembly delegates voted for a motion calling for "no extinguishment" in the Final Agreement: 124 delegates votes in support, 24 voted against, and 25 abstained (Dene Nation 1990: National Assembly motion #18). Major changes to the Dene/ Métis land "claim" agreement were not considered possible by the federal government, even though Indian Affairs ministers had agreed in 1988 and reassured us on April 9, 1990 that improvements would be made. Following the Dettah Assembly, the Gwich'in Dene leadership approached the Indian Affairs minister to request that they be permitted to negotiate a land settlement for their region alone. The Gwich'in leaders agreed to base their claim on the 1990 initialled Dene/Métis Final Agreement, but ignored the 1988 Memorandum of Understanding and the letters of agreement accompanying it. The Gwich'in and Sahtú Dene/Métis Final Agreements have since become law (ie, in 1992 and 1994). On November 7, l990 the Indian Affairs minister wrote to the Dene Nation that the Cabinet had decided to stop negotiating a single Dene/Métis claim, and that only regions that would agree to the 1990 Final Agreement would be welcome at the negotiating table. More ominously, the interim protection on lands within the land settlement area, which had been in effect throughout negotiations, was lifted C opening our lands once again to fossil fuel and mineral exploration, even though land settlement agreements (ie, unfulfilled Treaty entitlements) have not been completed with all Dene. Mineral staking in particular has been very extensive since the interim protection was removed.

PART TWO: KEY EVENTS IN DENE NATION'S HISTORY

The debate over extinguishment continues within the Dene Nation. One side of the debate holds that we should never give up those rights that recognize and affirm our unique status as Dene here in the country of Canada. Another side of the debate says that we must exchange some of our rights to negotiate and to secure some lands for the future. One former Dene Nation President put it this way:

> I think there were many people who said, you know, that we've got to get rid of extinguishment, we've got to get the government to agree that our political rights should be negotiated as part of the claims, our aboriginal title is intact, that we shouldn't give up any land C before we negotiate. But there were also people who said, "Look, we should get on with this; you know, we have to realize that some of us don't want to give up anything, and some of us are willing to give up something and move to a compromise position".
>
> I think the Métis element in it, for me, always meant that we have to make some sort of an effort to settle. There would always be, I felt, some people who would never settle, whether we did it with the Métis or not. But the feeling was that we had agreed in l973 to take the Métis in and make a joint settlement, so inherent in that is that we have to accept that they're part of the family and, if they're prepared to settle, then we have to reconcile that with those people in the camp who didn't want ever to settle or do anything substantial with the claim.
>
> So, I think people wrestled with that a long time and in the end said, "Well, the best thing we could do is rally together and make the best effort towards negotiating a package that we can look at in the end and let people decide".
>
> (1993 JUL: interview)

However, a different President voiced these thoughts:

> The Conservative Party ... have been especially harsh toward the Dene, going so far as to change a policy in mid-stream, so that they would no longer be dealing with us as a collective C as a very strong political entity C purposely agreeing to go on a regional outlook with our people after they had an agreement in place. They had an agreement to conclude outstanding issues with us. They signed a document to say that, "Yes, we will deal with those outstanding issues". We wanted to delay the ratification date because we knew those outstanding matters would not be settled by then. We recommended [at the Assembly] that we not vote until those matters were dealt with because our people would vote "No". ...
>
> The Assembly didn't reject the claim. They said they were quite prepared to continue negotiating and they wanted to have the outstanding issues completed to satisfaction, then they would vote. ... They put it in the form of a motion, and some people today say, "Well, if we went ahead and voted, maybe our people would still be together". Well, if we went ahead and voted, it's clear that people in that instance would have rejected the claim. And I think it would have been even more difficult for government to say, "Okay, you've had your chance; you've killed it, but we're still prepared to go back to the table and work things out." ... I believe we did the right thing.
>
> (1993 SEP: interview)

Any final agreements on land settled through Comprehensive Claims call for an exchange of rights: we are to exchange some of our Treaty rights, which the government says are vague, for the certainty of rights specified in our land settlement agreements. This exchange is of great concern even for those Dene who have voted for regional claims. Are we giving up our Treaty rights for rights which may not be as strong? Are we giving up our chance to have our own governments when we sign agreements saying that self-government will be within "public" government? Are we giving up something we already have for something that is new and something that gives a role to the Territorial administration that it does not have the constitutional authority to do, for example to make laws of general application that affect our people? (Issues summarized in Dene Nation 1989/90: President's

report in the Annual Report.)

The present Dene National Chief wonders how the Territorial administration, which has supported the regional claims approach, at the same time is trying to get our people in all our regions to find agreement over constitutional development for the western NWT:

> It's really ironic. I say that because they were part of this process C they encouraged the regional approach, which obviously means that, if you develop a land agreement which is regional to your people, you're then going to develop a self-government approach that's consistent with that. Because your agreement says your self-government model has to be subject to that agreement, you're going to design something that makes sense to you. You're not going to worry about the next region or the other people. But now they're telling us, "Why don't you design something that makes sense to all of you?" How can you do it? You're defeating the regional claims' purpose.
>
> It's really difficult to see how things are going to emerge. It will be difficult to see a pan-Dene/Métis approach to things down the Valley. (1993 SEP: interview)

Some of the impacts of the failure to reach a single Dene/Métis land settlement have, of course, involved inconsistencies in government funding for Dene Nation. First of all, our national organization has not been treated as a Dene government. Its mandate has always been wider than just settling a claim. The current Dene Nation President emphasizes that the National Office play the role of facilitating for our communities. Some recent initiatives on behalf of Dene communities include health, environment, taxation, and protesting such legislation as the transfer of land titles registration to the Territorial administration without the consent of northern aboriginal peoples. The Dene Nation President C now called the Dene National Chief C has also been involved in extensive consultation with other aboriginal political associations regarding, in particular, Canadian constitutional amendment, Treaty entitlement, research into aboriginal nutrition, and trapping issues. The lack of recognition toward Dene governments by federal officials has been extended to the Dene regions that are resisting Comprehensive Claims. Dene leaders in those regions were told at one time that, if they were not at the Comprehensive Claims negotiating table, they could not negotiate for self-government (1993 SEP: interview with current Dene Nation President).

This ends the chronological description of key events of the Indian Brotherhood of the NWT and Dene Nation. Part 3, which follows, provides an analysis of the external influences and internal changes of our organization. A more detailed discussion of the recent events affecting the Dene Nation is in a study commissioned by the Royal Commission Intervenor Program, which presents the findings of the 1993 Dene Nation Review Committee.

It is only fitting that I end this section of our report with the words of our representative from the Dene Cultural Institute's Elders Council, George Blondin:

> the Dene prophet, Ahya, had seen a great starvation coming. The aboriginal people, though, will not starve. People would come to depend on the Dene. The Indians knew much too late what was going on. I am worried and sad. I don't have the answer. Only God knows what will happen to us.
>
> (1993 SEP: interview)

DENE NATION: AN ANALYSIS

part three

Capacity Building for Self-Determination

Raising Dene Political Awareness
Representing Aboriginal Citizens
Encouraging Participation
Funding Challenges
Raising Dene Cultural Awareness

by Susan Quirk

Capacity Building for Self-Determination

As noted in the introduction, Part Three examines the scope and effectiveness of the Dene political organization. The scope of activities undertaken by the Indian Brotherhood/Dene Nation has been very broad: the people involved organized programs and projects both to meet internal needs determined by the Chiefs on behalf of their First Nation communities, and to respond to external pressures and requests. The effectiveness of the organization is considered for its ability to raise awareness and build the capacity of Dene in relation to its mandate, and for its success in making strategies or plans and carrying them out. As the chronological account in Part Two shows, the Indian Brotherhood/Dene Nation was very active until the devastating funding cuts in 1986. While it could afford to be a vibrant force in Denendeh, the Dene National Office was a place where young Dene could express their commitment to the people's movement: they could work for their people rather than for non-Dene governments or businesses. It was a place where future leaders and managers learned the issues and developed their own strategic abilities, then left to apply them elsewhere. This movement out from the National Office C perceived from the outset as a vital process for the organization C has been crucial to the development of local capacity for self-government and self-determination in Dene communities.

Dene involved in the many activities of the Indian Brotherhood/Dene Nation were and are committed to raising their people's awareness: the focus throughout the 1970s was political awareness, while the need to raise cultural awareness was added in the 1980s. Informing people of issues relating to the well being of their land, cultures, and families throughout the vast Dene homeland has always been a formidable task. The number of issues affecting Dene social, economic, cultural, environmental, and political life has increased tremendously throughout the past 25 years C reflecting the very rapid development occurring here. Alerting the people involved to strategic responses to these issues has remained a necessary activity for anyone working in any Dene organization. And encouraging people to become involved in responding to issues and in carrying out their own ideas for meeting the challenges of such rapid develop-ment was a fundamental process for Dene starting their own organization C and is still fundamental today. The Dene preference has consistently been for grass-roots participation, from within communities (ie, the First Nations) and cultures (ie, the regions).

During the history of the Indian Brotherhood/Dene Nation capacity building has been both shaped and obstructed by external influences. Many non-Dene researchers, advisors, and staff C often people attracted to thinking and processes beyond the conventional or mainstream C have collaborated with Dene colleagues in the entire range of activities throughout this history. Innovative approaches to organizational structures, research, programs, and strategic processes resulted.

However, the newcomers seem mostly to have offered their thinking as their own work; there seems to have been little concerted effort by such non-Dene to transfer their technical, analytical, and professional skills to Dene individuals at the National Office. Dene involved as fieldworkers, especially in community development and research programs, acted much as outreach or extension agents do in rural areas C bringing information, encouraging local people to work for themselves, suggesting approaches to planning or carrying out strategies, and revitalising Dene customs and traditions.

In 25 years, political participation by Dene has gone from no formal institutions to a plethora: now there are First Nation Councils, economic development corporations, Tribal Councils and Assemblies, Treaty Councils, the Assembly of First Nations, co-management and other advisory boards, the Territorial Council and administration, the federal Cabinet and administration, as well as the Dene Nation. In those 25 years, Dene citizen participation has gone from contrived involvement to the possibility of genuine power sharing. These governing and administrative structures follow EuroCanadian organizational principles, and efforts to imbue them with Dene-ness have been minimal. Non-Dene governments seem insistent that Dene governments mirror as much as possible the non-Dene models, and use funding limitations to support their insistence. The challenges for the Indian Brotherhood/Dene Nation to maintain consistent funding for its programs are similar to challenges facing First Nations and Tribal Councils throughout Denendeh, particularly if they are in regions that are resistant to the federal Comprehensive Claims policy. For these reasons, funding challenges are examined in some detail, to reveal the deliberate undermining by government C through withholding of admini-strative and limiting program funds C of the organization representing Dene citizens.

Raising Dene Political Awareness

Raising political awareness was recognized by the founders of Indian Brotherhood/Dene Nation as one of their most important tasks. It included the development of aboriginal communications links to disseminate information and issues, as well as enhancing the analytical skills of people running the organization. Awareness-building externally was also seen as necessary: improving ways of informing non-Dene about Dene positions on issues, and lobbying aggressively with government to advocate policy change. Few new organizations have had to lobby as hard as for federal officials to meet their obligations: to honour the Treaties, to return DIAND staff to Denendeh, to provide administrative funding to Bands, to listen to the concerns of Indigenous Peoples about conflicting uses of their traditional lands. The major change through the years has been the growing complexity and number of issues for the leadership and staff to handle. Gradually, the flow of information has shifted: in the early years, it flowed mostly from the National Office to the communities; now, the communities are more likely to be the focus for issues and raising awareness about them. Gaining

access to technology has at once increased the amount of non-Dene positions on issues as well as the scope and means by which Dene can inform their own people and non-Dene. Language differences and the prevalence of oral custom were and remain issues related to the scope and effectiveness of raising awareness.

The individuals who worked alongside the Dene Chiefs to establish the Indian Brotherhood were young Dene and Métis who were sharing information and ways of organizing people with other aboriginal organizations forming throughout North America. (For a history of many of these activities through the eyes of a major figure, George Manuel, see McFarlane 1993.) Aboriginal political associations were forming throughout the provinces and territories at a time when interest in citizen participation in the non-aboriginal population was also increasing. Young Dene and Métis attending universities and visiting in southern Canada or the United States met other aboriginal individuals committed to changing the socio-cultural and economic conditions of their peoples; one of them was Roy Daniels from Manitoba, who became the interim President of the Indian Brotherhood of the NWT when Mona Jacob decided that the position meant too much travel away from her young family (1993 SEP: interview). Most of the initial volunteers and, when funds were available, paid staff were under contract to the Company of Young Canadians (CYC). Roy Daniels, James Wah-shee, and Georges Erasmus C all of whom headed the Indian Brotherhood/Dene Nation C were CYC volunteers who, among other activities, interviewed Dene Elders about Treaties 8 and 11 and their understanding of them (IBNWT 1969; 1993 SEP & OCT interviews with former Presidents; SEP 1993: interview with early staff member; and CYC 1966: reports and minutes).

At this time, few people worried about where staff came from or what their legal aboriginal status was: an individual's commitment to the aboriginal issues was the vital qualifi-cation. More than 6 years after its establishment, Indian Brotherhood formulated an agreement signed by each staff member and Chief (ie, Board member); the wording of the agreement suggests that this kind of commitment remained foremost:

Our prime objective is the actualization of the goals stated in the Dene Declaration. The Indian Brother-hood should be working to establish the ideas in the Declaration such as:

1) To represent the political views and ideas of all Dene interest groups
2) To continually communicate with all Dene interest groups and keep them informed of what IB is doing
3) Encourage and support Dene culture and traditions so that the Dene identity can survive and grow
4) Encourage and support Dene control and participation on an equal level in all areas that affect the Dene identity
5) To establish in the future a better society for the Dene: a society based on equality of the individual, free from colonial and oppressive institutions
6) We must eliminate all manifestations of colonial control over the Dene of the N.W.T. including even those set up by the Dene themselves. We must only begin those institutions which give control to the Dene and only those organizations that do not oppress workers
7) To encourage and develop Dene people as individuals and as groups, to become independent and responsible, that institutions governing the Dene are not imposed
8) To support the development of a Dene economy C free from colonial ties, and responsible to all Dene

Breaking any conditions of this agreement without previously re-negotiating the agreement indicates that you are no longer seriously interested in working for the Brotherhood.

(1976 FEB 02: from IBNWT Board minutes)

Ideas and attitudes behind the rhetoric expressed in this agreement reflect the influences from Dene and non-Dene sources from which Indian Brotherhood/Dene Nation derived its dynamism.

People supporting the Chiefs as staff in the central Dene organization rapidly gained an awareness of the situation of Indigenous Peoples generally and of aboriginal peoples in the Dene homeland in particular (verified by 1993 SEP: interview with founding interim President). Two very influential Canadian aboriginal leaders, Harold Cardinal and George Manuel, each visited Fort Smith before 1970; also, Cardinal attended the second Dene National Assembly in Fort McPherson in 1972, and Manuel attended Indian Brotherhood Chiefs (Board) meetings in 1974 in Fort Norman and in 1975 in Fort Rae (IBNWT and DN chronologies, histories, meeting minutes). Several Dene Nation Presidents noted in interviews the impact on the Dene from these and other aboriginal people demanding change for their own people:

Our people didn't have the arguments about why it was important to have your own language, to be close to the land, and to be proud of who you were. ... In the early years [of the Indian Brotherhood/Dene Nation], it was a real boost to many of our people to be involved in the organization that was pushing for change C radial change C in the way things were done and the way people saw the world. A lot of people who were working in the office at that time were quite young ... and it was a real learning experience for our people. I think ideally a lot of us wanted to empower our communities. There was a community development process to bring control into the hands of our people, and there was a strong backlash or fight against that, by government.

(1993 SEP: interview; corroborated by interviews with other former Presidents)

Although Dene and Métis leaders had raised objections to federal policies before the 1960s, their efforts had been in meetings with federal officials that were not reported in public media. Their attempts to attract support for their concerns through a formal association evidently startled many non-aboriginal northerners at the time. Georges Erasmus, at the time employed by the CYC, recalled that the Chiefs' decision in 1973 to go to court to protect their traditional lands was greeted by shock and laughter by non-Dene and, often, by Dene who apparently accepted that their people were powerless to act on their own behalf (1993 OCT: interview; corroborated by 1993 AUG interview with early staff member, Fumoleau personal communication, and news articles in *The Native Press*). Far from deluding themselves, however, the Dene organizing politically were making careful evaluations of government policies that affected their people, their homeland, and their potential development (1993 OCT: interview with a former President). Based on their analyses, they devised their own, specifically Dene policies.

The promotion of Dene cultural identity was perceived to be essential in the face of government assimilationist policies as they had been articulated in the 1969 White Paper and as they were being enacted in NWT. The imposition of the non-aboriginal Territorial administra-tion's policies C especially the creation of local councils that undermined the authority of the Chiefs C was

characterized by politically astute Dene as "colonialism" within the state of Canada. Further, Dene perceived their Nations as colonies within this NWT colony (Watkins, ed. 1977; see especially Barnaby et al., Bean, Russell, Puxley, and Watkins). The awareness expressed in the constitutional mandate of the Indian Brotherhood/Dene Nation and the ways in which Dene running the organization sought to pursue its goals came from a variety of sources: political science, international law, development theory, approaches to organizing citizens and advocating on their behalf, and principles of social justice, as well as the sharing of similar analyses globally among Indigenous Peoples.

Clearly, as noted in Part Two, some Dene had been exposed to the concepts, drawn from political science and international law, of the "colonisation"of Indigenous Peoples and their right to "decolonise". Their understanding went well beyond using rhetoric or political science theory. Just as clearly, Dene involved in the early Indian Brotherhood were familiar with related development theory, producing commentary or reports about the dependency evident among their people resulting from modernisation policies by government and industry for the NWT and its aboriginal residents. This dependency was ascribed to the status of their people as wards of the state under the *Indian Act* and as northern residents marginalised from the benefits of moderni-sation. The Dene Nation Library/Archives contains many publications dating from this early period about consciousness raising and about people-centred or grass-roots development. From the amount of archival material about meeting some people from Tanzania, who reported their circumstances in similar terms, this visit obviously made a deep impression on National Office staff. Ideas about people-centred development initiatives in Tanzania are included in the introduction to a report of a 1974 community development workshop in Fort Simpson, arranged and facilitated by Indian Brotherhood staff (IBNWT 1974c).

Indian Brotherhood staff were intent on spreading their awareness, which was highly critical of contemporary government policies for the NWT, to other Dene through the communi-cations system it developed and through its fieldworker programs (IBNWT and Dene Nation histories and chronologies, meeting minutes, personal communications, and internal admini-strative documents). Federal and Territorial officials, rejecting the assumptions underlying these Dene evaluations and objecting to having them spread throughout the communities, tried to dismiss them pejoratively as controversial views of a radical minority (ie, DIAND 1978b, GNWT 1977). In many ways the rhetoric of non-Dene officials reacting to Dene strategies was just as strident as the words in English the Dene were learning to use to describe their circum-stances C perhaps a sign of the times. Beyond the words, federal and Territorial officials of that era were trying to impose top-down policies formulated by non-Dene professional administrators for development based on modernisation, dismissing Dene community-based initiatives.

The debate over development in the Dene homeland became focused in the 1970s on the proposed construction of the Mackenzie Valley pipeline and the highway to accompany it. These projects were announced by the federal government in 1972, shortly before Indian Affairs Minister Chrétien, announced that reserves would be set side for Dene under Treaties 8 and 11. Part Two of

this report chronicles Dene initiatives and strategies in response. In April 1974, members of the Federation of Natives North of 601 met in Inuvik to discuss a letter from Mr Justice Berger inviting them to participate in hearings into these projects. Federation members representing Dene, Métis, Inuit, and Inuvialuit outlined strategic positions that their member organizations could take regarding these hearings. The minutes of their meeting indicate that they considered three possible strategies: (1) opposing the pipeline outright, (2) demanding a postponement until their land entitlements had been settled in or out of court, or (3) negotiating concessions from government and industry for not opposing the developments too vigorously. They also wondered if it would be possible for aboriginal representatives to be present during Berger's discussions with his advisors, so that they could "understand what he is looking for and how he comes to his conclusions". A further strategy under consideration was to borrow resource people from the James Bay Cree to help analyse the vast amount of materials expected to be generated during the hearings (Federation of Natives North of 601 1974: meeting minutes). The decision to oppose the pipeline and highway meant that Indian Brotherhood, Inuvialuit, and Métis Association staff had to prepare their communities for official visits by Berger, much as the Dene had prepared for community hearings by Judge Morrow during the *caveat* court case.

Preparing communities for such formal hearings was well within the ability of the Indian Brotherhood by 1974. Much of their experience came from organizing the research into the Treaties and into Dene patterns of use and occupancy of their traditional lands, as well as getting ready for the *caveat* court case. Their efforts to alert their people about the pipeline issues and to inform them about the hearings with Mr Justice Berger, however, were cast in a negative light by Territorial officials:

> The analysis of the Territorial government was very, very faulty. ... And that was primarily during the Berger Inquiry days. Because, I guess, for the first time, the Dene were being very, very loud and clear in the valley since the European descendents had been living amongst us C we had been quiet for so long, they just weren't used to us speaking out. And then, when we were so clearly opposed to something that was dear to the heart of many C business people and others that felt that opening up the north in a much faster way was going to be the way to go C we were hostile to it, you know, person after person standing before Berger, they thought in each case that we had programmed those people, that we had told the Elders what to say, that we had told the average Dene hunter what to say, and really scripted each of the hearings. You know, Berger heard over a thousand people, and somehow the people who were running the territorial government at that time ... they saw us as having, you know, ultimate power in one structure, in the Yellowknife office, and that we were manipulating people and so forth. It couldn't have been farther from the truth.
>
> (1993 OCT: interview with the President at that time)

The effect of these hearings on northern and southern Canadians C and on the environ-mental assessment review process in Canada C is well documented. The hearings provide a vivid example of public hearings that listened with respect to all presenters, with tremendous participation by citizens who often felt left out of such processes. Southern media coverage of the hearings also carried the Dene perspective about the development of their lands to the Canadian public, where much support was gained.

PART THREE: CAPACITY BUILDING FOR SELF-DETERMINATION

The Dene felt euphoric as their concerns were taken seriously. The Indian Brotherhood co-ordinator for the Berger hearings, who became Dene Nation President, described the feelings:

> that was, I think, the spirit that carried a lot of us. We had no definite work experience or way to get our hands into something substantial. We were fighting something, you know? It was the most elemental type of situation to be in. ... we were building strength and courage and spirit by fighting something, something that was threatening us.
>
> (1993 JUL: interview)

The proposed Mackenzie Valley pipeline and highway C in combination with the 1969 White Paper, the need for land settlement of Treaty entitlements, the need for funded Band councils, the return of Indian Affairs officials to the Dene homeland, and the protests over the Territorial administration's establishment of local councils to compete with Band councils C gave NWT Dene and Métis purposes for uniting in defence of their lifeways. Perhaps the most notable consequence of the 1973 *caveat* court case and the 1974B76 Berger hearings was the rapid increase in credibility garnered by the Indian Brotherhood/Dene Nation. This credibility was expressed not only by non-Dene in the NWT and throughout Canada, but by government officials and, most importantly, was felt among their own people. One former President noted that they were victories in the sense that the Dene Chiefs and the National Office had proven to their own people that they were not powerless: "the Dene could plan; they could act and, against great odds, they could win" (1993 JUL: interview).

In the early years, being able to assess their own situation and communicate their evaluations throughout Denendeh was the work of gradually increasing numbers of National Office staff, assisted by the Chiefs and Elders and a handful of non-Dene resource people. The work done by Antoine Mountain, the Dene author of Part Two of this report, was in the original communications section, in radio. The fledgling broadcasting and publishing efforts became technically competent very rapidly and soon left the Indian Brotherhood office as an independent organization, the Native Communications Society, which has been expanding ever since.

Recognizing that the National Office still needed its own means of distributing information with the First Nation communities C in an era before facsimile machines, wide-area networks, and e-mail C the Dene Nation in the 1980s again developed its own communications department. Before the funding cuts of 1986, the Denendeh National Office staff published a regular newsletter and transformed information onto tape in the Dene languages for broadcast on local radio stations. The Dene Nation newsletter informed literate Dene in English about progress on land "claim" talks and other political issues, provided updates of National Office programs, and included articles of interest to Dene, such as traditional stories from Elders. Along with similar information in aural form in the Dene languages, special-interest features were recorded by the language staff: a history of the Dene Nation was taped by Peter Hope and played on community radio during this period (ie, Dene Nation 1984c). The third method of distributing valuable information throughout the Dene homeland was in person, with the many fieldworker programs in participatory research studies or community development projects. The role played by such programs is examined in the section entitled "Encouraging Participation". It is within this third way of raising political awareness that the

DENE NATION: AN ANALYSIS

Dene in the Indian Brother-hood/Dene Nation most significantly contributed to capacity building for self-determination, as the intent was to increase participation of Dene citizens in self-government.

Representing Aboriginal Citizens

While the Indian Brotherhood of the NWT was the first formal association of all Dene north of the provinces, it was not a unique organization in Canada. This section analyzes the formal Dene organization in the context of changing perceptions of aboriginal citizen participation. Efforts to enhance citizen participation through organizations supported and funded by the state have had a fundamental effect on the Canadian polity. The interests of aboriginal peoples are distinct from the interests of other citizens, since the participation aboriginal peoples seek is to regain their political autonomy within the state. Challenges for Dene Nation as a representative aboriginal organization range from legitimacy through organizational management and funding consistency. Never having operated a EuroCanadian-style organization meant that Dene participants felt obliged to learn about the ways required by outsiders, yet gave them a peculiar freedom to experiment. Throughout its history, Indian Brotherhood/Dene Nation has operated in an atmosphere of external power inequity. Countering external restrictions and obstacles was support from similar aboriginal organizations, including others north of the provinces, as well as support from non-aboriginal individuals and organizations.

Citizen Participation in and after the 1960s

The Indian Brotherhood of the NWT came into existence at the end of the 1960s, a decade when much more active involvement by citizens in matters of the state had become widespread throughout Canada, with mixed reception by politicians and administrators (Draper 1977). In the 1970s, however, the federal government accepted expanded notions of citizen participation in policy making. Federal programs began funding groups to advocate on behalf of interests that were thought not to be adequately represented by elected officials; these programs were remarkable in that Canada is unique in funding organized interests intent on influencing and changing state-generated policy (Cunningham et al. 1988; Ng, ed. 1990; Esberey & Skogstad in Krause & Wagenberg 1991; also works by Pross and Phillips). The support for state-funded advocacy groups C called variously political pressure, lobby, special interest, or organized-interest groups C has been consistent with other liberal democratic principles underlying Canadian policy, such as the creation of the *Canadian Bill of Rights* in 1966 and the *Constitution Act, 1982*. This latter addition to the federal written and unwritten constitution includes one Part for the Canadian Charter of Rights and Freedoms, and a second Part specifically for aboriginal and Treaty rights. Both parts have triggered cases brought by state-funded advocacy groups before the Supreme Court of Canada, which has attempted to interpret the rights and their limitations especially for citizens marginalised within Canadian society C including aboriginal peoples. (For one analysis, see Morton in Krause & Wagenberg 1991.) The rights and

interests of aboriginal citizens have been funded by the state and promoted within these contexts.

Aboriginal citizenship in Canada has been contentious. Enfranchisement, among other former policies, was intended to assimilate aboriginal peoples into mainstream or EuroCanadian society. Since 1869 Indian Affairs officials encouraged aboriginal males to become voting citizens but stripped them of their Treaty status when they did so; for a few years, aboriginal males who became professionals, such as doctors or lawyers, were automatically enfranchised, their Treaty status lost without their consent (DIAND 1975d & 1978a; Daughty & Madill 1980; Titley 1986). Not until 1960 could aboriginal Canadians of both genders vote alongside other citizens without fear of losing their status. However, the memory of former policies C along with changes to enfranchisement policies when they suited federal officials C has created an uneasiness among aboriginal Canadians about citizenship generally and about voting. In the Western NWT, until 1979 Dene withheld their votes from Territorial elections, in part to demonstrate their reluctance to become involved with this non-aboriginal form of governance which, they felt, did not represent them. Since 1967, the Territorial Council had received, along with funding transfers from the federal government, moneys that in the provinces would be transferred directly to Treaty peoples. In 1979, the Dene Nation encouraged voting:

> Eventually, we decided that we ... needed to change our style C not that our long-term goal would change. We still took the approach that, until the Dene renegotiated or negotiated a new union with Canada C a new Treaty or a new settlement or whatever C in fact, the Territorial government, it was highly questionable whether it was legitimate for the Dene. But we decided that we would get involved in the elections of the Territorial Council because we thought it would be useful to have people working inside and outside, working for change. All the resources that are being used against us, we could easily start to harness some of those things.
>
> (1993 OCT: interview with Dene Nation President at that time)

Along with enfranchisement that required the loss of Treaty status, federal policies since 1876 had created Band councils with powers derived from the *Indian Act*. Such a council had authority to represent people listed on registered Treaty rolls within the Treaty-determined reserve lands. The definition of "Indian" in the *Indian Act* does not bear any relation to Treaties, but status Indians are people who carry Treaty cards bearing their registration number. Federal officials intended Band councils to develop into municipal-like bodies, despite their direct relation to the federal, rather than a provincial, government. Procedures outlined in the *Indian Act* for Band councils to follow were supposed to teach the elected aboriginal politicians the essence of citizenship (Daugherty & Madill 1980). No forms of aboriginal association were planned beyond Band councils because, as one Treaty Commissioner explained, the system of reserves in Canada was designed deliberately to keep peoples from joining together (Morris 1880; 1991: 288). The underlying concern at the time of the Treaty making was to prevent people organizing battles like those by Indigenous Peoples south of the Canadian border against European settlers encroaching on the peoples' lands C even though battles had not been characteristic of aboriginal/settler relations in Canada.

Aboriginal leaders have always spoken to protest conditions and to bargain or advocate for improvements for their people (Morris 1880, 1991; Daugherty & Madill 1980; Titley 1986;

Dickason 1992). Their individual efforts, however, had been minimal until recent decades. Chiefs' attempts to join forces form associations were thwarted by policy makers' changes to the *Indian Act* restricting peoples' ability to assemble and their use of Band funds for meetings with other peoples; the distances separating different peoples and their pervasive marginalisation within Canadian society contributed to keeping peoples from uniting (Whiteside 1974; Titley 1986). Certainly, distances between Dene peoples in after they were relocated in town made it difficult for more than the one annual meeting between Chiefs and Indian Affairs officials.

As the minutes of the 1957 annual meeting show, Dene Chiefs arrived the day before the government officials in order to meet together on their own. By 1969, the Chiefs had sufficient concerns about the 1967 and 1968 consultations on federal plans to scrap the *Indian Act* and a federal presence in the north that they decided to form the Indian Brotherhood. Because the Chiefs had to return to their communities after such meetings, they needed staff who would stay together and work on the peoples' concerns. Despite obstacles, aboriginal political associations C beyond such long-standing aboriginal governments as the Haudenosaunee Confederacy C have been forming throughout southern Canada since 1850 (Whiteside 1974). An irony observed by many is that official assimilation policies, like teaching aboriginal peoples English, made it easier for people from different cultures to organize to advocate for their common interests. Speaking the same language as most federal officials whom aboriginal representatives must lobby to advance their interests has also been useful.

The two essential motivations prompting aboriginal political association in Canada have been the failure of government policies to improve aboriginal socio-cultural and economic conditions, and the insistence that aboriginal Canadians have the legal right to identify and govern themselves and to determine the quality and pace of their own development (Beaver 1979; Little Bear, Boldt, & Long, edd. 1984; Boldt & Long, edd. 1985; Ponting, ed. 1986; Long & Boldt, edd. 1986; Cassidy & Bish 1989; Erasmus 1989). These motivations set aboriginal political association apart from other organized interests in Canada. The promotion of this thinking drew strength from citizen participation movements since the 1950s.

Citizen participation in public meetings, public hearings, membership on committees and boards, and lobbying have become common and acceptable forms of formal political involvement in Canada C but they have not always been so (Draper 1977; Homenuck et al. 1977). In the 1960s, rallies and parades, sit-ins and blockades, petitions and demonstrations to publicize political issues and causes were common kinds of informal citizen activism, often referred to as "civil disobedience". Some forms of civil disobedience C notably those labelled "radical" C have not become acceptable as expressions of organized interests. Between these formal and informal expressions of citizen participation are many activities involving citizen organization (Kasperson & Breitbart 1974; Connor 1977; Lucas 1977). Among them is community development, which itself represents a broad range of concepts and initiatives. As discussed in the section entitled, "Encouraging Participation", community development struck particular chords in the Dene homeland.

PART THREE: CAPACITY BUILDING FOR SELF-DETERMINATION

Indian Brotherhood/Dene Nation, formed through indirect response to aboriginal and non-aboriginal citizen activism, did not use civil disobedience among its strategies. Yet, the organi-zation was often called "radical" by federal and Territorial officials (Crowe 1974; GNWT 1977; Thomas 1956, 1978). In December 1974, for instance, the Yellowknife RCMP detachment held a two-week training course on "Native Extremism" for its senior constables (IBNWT internal discussion paper; verified in newspaper articles). In 1978, a DIAND public affairs official used a musical tour of Mackenzie valley settlements as an opportunity to discover how much local support the "militant Indians" in the Dene National Office had (see DIAND 1978b for the report). This impression persists and, according to one President, has harmed the organization:

> Government a lot of time is reluctant to fund us because, in the view of a lot of people, we have a radical political view. In the eyes of government and some other Indigenous institutions across the country, the Dene Nation has a radical view on rights and just generally their view of where they ought to go. ... The Dene have been known to be quite politically active. And that has caused some hardship with regard to dollars. You look at the organizations across the country who have a lot of money and most of them are very silent on the major issues, because they're afraid to buck the system.
>
> (1993 SEP: interview)

In retrospect, Indian Brotherhood activities were indeed a contrast to prior aboriginal citizen involvement in the Western NWT. But they were not a departure from efforts to encourage citizen participation and social change elsewhere in Canada. In fact, two of its initial proposals were for Indian Affairs programs that already existed for First Nations in the provinces: funding for Band councils, and a community development program (IBNWT 1973d). Other early strategies were drawn from such federal initiatives as the Company of Young Canadians and, later, Secretary of State programs under the Native Citizens Directorate. Within the Directorate was the Native [later, Aboriginal] Representative Organization Program, which began funding national, provincial/territorial, and regional or tribal organizations for aboriginal peoples, regardless of their DIAND status. In order to get funding, an organization had to register under federal or provincial/territorial societies legislation and comply with its rules of conduct.

A mid-1980s consultants' assessment of the aboriginal representative associations program noted that the objectives of the Secretary of State shifted over time. At first, it was to provide:

> a consultative framework in which native organizations act as advocates and negotiators for their constituents .. . In the mid-seventies, citizenship participation objectives were added C calling for native involvement in political, social and economic institutions. Finally, there is the operational objective which specifies that program objectives will be achieved through operational support to native representative organizations. (DIAND 1986: 8)

Indian Brotherhood began to receive funds from the Secretary of State in March 1971. That ministry recognized the function of the organization as a representative of the Dene C long before land settlement negotiations were considered. This funding was consistently provided, even during years when land settlement talks were intermittent, until 1991. Throughout that time, Secretary of State accepted Indian Brotherhood/Dene Nation as a provincial/territorial association representing aboriginal citizens, like others such as the Indian Association of Alberta and the Métis Association of

the NWT.

One of the main goals of Indian Brotherhood/Dene Nation has been regaining for their peoples the right of self-government. In terms of citizen participation, this is the highest form. In 1969, Arnstein published what is widely recognized as an authentic hierarchy of the various forms of citizen participation; Arnstein presented this hierarchy in the form of a ladder, as shown in the diagram on the next page. Arnstein shows the increasing autonomy citizens gained through different kinds of involvement; her interest was to encourage greater participation by citizens in the planning for their communities C rather than leaving it to professionals giving their advice to government officials. As noted earlier, Dene citizen involvement prior to 1969 was contrived. Informing and consultation occurred between DIAND officials and the Chiefs at their annual meeting with no further involvement by Dene in policy formulation or implement-ation: for Arnstein, this is token power-sharing. The participation to which Dene aspire is at the top of Arnstein's hierarchy C citizen control C as Dene did before European contact. It is a measure of the effectiveness of aboriginal political associations like Dene Nation during the past 25 years C an astonishingly brief time C that this aspiration has attained serious public and political attention. Until full aboriginal autonomy is attained, aboriginal citizens can have only degrees of token power-sharing. Councils and organizations that advocate for aboriginal peoples must continue challenging this unacceptable degree of citizen participation.

Arnstein's Hierarchy/Ladder of Citizen Participation

Representing Aboriginal Citizens in the Dene Homeland

The immediate tasks of the Dene who formed the Indian Brotherhood were to express the Chiefs' concerns with the White Paper on Indian Affairs and to investigate Dene understanding of the making of Treaties 8 and 11 (IBNWT 1969). In the western NWT, Treaty documents were hurriedly carried from Ottawa in 1900 and in 1921B22 by Commissioner C the Indian Agent C who designated Chiefs to be signatories (Fumoleau 1974; YDFN 1993). By the late 1960s, no major decisions about land had been settled between Dene Chiefs and federal officials, despite a special commission to settle obligations unfulfilled from the northern Treaties (Nelson Report 1959), and many meetings on the subject (eg, Indian Affairs 1957; *see* Fumoleau 1974; YDFN 1993). Since 1959B60, federal officials coerced Dene families to stop living on the lands their people had shared in common for hundreds of generations. Dene and Métis were relocated from their seasonal hunting and fishing camps to the few distantly separated towns and villages, most established for non-aboriginal companies pursuing fur and other resource exploitation. Few economic or training opportunities for the wage economy were available in these settlements: they were places to live but not places to work in. For people accustomed to hard work every day, living in town meant a lack of ongoing purposeful activity.

Few towns and villages in the western NWT are wholly aboriginal. Generally, settlement

land has been surveyed and, since 1951, has been sold for freehold title in accordance with the EuroCanadian land tenure system. Towns are run like their counterparts in southern Canada, at the insistence in the 1950s and 1960s of non-aboriginal residents who demanded "responsible" local government in the NWT (Thomas 1956, 1978; Crowe 1974; Braden 1976; YDFN 1993). There was a form of district council in Yellowknife in the 1950s. The Territorial legislature and public service, established in Yellowknife in 1967, set about organizing local councils with responsibilities resembling those of municipalities in southern Canada. These local councils were accountable to the Territorial ministry that enacted their existence.

Unlike southern Canada, signatories of Treaties 8 and 11 were not funded in any way, nor were Band councils set up in the 70 years following Treaty making. Dene First Nations had no formal links to maintain the Nation-to-Nation, or direct federal, Treaty relationship. Programs available to aboriginal peoples on reserves in the provinces were not offered to the Dene. Indeed, some programs available to all Canadian citizens C such as old-age pensions and mother's allowance C were not routinely made to northern aboriginal peoples. Some individuals whom government identified as Métis were eligible for Treaty status under Treaty 11, while other relative of Dene signatories to Treaty 8 were not; still others were not identified by government as either Treaty or Métis. These differences in official designation resulted in confusion, as some members of one family might receive Treaty benefits while others did not (Fumoleau 1974; personal com-munications). When the Territorial Council and administration moved north C at the time when the federal government was developing its infamous White Paper on Indian Affairs C it was given recognition as the only legitimate "responsible" govern-ment. Consequently, all funding and program responsibility for Treaty people in the NWT was handed informally C that is, without legislative sanction C to the Territorial administration. Ever since, the Territorial administration has competed with First Nations for their authority and jurisdiction. With the funding for Treaty people hidden in comprehensive transfer agreements between the federal and Territorial administrations, it has been no contest.

Motivation for northern aboriginal peoples to form their own political associations were mostly related to protesting the lack of settlement of ownership of aboriginal lands, as well as this informal devolution to the Territorial administration of federal authority that properly belonged to aboriginal peoples (Crowe 1974; Braden 1976; Bopp 1987; Asch 1988; Watkins, ed. 1977). For many years, only one aboriginal person, an Inuk, was appointed, and later elected, to the Territorial Council; in those years, all other representatives were non-aboriginal people whose residency in the NWT was relatively brief. (*See* annual reports printed by the Territorial administration for the membership and policies of the council. In 1977, the Dene Nation printed a newsprint photograph of the first council, pointing out that only 3 of the original members still lived in the Territories.) The consent of the peoples Indigenous to the lands over which this administration now made policy was not sought, even though the federal government has a fiduciary obligation to protect their interests, particularly their interests in their lands. Dene, Métis, Inuit, and Inuvialuit began organizing themselves into formal associations as credible alternatives to what was perceived as a colonial government being imposed on their people.

DENE NATION: AN ANALYSIS

The celebration of the Canadian centennial had been an excuse to bring aboriginal residents from all over the Territories together: Dene report that much political awareness-raising and organizing happened at these gatherings. Perhaps the first of these organizations was the Thebacha Association, centred in Fort Smith, which represented mostly Métis interests south of Great Slave Lake from March 1967 to September 1971. The Thebacha Association had a representative at the federal consultations held on the White Paper. One of the individuals staffing the Thebacha Association was Mona Jacob (now, Fox), who became the first president of the Indian Brotherhood. She told us that the association shared her time during 1969 so that she could contribute to the early activities of the Dene organization (1993; SEP interview).

Among the influences and supporters of the newly formed northern political organizations were the Indian Association of Alberta's spokesman, Harold Cardinal (who visited Fort Smith), the Company of Young Canadians, and the Indian-Eskimo Association of Canada. The latter, which opened an office in the NWT in March 1967, broadcast programs of interest to aboriginal peoples and C like the Company of Young Canadians later that summer C began holding workshops for Dene and Métis. The Indian-Eskimo Association also held a regional conference on aboriginal issues in Yellowknife in January 1968, and assisted the Indian Brotherhood financially (Dene Nation histories and chronologies). While Indian Affairs officials were holding consultations with Chiefs throughout Canada to prepare them for the White Paper policy changes, the Chiefs formed the Ottawa-based National Indian Brotherhood C later, the Assembly of First Nations. In October 1968, Yukon Chiefs founded the Yukon Native Brotherhood. By December, Dene volunteer members of the Company of Young Canadians, guided by trained anthropologists working in the NWT, began interviewing Elders for their understanding of the making of Treaties 8 and 11. In January 1969, Dene leadership meetings were held in most southwestern NWT communities. Just before the White Paper's release in June, the Inuvialuit in northwestern NWT formed an ad-hoc association that became COPE, the Committee for Original Peoples Entitlement, which was incorporated in January 1970. The formation of the Dene organization later that year was not a surprising or isolated event: it must be seen in the context of other activity by aboriginal peoples to organize themselves politically.

Some of these aboriginal associations were formed solely to negotiate a land settlement. The Inuvialuit association, COPE, for example was disbanded once the people's Final Agreement was passed in 1984. Inuit in the eastern Arctic formed the Tungavik Federation of Nunavut to handle their land settlement: TFN has since evolved into an implementation body. The Yukon, NWT Dene, and NWT Métis associations all perceived themselves as having much broader mandates and functions beyond land settlement negotiations. Indian Affairs officials have tried to depict them as limited to this sole function, presumably in an effort to diminish their representivity and perhaps the effectiveness of these organizations in advocating for their peoples (DIAND 1993b). For 2 years, from September 1975, the Indian Brotherhood/Dene Nation had an office in Ottawa to assist with government and public relations during the Berger Inquiry and early negotiations on land talks. It is likely the organization could not have succeeded with this office had staff not formed strong links with

other aboriginal associations in the early 1970s.

Northern aboriginal associations in the early 1970s concentrated on improving their exchange of information, both among themselves and among their memberships. In the Yukon Territory, "non-status Indians" had formed an association in addition to the Yukon Native Brotherhood and, in the eastern NWT, Inuit formed ITC, the Inuit Tapirisat of Canada, which is now the national body that represents Inuit throughout Canada. In Edmonton, in October 1971, Dene representatives from the Indian Brotherhood met with Inuvaluit from COPE and Inuit from ITC; they agreed to unify to express their common concerns and commitment for the benefit of all their peoples. Meanwhile, NWT Métis and "non-status Indians" had been encouraged by their Manitoba colleagues to organize themselves: in March 1972, they formed the Métis and Non-Status Association of the NWT, with a central office in Hay River. In July 1972, the National Indian Brotherhood invited northern aboriginal political associations to send representatives to a meeting in Ottawa C where they held their own, separate conference. While most of the representatives were non-aboriginal consultants working for the associations, the delegates at this conference decided to unite formally as the Federation of Natives North of 601.

Until 1975, periodic meetings of the Federation were held, despite the difficulty of finding funds to cover costs for the travel. At its first meeting in the north, in September 1972, representatives also came from the two Yukon associations, the James Bay Cree, Alaska, and the Native Council of Canada. Also in attendance were representatives from the Canadian Arctic Resources Committee and journalists from Anchorage and Toronto. Exploitation of resources from the lands of Indigenous Peoples, and comparisons of land settlement talks were the topics on the agenda of this significant meeting. The Federation could not afford to meet often but, when it did, the scope of issues discussed was very broad. Delegates exchanged information, for instance, on strategies for public enquiries and on the sterilization of aboriginal women without their consent (summarized meeting minutes 1972B1975). Although the reason is not recorded, it is likely the Federation stopped meeting because of financial constraints and the demands on central figures from their individual associations.

For some years, Dene and Métis in the western subArctic discussed the benefits and drawbacks of forming a single political organization. In many ways the closest, most challenging relationship Dene Nation has had with another northern aboriginal political association is with its Métis counterpart, now known as Métis Nation. The Secretary of State program that funded both organizations did permit support for representation of aboriginal citizens that DIAND did not recognize (ie, Métis and "non-status Indians"). Initially, however, the program funded only associations whose membership followed federal identifications C refusing funds or threatening to cut off existing funds for associations with non-status aboriginal peoples on staff. With typical contradiction, no threats were forthcoming if such an organization had fully non-aboriginal people on staff. For instance, a Dene hired in 1974 as a fieldworker for the Indian Brotherhood had to be let go, when it was discovered that he was "non-status"; instead, he went to work for the Métis association but returned later to Dene Nation and became its president. Steve Kakfwi has never

forgotten how offensive he found this treatment (1993 JUL: interview). In the Dene homeland, where members of the same family may have different official identifications, this insistence on artificial barriers to representation was confusing and painful.

DIAND was dogged about this artificial division of people, extending it to eligibility for land settlement benefits. At first, DIAND refused to include Métis relatives and "non-status" Dene as Dene eligible for benefits (ie, *see* the Dene Nation annual report for 1979). When DIAND contributed funds to the 1974 Joint Dene/Métis Assembly in Fort Good Hope, officials sent the money with this note in a cover letter:

> This contribution is accountable, and we will require a statement of expenditures supported by receipts to cover the Registered Indian people who attend the meeting. This is particularly important as we have no authority to cover any costs incurred by Non-Status participants. (DIAND 1974)

It was at this Assembly that Dene and Métis recognized their need to unite their efforts for an equitable land settlement. The Assembly passed a motion to admit as members into the Indian Brotherhood of the NWT any descendant of the Dene. During 1974, the two associations agreed to co-ordinate more of their activities to make more efficient use of funds, and to improve external perceptions of their relationship (IBNWT/MANWT Joint Executive 1974 APR 08: meeting minutes). The two central offices, both in Yellowknife, began to share resource people, to co-ordinate their policy recommendations to the Territorial administration, to work together preparing their communities for the public hearings in the Berger Inquiry, to attend each other's meetings, and to co-operate on the land settlement process since the Métis at that time were not eligible for DIAND "claims" research funding. For many years, the two associations held joint executive and leadership meetings, and occasionally joint Assemblies.

Evidently under pressure to obtain a land settlement, DIAND officials changed their policy about excluding Métis relatives and non-status Dene as beneficiaries. But for some years DIAND insisted that only Dene could negotiate on behalf of both Dene and Métis. This put considerable stress on relations between the two key associations. The Dene version of events, with an admittedly subjective perspective, is told in a report by the Committee for One Organi-zation (Dene Nation 1979: annual report). At that time, the committee assumed that the Métis would disband their political association and became part of the Dene Nation C but Métis resisted this move. The two major points of contention were: recognition of Métis as a distinct people, and the decision by the Métis association near the end of the Berger Inquiry to support the Mackenzie pipeline, which the Dene had vigorously opposed.

By 1981, this rift was healed sufficiently that the Dene Nation annual report includes reports from both the Dene and Métis executives, and copies of both the Dene Declaration and the Métis Declaration. However, from 1978 to 1980, DIAND officials exploited tensions between the two organizations such that land settlement negotiating terms and funding were distinctly to DIAND's advantage. By 1980, it was finally decided that a separate body should be set up to negotiate the

Dene/Métis land settlement. Although it was almost 3 years before the separate organization was functioning, the Dene and Métis central organizations were able to continue pursuing their political mandates on behalf of their people. As the discussion in Part Two shows, the activities of Dene Nation far outstripped land settlement issues.

In 1979, the Dene Nation's Committee for One Organization outlined its concerns about the representivity and accountability of a third body, should one be formed to negotiate a land settlement. Many people who spoke formally and informally to us felt that the Dene/Métis Negotiations Secretariat, formed in 1983, justified those concerns. Whereas each of the central offices of the two aboriginal political associations was responsible and responsive to its member communities and to each of its Assemblies, the Dene/Métis Negotiations Secretariat was set up without any clear accountability, except to each of the associations as a whole. It is ironic that the undertaking on which so many Dene and Métis pinned their hopes for the future was not structured with the care taken to shape the two separate Dene and Métis political associations.

By the 1980s, both leaderships and both central offices had had ample experience with their organizations to be aware of potential difficulties. It appears that the Negotiations Secretariat took off with a life of its own. And the consequences were felt at the Assemblies in 1988 in Hay River and in 1990 in Dettah, when the delegates C the people represented but not involved at the table C discovered to their horror what was being offered to them as a settlement. After 20 years and millions of dollars spent in loan funding, Dene and Métis from the communities were shocked and discouraged by the results. Certainly, information about ongoing discussion at the negotiating table was not properly communicated to the communities. This research could not undertake a detailed study of the body that led substantive negotiation of the Dene/Métis Agreement-in-Principle and Final Agreement, mostly because its archival documents are not readily accessible. But, Dene Nation administrative archives, media accounts, and interviews we conducted suggest that the only person who is wholly supportive of the Negotiations Secretariat was the president of Dene Nation at the time.

Many aboriginal political associations sprang up in northern Canada in the 1960s and 1970s, and tried to keep in close contact with one another. They were avowedly *political* associations, with the purpose of promoting participation by aboriginal citizens in the highest forms of governance, with a land base of their own C the lands to which their peoples are Indigenous. Because government controlled the funding of these associations, government could attempt to manipulate them through limitations on membership requirements. Efforts by DIAND to restrict beneficiaries of a Dene land settlement resulted in the formation of an organization separate from the two Dene and Métis representative bodies. Given the controversy over the Final Agreement, the Negotiations Secretariat clearly was not accountable enough to Dene and Métis citizens to produce an effective outcome for the organization's sole purpose. Since the collapse of the Final Agreement, DIAND has attempted to portray the Dene Nation as only a land negotiations organization and has suggested that, as such, it should be disbanded. DIAND now claims that Dene Nation cannot represent Dene in regional land settlement areas (internal correspondence to current Dene National Chief from DIAND NWT Region). Despite the obstacles and efforts by government officials to undermine them, it is a

measure of the success of northern political associations that all northern aboriginal peoples today enjoy full recognition as distinct peoples, and anticipate a measure of full citizen participation.

Encouraging Participation

The initial interest by Dene in community development in the establishment of the Indian Brotherhood remained. Community development provided processes that Dene found appropriate for spreading ideas, planning and carrying out strategies both in the National Office and in the communities. Programs for community development persisted and spread until governments in the 1980s discouraged the Denendeh National Office from organizing them. By then, most local Dene political organizations were prepared to continue such programs. That they have is not surprising: ideas and processes associated with community development seem to resonate with Dene thinking about self-determination. The goal for Dene, and other First Nations in Canada, to enhance their political participation has consistently been self-determination.

Interest in community development throughout North America has been lively since the 1950s, particularly in rural communities. Academic observers note that this interest seems to have begun with widespread migration of rural residents to cities. Later movements have been are also prompted by encroachment of cities into rural areas, mechanisation of primary or renewable resource industries, and the loss of conventional economic pursuits in rural areas (Saunders 1958; Bruyn 196?; Warren 196?; Kasparson & Breitbart 1974). Residents who remained in their rural communities became concerned about the future of their towns and villages, the rural landscapes, and their way of life. Processes by which people gather, often through an organized body such as a church, and try to find their own approaches to addressing such concerns are described as "community development" because they bring feelings of capability and empowerment to people feeling vulnerable or dependent on external influences.

Community development processes C which have gradually become more sophisticated and are used routinely in, for example, rural extension services C have become popular for bringing citizens together to plan organized strategies to respond to local concerns. People living in urban neighbourhoods have also benefited from community development processes. Very formal techniques have evolved specifically for community economic development, which remains a preoccupation of rural communities. Small-scale projects organized through community- or people-centred processes have been part of international development programs since the 1950s (Compton in Draper, ed 1971; Rondinelli 1983; Korten & Klaus, edd. 1984). Common threads remain the emphasis on gathering local people together to identify specifically local concerns, and to find solutions to them that they can carry out themselves. These processes are opposite to the kind of incremental development envisioned by most governments, whereby professional experts determine a general plan appropriate for a great many communities, which is usually implemented by

public servants through established procedures. These competing development ideas and practices are at the heart of the Dene struggle for self-determination.

Interest in community development for First Nations began with a government program in the 1950s through which comprehensive planning for development of reserve communities was attempted in Manitoba (Legassé in Draper, ed 1971). During the 1960s and early 1970s, Indian Affairs experimented with comprehensive planning for community development on reserves throughout Canada; observers criticized the program for being organized centrally and from the top down, as well as for its cultural insensitivity (Lloyd 1967; McEwen 1970s/nd). George Manuel, who was involved in this program, believed that Indian Affairs revoked it when, despite its limitations, it started to work: aboriginal peoples started to feel empowered, started to build their capacity to act for themselves (MacFarlane 1993, Part 2). In 1966, the federal government started a program called the Company of Young Canadians, that was to draw heavily on community development (Canada 1966; CYC 1966). One observer has described the Company's program as a process of community animation to foster social change (Draper in Draper, ed 1971). When the Company of Young Canadians came to the Great Slave Lake area in 1967, it immediately attracted Dene who, not having reserves, had not been eligible for the Indian Affairs community development program. Some of the first Indian Brotherhood staff were Dene volunteers trained in community development processes by the Company of Young Canadians (CYC board meeting minutes 1967B1969; IBNWT 1969; IBNWT 1971; Bopp 1981). Among its many and diverse activities, Indian Brotherhood/Dene Nation has proposed some kind of community development program on behalf of its member First Nations throughout its history.

A characteristic common to all the programs developed by Indian Brotherhood/Dene Nation is their reliance on processes for encouraging local people to identify and address local problems, rather than on formulating solutions to problems for people. The National Office staff had a clear awareness that local concerns in one First Nation would not be identical to those in another, and different communities might address the same concerns in different ways. The processes Dene identified as most suitable included hiring and training Dene as fieldworkers who would travel to the communities and speak informally to local people about their issues, until the people felt comfortable with holding a workshop to discuss things collectively. In the early years, Indian Brotherhood staff held lengthy workshops and discussions about the processes themselves, how they might work, what obstacles might present themselves and how to deal with them, whether the processes were suited to Dene cultural thinking, how fieldworkers must avoid doing things for local people (*see*, for example, IBNWT 1974f, 1975). Community development was soon established as workable and suitable: the proposal Indian Brotherhood staff sent to Indian Affairs for Dene Bands to start being funded included a community development component (IBNWT 1973d). Sending trained Dene into communities to encourage local partici-pation and empowerment became a consistent method for National Office development programs (IBNWT 1974; Dene Nation 1979a, 1981a, b, c, 1983a, 1984a, b, 1985a, b; Dene/Métis 1990), as well as other Indian Brotherhood/Dene Nation initiatives.

Dene trained in community development applied the methods they used in research projects.

DENE NATION: AN ANALYSIS

Research was conducted by Dene volunteers in the Company of Young Canadians, along with anthropologists, into Elders' understanding of the making of Treaties 8 and 11: much of this research was given in testimony before Judge Morrow in the *caveat* court case, especially in the community hearings. Community development methods were used to encourage local Dene to come to these hearings and tell the judge what they knew C the same kind of prepar-ation undertaken for the Berger Inquiry. Far from controversial, these methods rely on face-to-face communication as often as possible in the peoples' languages, social learning based on traditional ways of passing on Dene knowledge, highly participatory collaboration and consensus building in which everyone's voice is heard, regardless of their social standing or expertise.

Between these two major hearings held by judges, Indian Brotherhood staff had been alerted by Indian Affairs officials that the Dene could apply for a land "claim". The initial step in such a procedure is for the Indigenous Peoples to identify the lands they have traditionally occupied and used. Grants for conducting such research are available from the same government agency that handles land settlement negotiations. Dene wanted to use their own people and community-based methods to conduct this research (*see* Nahanni 1977), and went to great lengths to allay DIAND's concerns (ie, IBNWT 1973c, IBNWT 1974d, and 1974b, [a 115-page description of the research methods]). The result was, in part, the Dene Mapping Project, which consisted of data from about 30 percent of Dene hunters and trappers at the time drawn by the harvesters themselves. A vast quantity of data were produced on hundreds of maps, on surveys, and in biographies written of the hunters and trappers. Through contracts with the Dene/Métis Negotiations Secretariat, Dene Indigenous Knowledge from Dene Mapping Project was entered into computerised an early geographic information system at the University of Alberta. The other result is that Dene gained confidence in these highly participatory, culturally sensitive methods, so that they became used for many research projects, notably documentation of Dene Indigenous Knowledge (*see*, for example, Johnson 1992; Ryan & Robinson 1992). Because so many people were involved in these research projects and in preparing for public hearings, the use of community-based methods gained a firm hold in the Dene homeland.

The Indian Brotherhood started with Dene staff inspired by the Indian movement in North America and equipped with methods for citizen empowerment. In order to accept government and other funding, the association had to become a registered society with a formal constitution and by-laws dictating a particular structure and financial accountability; however, Dene running the organization tried many innovations. In their efforts to avoid what they perceived as oppressive operational styles in non-Dene organizations, the executive and staff in the National Office experimented with management styles that one President described as "exciting". The role and organizational structure of the National Office were critically evaluated internally and discussed at several Assemblies (IBNWT 1973a; Dene Nation 1979a, c, 1980b, 1986a, b, 1991); a major re-assessment was documented for this Royal Commission under the intervenor program. Most of these evaluations, including the most recent one, encompassed not only the National Office but First Nation communities, Dene families and cultures.

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One side-effect of acquiring competence in running a EuroCanadian-style institution is the acquisition of non-Dene thinking and behaviour, especially when non-Dene resource people are on staff. The influence of non-Dene resource people on Dene staff is discussed in a later section. Outside resource people are often sought by informal citizen-based organizations C which is one way of describing the Dene Nation C to compensate for gaps in internal expertise. Observers have noted that, while resource people can provide essential shortcuts to expertise, a reliance on outside professionals may also undermine the organization's goals or may prompt the organization to take directions that are expensive to adjust later (ie, Christiansen-Ruffman & Stuart 1977; Shragge 1990). Possibly, the Dene/Métis Negotiations Secretariat with its many highly-paid consultants and lawyers experienced this difficulty; Indian Brotherhood/Dene Nation, however, seems to have avoided it. Rather, the Dene political association's main troubles have been rooted in its dependence on external funding. The organization has never had difficulty maintaining its commitment to Dene ideals, Dene aspirations, Dene culture.

In 1984, Dene Nation arranged for Elders to meet in Rae to discuss customary ways in which Dene governed themselves (Dene Nation 1984d). The report of this meeting, produced under the NWT constitutional development process at that time, was professionally printed. It is a document the National Office staff recommend to all enquirers requesting information about Dene traditional or customary governance. Following descriptions of the ways individual Dene governed their personal behaviour within the people's way of life, the report outlines the values and principles at the core of Dene traditional law. For Dene, this is always the starting place for discussing self-government. Because governing and living are intricately inter-related in the Dene cultures, self-government and self-determination are similarly linked.

Dene staff of the Indian Brotherhood/Dene Nation maintained their interest in community development because they saw in it appropriate ways for the National Office to work with First Nation communities C to encourage participation by local people to address their particular concerns. The history of this organization is, in some ways, the search by Dene for a structure and approaches to operations that can accommodate the traditional ways their people are comfortable with within EuroCanadian institutional constraints. As well as learning community development processes, Dene staff had exposure to and an opportunity to learn some Euro-Canadian operating and management styles, how northern government administrations work, methods of and requirements for fund raising, the kinds of information available from policy makers and public sources, some arguments used by rights advocates and critics of government policy, and the importance of aboriginal and Treaty rights from a Dene perspective. Dene staff who left the National Office carried to other Dene institutions what they learned to contribute to building local capacity for self-government and self-determination.

A significant preoccupation of Dene involved in Indian Brotherhood/Dene Nation has been increasing political participation by their people. Despite considerable government opposi-tion, Dene in the organization representing their people have pressed for a return to governing according to traditional values and ways. No federal or Territorial initiative has been responsive to this

movement. In 1984, the federal Penner Commission delivered its recommendations that aboriginal people regain their right to government themselves. In 1995, DIAND released a draft policy for implementing the inherent right to self-government C 21 years after Penner, 21 years in which government officials made no effort to invite aboriginal participation in the development of this draft policy. The federal vision has no bearing on aboriginal rights. It does not confer on local people the ability to design their own governing processes or to make their own policies, and it does not restore or even recognize Indigenous Peoples' customary or traditional laws. Aboriginal peoples in the territories are to have a different form of "self-government" from the form their relatives in the provinces can have. In the Dene homeland, under the 1995 draft policy, aboriginal "self-government" is to be limited to a form of public government.

In 1966, Dean Carrothers produced a report recommending that aboriginal peoples in the NWT be taught the rudiments of EuroCanadian administration and governing so that they could participate in democratic institutions. By their own efforts, Dene have climbed every rung of Arnstein's citizen participation ladder. Institution building in the Dene homeland has been a major activity since the formation of the Indian Brotherhood, and every institution has been or is wholly dependent on government funding. Funding is tied to strict limitations about the kind of institution that is to handle the funding and how the moneys are to be accounted for. There is no motivation for local people to infuse their institutions with traditional Dene thinking, values, or ways of working. It seems that the federal government has spent the 20 years between Penner and the release of its draft policy on self-government grooming aboriginal organizations for a style of EuroCanadian administration and governance. What choice have the people had?

Funding Challenges

In its earliest days, Indian Brotherhood was entirely voluntary. The association relied on media publicity and such organizations as the Indian-Eskimo Association for office space and travel funds to enable the first organizers to visit Dene communities (1993 SEP: interview with founding interim President). By 1970, staff were struggling to obtain funds to rent an office, have some form of communications, and pay small salaries to the people who gave their time to run things instead of working elsewhere to earn a living. A Dene on staff in those early years recalled that "finding money was a daily exercise. ... A great deal of non-native people would come in to give us moral support and, in some cases, financial support C just give us an outright donation" (1993 SEP: interview). After a few months of investigating potential sources of funding, the ad-hoc organizers were ready to recommend to the Chiefs who established the Indian Brotherhood that their best option was to incorporate as a non-profit society. Churches, charitable foundations, and United Nations development agencies had expressed a willingness to donate funds but most wanted to be able to claim their donations as tax exemptions; to do so, the Indian Brotherhood as the organization receiving such donations had to be registered as a federal or territorial non-profit society and be

registered with Revenue Canada for charitable status. At first, the Indian Brotherhood tried to operate entirely without government funding, as a matter of principle (Braden 1976: 110B114). Funding information from government sources was very difficult to obtain, former staff told us, but programs for which Indian Brotherhood might be eligible all required that the Dene register their association as a society.

Incorporation under the NWT Societies Ordinance (*now* Act) meant that Indian Brother-hood had to comply with the registrar's rules for how the organization was structured, how it could select officers and operate, and how it must account for its finances. A constitution and by-laws were developed, and Indian Brotherhood of the NWT was officially registered as a society in February 1970. With registration, Indian Brotherhood staff applied to Revenue Canada and received status as a charitable society, which made it eligible for foundation grants. Oxfam, several churches in Canada, the World Council of Churches in Geneva, and several foundations donated funds in the early years C some of which were untied and some were for specific projects. For example, the Richard Ivey Foundation in 1974 gave $10 000 for the purchase of portable radio-phones that were distributed to the Dene communities with no tele-communication links. Some of this funding was one-time, and none of it was sustained. Welcome as such funding was, getting it required a lot of time by Dene staff with little prior experience at contacting donors, preparing and distributing proposals, developing and monitoring budgets, interpreting complexly worded contribution agreements or contracts, and reporting to donors C all activities separate from running the programs made possible by the funds. Once government provided core administrative funding and some program funds, staff had to keep track of contribution agreements, budgets, and reports according to the demands of each govern-ment department's criteria in addition to those of non-government donors.

Most registered societies draw their funding from membership fees as well as external sources. Unlike most other non-profit societies at the time, Indian Brotherhood's membership was comprised mostly of aboriginal people who could not afford to pay a fee. Not everyone in Yellowknife agreed that Dene could belong without paying a fee. When it became known that Secretary of State had granted funds to the Indian Brotherhood in 1971, an informal local association called Northerners United for Equality wrote letters to local newspapers stating that, instead of government funds, the Dene organization should be supported by Dene trappers who should each donate the proceeds of a pelt. The decision by Secretary of State to fund the Indian Brotherhood was also condemned by the Commissioner of the NWT at the time, in a 13-page letter to the Indian Affairs Minister (reported in Dene Nation 1980?a: 9). The Commissioner had tried to insist that funding proposals and applications for the Indian Brotherhood should be submitted for review by the Territorial administration before going to funding sources. Under the first Indian Brotherhood constitution, associate membership was available at $20, in recog-nition that some non-Dene did want to support the association. Dene staff and Chiefs regarded the acquisition of core funding from the Native Representative Organization Program as lending Indian Brotherhood the external legitimacy it needed to raise additional funds to support Dene advocacy, research, and community development efforts.

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Funding for aboriginal political associations regardless of their status under Indian Affairs began in the 1970s through the citizenship branch of the Secretary of State (SOS). The Native Representative Organization Program was to provide "a very basic level of support such that an office can be established and operated. The specific activities which S.O.S. wants to see occur as a result of this support are in the area of advocacy and negotiations of a broad range of issues which are important to the organization's constituents" (DIAND 1986: 11). Programs run by Indian Brotherhood/Dene Nation were funded from other sources. Reporting to Secretary of State was restricted to a financial audit, so that an arm's-length relationship was maintained; the ministry did not want to "monitor the specific advocacy/negotiation activities of the organization or ... explore the long-term effects of these activities on native communities" (DIAND 1986: 10). This policy is in stark contrast to that of DIAND, which has treated Dene organizations much as it had other aboriginal political associations since 1940: "instead of using direct and autocratic tactics [as it had before 1940,] the department use[d] more subtle indirect techniques to manipulate the situation to the Department's advantage" (Whiteside 1974: 87).

A motivation for Dene Chiefs to form the Indian Brotherhood was the announcement in July 1969 by the ministry's Advisory Committee that Indian Affairs Branch officials would no longer be in the NWT. Their responsibilities were to be turned over to the Territorial admini-stration (IBNWT 1969; IBNWT Annual Reports 1972 to 1975; Braden 1976: 95B99; Dene Nation histories and chronologies: 1980?a, 1984c). The Territorial Council, while still a branch of a federal ministry in Ottawa, had been demanding control over aboriginal peoples in NWT; indeed, federal funding for Treaty peoples has been sent to the Territorial administration through transfer agreements. Dene Chiefs interpret this financial control as one of the ways in which the 1969 White Paper, while it was apparently shelved, has in fact been implemented in the Dene homeland. Although Indian Affairs left the NWT in 1969, the Indian Brotherhood successfully lobbied for their return. In April 1972, there was again an NWT Regional Director for DIAND located in Yellowknife (IBNWT 1972). DIAND's NWT Region staff has grown steadily, and today numbers about 300 C far greater than most local businesses.

In 1972, Indian Brotherhood staff submitted to the newly arrived DIAND Regional Director their proposal for NWT Bands to receive first funding for their Councils and administration (IBNWT 1972 annual report: 3B4). Correspondence about Band and community development programs, once they were funded and underway, came to the Indian Brotherhood office from both the NWT Regional office and Ottawa, notably the Community Affairs Branch (eg, DIAND 1975a). All letters are written in a patronising tone with ill-disguised suspicion about Dene motives. And it is clear that, although the federal government had agreed to replace Indian Affairs staff in Yellowknife, senior DIAND officials in Ottawa continued to exercise vigilance and as much control as possible over the Dene political association.

Until the Dene/Métis Negotiations Secretariat was set up to handle negotiations, Indian Brotherhood/Dene Nation received money toward research and preparing for a land settlement.

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Once the Dene received a favourable judgment in the *caveat* case from Judge Morrow, DIAND officials did not wait for appeals C they agreed to switch from land entitlement according to a strict interpretation of the written Treaties to a comprehensive claim procedure. But it was some years before substantive negotiations would begin. Even though Indian Affairs officials had been pressing for several decades for settlement of the Dene Treaties (as described in YDFN 1993), and even though Dene presentations during the *caveat* court case had been detailed, DIAND insisted on full compliance with procedures for applying for a "claim". This meant a 3-year delay while the Dene and Indian Affairs representatives discussed how to fund and go about documenting Dene occupancy and land use (*see*, for example IBNWT 1973c), and for Dene to conduct the research. Concurrent research projects in the communities were completed in 1976. During 1974 and 1975 Dene, with their Métis colleagues, held more discussions C with a gap of 18 months in the middle C with a DIAND deputy minister, officials from the Claims Commission, representatives from the Territorial and Social Development Branch, and the NWT Assistant Commissioner (IBNWT 1974d; DIAND 1975b, c). These meetings were to clarify negotiating terms, and discussed at length the funding of negotiations through grants rather than loans. Negotiating terms were discussed among the Dene, culminating in a workshop that produced what Dene called a draft agreement-in-principle (IBNWT 1976a); this document was presented to federal officials. Consensus was difficult to build and attain while government representatives kept changing, although Dene were represented mostly by the same individuals.

The federal tactic of cutting funds to the Dene political association when the outcome of the Berger Inquiry was known is described in Part Two of this report. Fund-cutting occurred often while Indian Brotherhood/Dene Nation discussed funding for the land settlement. Until 1980, disagreements between Dene and 5 different Indian Affairs ministers provoked negotiations simply to agree on the funding arrangements for Dene to pursue land settlement talks. Loans from Indian Affairs for the Indian Brotherhood/Dene Nation to prepare for the ongoing discussions about how to negotiate the land settlement were capriciously provided and cut from 1976 to 1978 (Dene Nation 1978). In February, staff were informed by DIAND that a full year's funding would not be available for the 1978B79 fiscal year, and that each quarter's funds would be sent only after "simultaneous political and financial meetings [were held] to determine political progress and decide whether funding will be continued. [DIAND wanted] the right to audit [Dene Nation's] books at any time, and to terminate funding arbitrarily if they [did not] agree with how funds ha[d] been allocated" (Dene Nation 1979c: 2). Staff noted that their ability to hire personnel and make realistic plans was hampered by such funding uncertainty. These strictures by DIAND seem inappropriate, since the funds were loans to be repaid by Dene. The procedures for "claims" have no appeal process.

The DIAND minister for 1980 reinstated annual loans for Dene to prepare for the land settlement, but senior DIAND officials delayed selecting a federal negotiator until the next fiscal year, in April 1981. The first official negotiating meeting was not held until July and talks were closed the day they began. Dene and Métis representatives at the table decided to stop the talks when they learned that DIAND had approved construction of a pipeline in their homeland. This was the Norman WellsBtoBZama oil pipeline. In 1982, there were some discussions on the land settlement

negotiations before July, then nothing between July and November. Negotiations finally got underway at this time, and continued through the Dene/Métis Negotiations Secretariat from 1983 until the federal Cabinet stopped the talks in November 1990. Dene actually spent more years just getting to the table than they did in substantive negotiations.

Once the Dene/Métis Negotiations Secretariat took over negotiations, the Dene National Office could focus on meeting its constitutional mandate and objectives. Core funding from Secretary of State continued to support the National Office but, for programs consistently requested by the Dene membership, sustained funding remained elusive. For instance, staff tried to continue community development programs. In 1979, after a lapse of 3 years, Dene Nation managed to secure funding from Employment and Immigration Canada for a program centred in Fort Good Hope. Both the DIAND minister and the Territorial administration tried to stop approval of this funding, but they succeeded only in delaying it for almost a year (Dene Nation 1979c; confirmed by 1993 OCT: interview with Dene Nation President at that time). When community development was proposed as the process to determine socio-economic impacts of the proposed Norman Wells pipeline, funding for Dene Nation became erratic, delayed, or held back (Dene Nation annual reports 1981B1986, especially 1985B86: 17B60; Gorman 1987).

As noted in Part Two, Dene collaborated with Métis and Territorial representatives in their strategic approach to the federal government about the Norman Wells pipeline. Dene Nation had expected to receive approximately $21 million toward mitigative programs: this did not happen. A report commissioned by DIAND on special funding projects for Norman Wells states that the federal government had intended this amount to be designated for programs in the NWT, with no more than $2.55 million for each of the Dene and Métis associations or their development corporations (DIAND 1985: 41B42). The commissioned report concluded that, not only did both organizations receive far more money than was originally intended, government characterised the funding as *appeasement* and *compensation*:

> The federal government should try to avoid funding *to compensate groups which opposed a project*. However, if this is determined to be necessary, the purpose of the funds should be explicitly recognized and treated differently from funds that are intended to address tangible impacts from the project. There should not be any requirement that the funding be linked to project impacts or activities, since *the intent is appeasement, not project-related impact management*. Also, given its obvious political nature, such funding probably should be provided as a grant, which has fewer accountability requirements than a contribution program. (DIAND 1985: 41, Recommendation 5.3, *emphasis added*)

This characterisation reflects Dene opposition in the 1970s to the gas pipeline from the Arctic coast, rather than their more co-operative stance taken toward the much smaller oil pipeline in the 1980s, as noted in Part Two of this study. Disagreements between Dene and government agencies during the Norman Wells pipeline centred on the research methodologies for government-based impact assessments and their lack of Dene participation, combined with the lack of support for the community-based assessments and mitigative programs developed by Dene Nation. While the analysis quoted above seems to say otherwise, Dene Nation was certain at the time that the programs

it operated with Norman Wells funds were directly related to impact management C but for impacts and management as they were perceived by Dene. Further, there was nothing disreputable or new about the approaches the communities were using: Dene Nation's proposals reflected the kind of programs the organization had been running for more than a decade. Once the Norman Wells funding stopped, no comparable government funds have been available to Dene Nation for community development programs.

This discussion of challenges presented by DIAND for funding to the Indian Brotherhood/ Dene Nation is not comprehensive but serves to illustrate some ways in which Indian Affairs has sought to undermine the scope and effectiveness of the Dene representative organization. After Cabinet stopped land settlement talks on the "claim" being negotiated by the Dene/Métis Negotiations Secretariat, funding was cut off immediately to the Secretariat and staff had to pack up in a chaotic process that has rendered most of the documents produced inaccessible to the people who are still pursuing a land settlement. Perhaps because Dene were perceived as the stumbling block for getting the Final Agreement ratified, DIAND also arranged to have Dene Nation's core funding transferred from Secretary of State to the DIAND NWT Regional office C and promptly cut the funds retroactively to a date before the expensive annual Assembly. As a result, Dene Nation was plunged into a huge deficit from which it has yet to recover. Core funding was reinstated for the following year, but with conditions. Correspondence from the Regional office reveals that, once Gwich'in Dene applied to pursue a regional land settlement, DIAND no longer recognizes the Dene Nation to be representative of all Dene. No rationale is offered to explain why DIAND should determine who Dene Nation's members ought to be. In the years since, DIAND has sent letters to regional Dene organizations requesting direction on what the region wants done with the funds to Dene Nation.

At the 1990 Dene National Assembly, the 350 delegates participated in a two-day work-shop to decide what the future role of the National Office should be (reported in Dene Nation 1991). Further, a motion passed unanimously at that Assembly defined the role as:

> to serve as the political arm of the Dene Nation and to firmly establish our relationship with Canada, to continue implementation of Dene Treaty rights, to provide assistance and support relating to the definition and implementation of Dene Treaty rights, to co-ordinate financial and technical support for regional and local Dene organizations, to maintain and improve communications within the Dene Nation and with other governments, to initiate workshops with regional and local organizations, and to resolve roles and functions that overlap. (Motion 91/92B006)

Despite the support by Assembly delegates for this motion, the NWT Regional Director for DIAND informed the National Office that core funding for Dene Nation formerly available from the Secretary of State would be opened to other northern organizations (1992 correspondence; 1993 AUG: interview with Executive Director). Core funding for Métis Nation remained with the Secretary of State, so the transfer of Dene Nation's funding is questionable.

Government has affected Dene Nation funding in other ways. In 1986, Dene Nation staff neglected to renew its charitable status and Revenue Canada decided that the organization should

re-apply as if it had never had status before (1993 AUG: interview with Executive Director). With a change in government had come a change in attitude toward organized citizen groups that advocate on behalf of their members. Criteria for charitable status has changed, and Dene Nation was no longer eligible. Revenue Canada rejected the new application on grounds that Dene Nation was too political. Canada was no longer interested in encouraging citizen political participation. Without charitable status, Dene Nation had to rely almost exclusively on the same government programs that other Dene organizations must apply for, putting the National Office in direct competition with their own members. Most Dene First Nations continue to have very limited administrative funding, and both of the last two Presidents said they felt reluctant to compete with the communities for funding (1993 JUL & SEP; interviews). Extensive wholesale cuts to funding in 1986, consistent cuts to core funding since 1990, and a sizeable deficit have limited options for funding the National Office. The scope and effectiveness of Dene Nation are now severely restricted.

Like other membership- or citizen-based organizations, Dene Nation has had the energy and attention of its staff diverted from the objectives their members demand. Instead, staff are consumed with the task of finding money to keep the organization going. A typical evolution for such organizations is for the very close relationship between membership and operational centre in the early years to gradually diminish as the demands of external funding sources for greater formal management and accounting procedures compete for staff attention and energy (Shragge 1990: 137B140). This pattern seems to have overtaken the Dene Nation. As the scope of Dene Nation's program activities increased to meet membership demands, more staff time and core funding had to be spent trying to generate and account for funds to run them:

> Just going after a proposal ... on average, out of every 5 proposals we send out, we may get 1 that's positive and we usually get a small portion of what we're asking for. ... A lot of times, we don't get administration dollars to offset the cost of these projects, so administration is eaten up from the shortfall that we have from core.
>
> (1993 SEP: interview with a Dene Nation President)

When recovery programs were required C that is, when a program has cost over-runs C staff have had to dip into core funding. Cost over-runs have occurred for a number of reasons. In 1978, staff noted that government programs were holding back funds approved for a program until final audit and reports were received and approved by government personnel; such holdbacks can cause problems for organizations with narrow cashflow margins. In this example, the National Office received in February 1978 the holdback for the community development program that was completed in the 1976B77 fiscal year C a wait of more than a year. In order to have effective programs, financially strained organizations have to marshal their cashflow and hope that holdbacks will be sent promptly.

Another reason for a Dene Nation cost over-run occurred when a program's funding was cut off but, because the program was successful in a community, the staff decided to continue it until local people were prepared, perhaps for taking over the program. Program benefits did not always coincide with the flow of funds. When program funding is provided one year at a time, its

continuation usually depended on the submission of a new proposal along with audited statements and activity reports. The time delay before approval of new funding has often meant that, in addition to cashflow strain, the staff must find new people, as the ones involved last year have had to move on to something else.

Deficits and cost recoveries have been common throughout Indian Brotherhood/Dene Nation's history. Dene Nation has had to rely often on the patience of local businesses that have supplied goods and services but have had to wait to be paid for them. Through recovery programs, staff pay past expenses from current administrative dollars and have to trim current spending as a result (1993 AUG: interview with Executive Director). Such recoveries have had an impact on operations, in that current-year funds cannot be used effectively. Long-distance calls, photocopying, and travel had all had to be limited, and staff positions have had to be cut.

Dene in the communities and regions seldom express appreciation for Dene Nation efforts C although a recent CBC phone-in on the threatened dissolution of the organization brought almost unanimous support for what the Dene Nation stands for. Nonetheless, Dene are critical, particularly about money. Criticism ranges from concerns that moneys reaching the National Office do not benefit communities, staff are overpaid, National Office is not doing enough, and National Office activities duplicate what communities are doing. The most persistent criticism since the earliest years to the present, however, is that the National Office spends too much time on external issues rather than on local concerns. Ironically, this criticism is consistent with the internal concern by National Office staff that they spend too much of their time and energy on external funding issues instead of on program activities for the membership. One President noted how easy it is for people not working in the office to be critical, and emphasized that meeting often and talking out disagreements to address differences can improve relations between the National Office and the membership (1993 SEP: interview). Tensions rooted in funding issues affect not only the effectiveness of the Dene Nation but how it is perceived by its members. When money is tight, members forget the accomplishments of Indian Brotherhood/Dene Nation.

Raising Dene Cultural Awareness

Indian Brotherhood/Dene Nation was established to strengthen Dene culture. The mission statement says it all: "The purpose of the Dene Nation is to retain sovereignty by strengthening the Dene Spiritual Beliefs and Cultural Values in Denendeh." As explained by numerous statements, discussions papers, and Dene who have worked for the political association, "Dene culture" means the peoples' way of life, the view of their world held for generations, their common sense of their reality, values, and principles as expressed in their languages. Many observers have commented on the cultural revitalisation by First Nations throughout Canada, and the resulting pursuit by First Nations

of regaining their inherent right to govern themselves and determine their future development. Dene Nation has been among the leaders of this movement.

Revitalising culture C raising cultural awareness among Dene and non-Dene C has been the focus of many Indian Brotherhood/Dene Nation programs and activities. The organization has produced pamphlets, films, books, and calenders to describe or feature Dene culture and the Dene Nation's political initiatives designed to protect and strengthen it (ie, IBNWT 1973a, 1976B77; Dene Nation 1980?a, 1984d, e; also GNWT 1986, 1987). They have given away hundreds of copies of annual reports, which always contain cultural information or discussion. During the Norman Wells pipeline construction project, Dene Nation ran several programs for cultural survival and produced reports of research conducted on impact assessments that included impacts on traditional pursuits and culture (*see* Dene Nation annual reports 1982B83, 1986B87). Dene Nation's education staff in the 1980s began gathering materials chiefly from interviews with Elders for a Dene classroom curriculum C a project that had to be handed over to the Territorial education ministry when the funding cuts of 1986 resulted in Dene Nation's program being shut down. The Dene kede curriculum was completed for some years and released in the 1990s, and additional grade levels are being developed. Dene National Assemblies have passed many motions directing staff to support traditional economic pursuits, to encourage cultural learning, and to protect lands and renewable resources from undue damage or exploitation.

Assemblies and leadership of Indian Brotherhood/Dene Nation have created other separate organizations, mostly related to Dene culture. The Native Communications Society began as the Indian Brotherhood's communications arm, one way in which the central office could raise awareness among their peoples in their own languages. The Dene Cultural Institute, formed as the result of an Assembly discussion in ┌utsel K'e, became a separate entity at arm's-length from the National Office but still accountable to the Chiefs. Dene Cultural Institute has advocated for Dene Indigenous Knowledge to be part of northern government policy making, recently developed a healing program, and conducted an ambitious research agenda (ie, Johnson 1992; Ryan & Robinson 1993). Denendeh Elders Council, which advises the Cultural Institute, has developed cultural guidelines for community, regional, and Territorial governments (*see* Appendix B of this report). As well as these and political and negotiations organizations, Dene Nation founded Indigenous Survival International.

Indigenous Survival International was established in response to aggressive publicity by animal rights' activists against the fur industry. The organization was to advocate for northern Indigenous Peoples who pursued all forms of traditional harvesting (ie, trapping, hunting, and fishing). Incomes from harvesting activities had dipped so sharply that many people could no longer make a living at them. Indigenous Survival International was similar to Federation of Natives North of 601, in that membership came from different northern cultures: Dene, Métis, Inuit, Inuvialuit from Canada, along with peoples from Alaska and Greenland (Dene Nation histories & chronologies; internal documents; interviews with former and current Presidents). Dene Nation took the lead role in setting up the organization and implementing its activities C which for the most part consisted of public relations to support Indigenous harvesting and related cultural activities. In recent years, the

organization has mediated in government efforts to change the trapping methods of northern Indigenous trappers to meet European Community trade laws and threatened sanctions of Canadian fur products from allegedly inhumane traps.

We have already reported the efforts of Dene to identify themselves as "Dene" rather than generalised or stereotyped "Indians", and to declare themselves a sovereign Indigenous Nation within the state of Canada. There has been consistent encouragement for different cultures within the Dene Nation to use the names for their people in their own language, as well as in more recent years the use of Dene place names and Dene names for First Nations to replace DIAND's designations. An emphasis in the early years on unity within the peoples' movement prompted the creation of a single logo and other symbols of cultural solidarity. Dene were among the first in Canada to oppose Indian Affairs' efforts to separate people, including Métis relatives within their membership. Publications about Dene culture did not focus on only one of the regional cultures but ensured that illustrations and passages in Dene languages represented all of them. However, the distinct regional cultures were always recognized within Dene unity.

Although the members of Indian Brotherhood/Dene Nation have always been the Bands or First Nation communities, many aspects of the organization are carried through regional representation. As early as 1971, efforts were made to have the regions represented in the Indian Brotherhood. A regional Vice-President was elected to the executive by the Chiefs and Band councillors within each region (IBNWT 1973a: organization chart). In 1974, the constitution was amended so that regional Vice-Presidents were elected instead by regional delegates to National Assemblies (IBNWT 1972 to 1974 constitution and by-laws; 1993 SEP: interview with early staff member). At the earliest General, National, and Joint Assemblies C for instance, those in the 1970s at Fort Rae and Fort Good Hope C delegates broke into their regional groups for separate discussion of major agenda topics, which they subsequently reported to the entire Assembly. So strong is the cultural regional identification that, for a workshop at the 1991 Bell Rock Assembly, delegates insisted that they break into their regional groups rather than the cross-cultural groups suggested by the facilitator (Dene Nation 1991). In 1986, when the Chiefs decided that more consistent representation was needed at land settlement talks, a negotiator was appointed to represent each of the Dene regions. Although Tribal Councils were not set up until the last year of the Dene/Métis Negotiations Secretariat's work, regionalism is not a recent development. Cultural identity has always had a firm presence within Dene Nation.

Although the Dene political association had to comply with EuroCanadian characteristics in order to incorporate as a non-profit society, Indian Brotherhood/Dene Nation managed to maintain many cultural characteristics. On the earliest organization charts, the elected Chiefs , Band councillors, and executive were directly answerable to the Dene who elected them. The Indian Brotherhood office was not included on this chart: it was understood to be simply the administrative servant and political voice of the Dene leadership, on behalf of the membership (IBNWT 1973a: 5 corroborated by IBNWT 1974, 1976 and by reports by the Presidents in annual reports). This kind of accountability and authority reflect ideas about Dene governance, as Elders perceived them (Dene

Nation 1984d, e). This constituency- or community-based authority has been consistently recognized by Dene (ie, Dene Nation 1988b: 124). The National Office takes direction for its activities from, first, the National Assembly consisting of community leaders and delegates and, next, the Chiefs elected by First Nation members. The President/National Chief who heads the executive and manages the National Office has always been elected by the National Assembly. Throughout its history, Indian Brotherhood/Dene Nation's board of directors has been the Chiefs. Most external agencies C notably Indian Affairs, the Territorial administration, and northern media C have failed to recognize the lines of authority accurately, assuming instead that the Dene political association is and behaves like a top-down, hierarchical organization. Publicly, the Dene Assemblies have been perceived simply as large meetings.

Very early, Indian Brotherhood staff understood that they would need to arrange for large gatherings to enable their peoples to participate in policy and strategy making, and to share assessments of their situation from time to time. Assemblies hold cultural significance for Dene. For generations, the Dene have pursued their lifeways on their lands in small family groups throughout the cool and cold months. During warmer months, when melted surfaces and insects can make travel on the land uncomfortable, families gathered together at lake- and riverside fish camps. These annual gatherings assumed enormous importance for families as a time for celebrating marriages and births, for watching the maturing of youth, for grieving the passing of loved ones, and for resolving conflicts or seeking guidance from Elders. At such gatherings, experienced hunters exchanged crucial information about trails and changing patterns on the lands visited last season, to add to their knowledge and plan the next seasons' travel. In effect, summer Assemblies were times when the peoples exercised their customary laws and practices collectively, and considered the ways to approach the coming time (*see*, for instance, Dene Nation 1984d, e). Dene customary laws evolved as ways for Dene to govern their behaviour wherever they are C their law is not restricted to a land area as non-Dene jurisdiction is.

Dene General, National, and Joint Assemblies are reflections of the customary seasonal gatherings, where their people governed collectively. Thus, the Indian Brotherhood constitution was amended to require the holding of at least one National Assembly annually "so that [the Chiefs] had to have much more people involved from the communities .. and there were always Elders involved" (1993 OCT: interview with President at the time). Enthusiasm for such political gatherings ran high. In 1978, 300 delegates came to a leadership [Chiefs' only] meeting at their own expense. For several Assemblies in the late 1970s C at Fort Norman [Tulita], Fort Fitzgerald, and Drum Lake C close to 1000 Dene, or one-tenth of the entire Dene population at the time, attended (Dene Nation Assembly transcripts, histories & chronologies, and interviews with former staff and Presidents). Dene Assemblies were highly participatory and highly representative. One former President described some of the early Assemblies as huge political rallies (1993 JUL: interview), while another pointed out that such large attendance contradicted attempts by the federal and Territorial governments to suggest that a few individuals and their non-Dene advisors were running the Indian Brotherhood as a virtual dictatorship (1993 OCT: interview). Even when travel had become more costly and it was more difficult for Dene citizens to leave jobs to go to Assemblies, large numbers

continued to attend. The Hay River Assembly in 1988, attracted 300 voting delegates and about 600 non-voting people to discuss the initialled Agreement-in-Principle for the land settlement. That so many people attended gives even greater support to the motion delegates passed for improvements to the AIP (*see* Appendix A of this report). That the Assembly is the decision-making authority of the Dene Nation is clear: that body only has the authority to amend the association's constitution and by-laws.

Having large gatherings helped to raise both political and cultural awareness among the Dene. Delegates gather in a circle of speakers, and the National Office has always provided translators so that speakers can use their own language to express themselves. The host Chief welcomes delegates and, at the close, each of the Chiefs present expresses gratitude for those who contributed to the success of the Assembly. The Creator is greeted and thanked in prayer at the start and close of every day. Elders are always respected, featured speakers at Assemblies, reminding the peoples about what they have always valued. Anyone C delegate or not C may speak; speaking in turn, without interruption by others, is the respectful custom at Assemblies. One President recalled attending "community meetings in my youth [and being aware of] the principles I saw there, of the elected leadership taking a stance first, each of the family members all speaking and opening it up ... to more and more people" (1993 OCT: interview). Delegates build consensus through their speeches and in informal discussions beyond the circle and after formal sessions.

Assemblies continue for several days, with discussion of all agenda subjects, broken only by procedural motions. Resolutions are drafted by delegates throughout the Assembly, but are presented altogether to the delegates for decisions as the penultimate order of business before announcing the location of the next Assembly. Resolutions are generally supported, often unanimously, because consensus has been reached by the time they are presented:

> Had anybody sat through our Assemblies and listened to people work out together our positions, they would see that we wouldn't necessarily start together and that it was through the process of consensus and listening to each other and talking and giving everybody the proper time to explain his or her position, we finally come to collective decisions. And they are very strong because we have gone through a process of rejecting different options and coming up to a strategy that was acceptable to us.
>
> (1993 OCT: interview with former President)

Resolutions for which consensus has not been reached are more likely to be withdrawn than not supported by a vote C a practice consistent with Dene non-intervention. The current National Chief indicated that, in recent years, the staff have tried to ensure that communities are aware ahead of time of issues likely to be raised at an Assembly. For instance, agenda will be circulated to First Nations with information-only items so that Assembly delegates can inform themselves before having to reach a decision about them at the Assembly (1993 SEP: interview).

Not all Dene leaders now agree about the role or necessity of Assemblies. Some leaders who supported the Agreement-in-Principle at the 1988 Assembly wondered if that would be the last Assembly the peoples would need to hold (Dene Nation 1988b: 46). And in recent years, several

leaders have questions the logic of spending so much money to hold Assemblies and even Chiefs' meetings when funding had become to tight (Dene Nation 1992, 1993: transcripts; internal correspondence). One former President, for instance, spoke about the need for Dene during his term of office to get on with land settlement talks after years of stalling. He said that he and his staff were "compelled to come up with a substantive position to begin negotiations. Those were all duly approved by the Chiefs at Assemblies and Leadership meetings: everything we did was duly mandated" (1993 JUL: interview). This process is, in fact, the opposite of the flow of authority and decision making before and after this President's term, when the mandate flowed from Assemblies and leadership meetings to the National Office executive and staff. In 1989B90, a Dene Nation Vice-President suggested that the elected Chiefs ought to be accountable to each other (Annual Report: 6), apparently forgetting that they are accountable to the people who select them. Such shifts in thinking reflect the impact of non-Dene influences on some leaders and changes in their perceptions about the nature of leadership.

By custom, Dene leaders for generations were individuals gifted or skilled in providing what their people needed to survive. Most often, Dene leaders were respected Elders. All the former Presidents we interviewed agreed that the Chiefs representing Dene in the early years of Indian Brotherhood were respected Elders (1993 JUL to OCT: interviews). One noted that younger leaders forget the way Elders resolve conflict:

> What happened all the time in meetings was the older people ... always came in with the same message "We've got to work together, we've got to listen to each other, we've got to respect one another." ... I think it was too late for us when we realized that they were the pacifiers and the peace-makers of the Nation and, when they were no longer there saying those things that we thought were so simple and wasn't worth saying, you know, the fight was on. ... You read the transcripts of the Dene Assemblies and that, it's a kind of verbal abuse ... [that] would never have been allowed, you know, in the years when the Elders were there. ... It was the young Chiefs, you know, tat led the charge, I think, disregarding the basic message that, in the end, nothing is worth getting split up about. The message was lost. (1993 JUL: interview)

At various times, Dene have recommended having a formal Elders Council to work with the young leaders of the Dene Nation but, so far, the only ones established have been for the Dene Cultural Institute, individual First Nations, and the Deh Cho First Nations.

A long-time National Office staff member noted that some of the young leaders do not even consult their Elders on community matters (1993 SEP: interview). One young Chief at the Hay River Assembly declared that he sees and knows things that his Elders do not; further, he said that he was elected to make decisions, and he did not want to be controlled by his people, although he must respond to their requests (Dene Nation 1988b: 181B1830. By contrast, other Chiefs spoke eloquently and at length about the advice given them by their Elders, to assist with the position being taken on the Agreement-in-Principle. In 1974, Chiefs at the Fort Good Hope Joint Assembly spoke about ensuring ways for Elders to be involved in planning for the land settlement talks (IBNWT 1974: Assembly transcript). However, like the preference for guide-lines on the settlement going from local people to the negotiators (as expressed in IBNWT 1975c), no formal processes or structures were set up and the implementation of these good intentions was left to individual leaders.

PART THREE: CAPACITY BUILDING FOR SELF-DETERMINATION

Feelings among Dene that their political association ought to be run by their own people were often fierce. Community people have frequently expressed disappointment that non-aboriginal resource people were on staff; sometimes, the non-Dene have been asked to leave. From time to time, National Office staff felt obliged to explain why a professional person was needed and why no Dene had the expertise. Here is an example of the explanation given for the hiring of an economic professor as advisor on development in the mid-1970s:

> He will read what the government economists write about us and tell us what is wrong with it. ... [We need him] to tell us ... the sort of information to help us choose a land claim which will give us more control over development and make sure we get the most benefit from it. (IBNWT 1974: "Report on Economist for Land Claims Research Project" in Board meeting minutes)

This particular advisor was especially useful to National Office staff, who had to ask their Chiefs and people to be supportive after local media protested the economist's views (IBNWT Board meeting minutes, discussion papers, internal correspondence; *news north*). For the most part, non-Dene resource people have been positive influences on their Dene colleagues. People of many professions and academic backgrounds C often with alternative or nonconventional perspectives C contributed their knowledge and their innovative thinking. It is sometimes a drawback for citizen-based advocacy organizations to rely on outside professionals, because they may persuade organizers to change their direction (Christiansen-Ruffman & Stuart 1977). Dene seem to have successfully avoided such influence. In terms of effectiveness, however, Indian Brotherhood/Dene Nation could only afford to pay for professional expertise when funding permitted: only rarely have such persons been willing to volunteer. What the association may have lost in technical polish, it gained in avoiding acquiring too much non-Dene influence.

Despite being surrounded and inundated by non-Dene influences, and despite the lack of Elders present much of the time, many National Office staff felt touched by their influence. One Dene Nation President observed that many Elders removed themselves from their customary role; he suggested that, with changes that have occurred to the extended Dene family, Elders and youth are rarely together now and Elders are not always recognized as the leader of a family (1993 SEP: interview). Another former President felt that it was "impossible for us to talk about Dene laws C whether they were given to us from the Supreme Being or whether they were man-made through the history of the Dene C without the Elders (1993 OCT: interview). And in the 1989B90 annual report, the Executive Director noted that "the most important lesson [the Dene have learned] is the discovery time and again, that the answer to many of our problems lies within our own culture and traditions." The difficulty for some Dene seems to be making the conscious effort not to be distracted from their priorities.

While Elders were never replaced by non-Dene professionals in guiding staff, their influence became indirect and diluted by some aspects of the work to be done. The founding President and the current National Chief both mentioned that speedy decision making required for office

operations C more typical of non-Dene than Dene ways C has not left time or due care for the kind of deliberations that Elders would take (1993 SEP: separate interviews). Their comments are mindful of these concerns of an early staff member:

> I've been taught to make decisions on what I know, and the things I know are through reading and talking to people. And when I'm in the office, I don't have too much time to read, and so I feel as though I don't know what I'm deciding on. As we make decisions, I feel as though I'm saying "Yes, I agree" but I don't feel comfortable. ... And I don't feel that I can say "no" without a basis. I could say "Well, no, because I don't know about it" C but then who's going to give me the time to know about it, because things have to keep going. I suppose in a way a lot of Indian people feel that way C they don't know about an issue, but they have to decide right now. (IBNWT: 1974f: side 11)

Externally generated pressures still urge Dene in the National Office to make decisions rapidly, often without sufficient time to deliberate issues and possible positions. For peoples accustomed to face-to-face discussion, there are challenges for acquiring the skills to analyse the vast amounts of written information that demand responses, and manage it for easy retrieval and distribution. Many internal memos are filed in the Library/Archives from different times during the history of the association lamenting the time staff spend dealing with non-Dene demands when they would prefer to be working toward Dene goals.

This issue C National Office staff being able to decide whether to spend time and effort responding to external, usually non-Dene, demands or fulfilling Dene proposals C more than any other goes to the heart of the debate over Dene government and self-determination. How can Dene leaders today combine meeting these competing demands and remain accountable to their own people? Do Dene go forward with development by accepting government modern-isation, or by drawing on Dene values and principles? Can young Dene make the effort to focus on becoming aware of and assessing their circumstances, and to perceive them as their Elders can? Can young Dene learn how to apply traditional thinking and values to today's issues?

Dene are deeply spiritual peoples, identifying themselves with the lands to which they are Indigenous. They mark their political gatherings C even National Office staff meetings C with prayer. If they are present, Elders are asked to offer the prayers. They seek the steadying influence of the Creator to guide their speech and their ability to listen and build consensus. Perhaps no other action so distinctly sets apart Dene from non-Dene northern politics.

PART THREE: CAPACITY BUILDING FOR SELF-DETERMINATION

Conclusion

Dene Chiefs who asked young people in 1969 to set up an organization to raise their peoples' awareness might find it hard to believe that, 25 years later there are dozens of Dene political councils C most of them started through the efforts of the association they established. In the early years of the Indian Brotherhood, Dene staff told us they had to scramble to learn how government works, how to get the attention of very senior officials, how industry works, how to get funding, how to rally support, how to determine the best strategies, and how to follow Dene mandates when public servants insist that its policies and procedures be followed instead. From the outset, Chiefs and staff struggled against employing non-Dene institutional practices, preferring to fulfil their desire to be as Dene as possible:

> I think ... we were becoming aware that there was a relationship between how we organize ourselves and how we define ourselves as Dene. The question came out: If we organize ourselves under White Man's rules and procedures, how can we still pursue the objectives that we originally had of preserving and enhancing Dene identity and Dene heritage? There was a relationship there that we knew we had to be very careful of: this was a topic of several of the brainstorming sessions that we had. There as an element of expediency there as well. We had to have an organization that go the seed money with which to do some of the things that we wanted to do, or address some of those things.
>
> (1993 SEP: interview with early staff member)

This dilemma has been expressed by Dene in every kind of political organization ever since.

The scope of activities undertaken by people involved with Indian Brotherhood/Dene Nation during the past 25 years has been very broad. In general, it can be observed that changes in scope have been influenced most by external pressures, especially from federal fickleness for funding. In the early years, Dene Chiefs and Elders guiding the organization gave thorough direction to the younger people fired by their enthusiasm for a people's movement who were running the organization's activities. It can be seen that those early activities came from within: the organization set its own agenda and sought ways to meet their peoples' expressed needs. Dene also experimented with innovation and creativity in their programs and research.

Federal government support for encouraging greater aboriginal citizen participation C through which Dene Nation received its core funding C shifted in the 1980s with the change in governing party. No longer supportive of advocacy associations that lobbied for changes to existing polices, the new federal government instead shifted its approval to such self-financing organized interest groups as the Canadian Bankers Association or professional lobbyists (Esberey & Skogstad in Krause & Wagenberg 1991). This same government seemed more interested in supporting the land settlement procedures than programs the Dene Nation was carrying out for its membership. In 1989B90, for example, the Dene/Métis Negotiations Secretariat received nearly $4 million toward its administrative and operating expenses, while Dene Nation received just under $300 000. It is truly ironic how many Dene initiatives that were strongly opposed by senior Territorial and federal officials

– including most of the 11 Indian Affairs ministers since 1969 – are now advocated by government administrations or policy makers.

The influence of Indian Affairs over Dene must not be underestimated. In addition to its responsibilities toward Dene as "Indians", DIAND has diverse and competing mandates in the Dene homeland. The ministry has responsibility for the Territorial administration as well as for First Nations and Tribal Councils – governments with competing authorities. For many years, while the Territorial Council struggled to establish its own legitimacy, northern political associations like the Dene Nation were getting a respectful hearing from the general public and, at times, federal ministers (Braden 1976: esp. 155). DIAND handles both devolution to the Territorial administration and implementation of the inherent right to aboriginal government. The Northern Development branch of the NWT Regional Office of Indian Affairs handles both environmental management and resource exploitation. Indian Affairs headquarters handles land settlement negotiations, while the ministry also has responsibility to meet Canada's fiduciary obligation to protect aboriginal land interests. The Indian Affairs ministry in NWT has become increasingly complicated and contradictory, while Dene evolved politically.

The bitterness with which senior officials have treated and continue to treat Dene Nation seems rooted in the steadiness and consistency of Dene positions on self-government and self-determination. Dene understanding of their culture is the very broadest possible: it is their way of life. For Indian Brotherhood staff to enhance and protect Dene culture meant in part trying to address the socio-cultural and economic circumstances in which Dene were living at the time. While federal officials initially agreed that Indian Brotherhood proposals were worthwhile, they sought to limit Dene activities they regarded as competing with government authority. In 1975, for instance, an Indian Affairs manager requested of Indian Brotherhood staff very detailed reports under their agreement to fund Band and community development programs because Dene

> workers are devoting a considerable amount of time to community and social work problems of a general nature that are not specified in the Agreement, and to personal problems like alcoholism. I have no doubt that these problems are troubling Indian people in the Territories, but the Agreement is not intended to finance the Brotherhood in carrying out general social reforms. ... The objectives that were set out in the Agreement were carefully chosen to prevent conflict with the responsibilities of other Federal and Territorial Government Departments. (DIAND 1975a)

Clearly, the effectiveness of Indian Brotherhood/Dene Nation in carrying out activities from its full scope – meeting the mandate set out by its membership – was impaired by differences perceived about what the scope of its mandate *should* be, on the part of non-Dene government. As shown in this study, Dene staff persisted in their efforts to do what their members wanted. The gap in perception of what authority is acceptable for Dene, while it has diminished over the past 25 years, nevertheless is still there.

With the official shift in attitude toward support for advocacy associations came disastrous funding cuts and continual undermining of Dene Nation by Indian Affairs. Perhaps considering the

Dene association far too effective, some government officials manipulated the organization's funding, which resulted in an inability for the Dene National Office to meet its peoples' needs. Ironically, this external undermining of the central political association resulted in a strengthening of overall capacity of Dene throughout Denendeh. With little work available at the National Office, Dene staff moved to local and Tribal organizations, carrying with them the ideals and strategic thinking, their knowledge of community development processes learned through their work with the central organization. These individuals have gone on to sustain Dene culture and political aspirations for self-determination in every kind of Dene institution throughout the peoples' homeland. Given the consistent commitment of Indian Brotherhood/Dene Nation to highly participatory citizen-based participation, the effectiveness of the organization must be assessed in this light.

As a training ground for capacity building in self-government and self-determination that are grounded in Dene values and principles, Indian Brotherhood/Dene Nation has been a very successful political organization. In recent years, the Chiefs C still the organization's board C have withdrawn their attentive direction in order to concentrate on often overwhelming local (First Nation) and tribal (regional) issues. At the same time, the organization has been wilfully undermined and persistently redefined by federal officials, as if it is DIAND's task to recreate Dene Nation's history. Federal divide-and-conquer tactics used to resist Dene efforts to free themselves from colonialism C tactics familiar to the founders of Indian Brotherhood/Dene Nation C can still be seen at work 25 years later in Denendeh. The focus for the people's struggle now is the First Nations and Tribal Councils. The struggle for Dene self-determination continues and, generally, the Dene taking leading roles are those whose names and work grace the administrative archives of the Dene Nation.

DENE NATION: AN ANALYSIS

part four

Summary

by Susan Quirk

Summary

The Indian Brotherhood of the NWT began with lofty ideals and a strong sense of self-preservation. For more than two decades, the scope of the Dene national organization has been very broad and the approaches taken for most activities have been innovative. The organization has been far more than simply a land "claim" negotiating body, as it has been narrowly charac-terised by DIAND (1993b) and by one of its former Presidents (1993 JUL: interview). Often, external perceptions have underestimated the ability of the Dene to organize themselves and act in their own interests. Father René Fumoleau readily recalls the shock on the streets of Yellow-knife when, in 1973, the Dene Chiefs took their case to court (personal communication). The organization's early staff gave themselves the widest possible mandate C younger Dene being influenced by "Indian" and popular citizen movements, and the Elder leaders persisting in their customary role. Indian Brotherhood/Dene Nation accomplished some extraordinary successes, being especially effective with single-focus issues, like the Mackenzie Valley pipeline, which Dene from all regional cultures could support.

Consensus among the different Dene cultures on unified approaches to issues has been rare. Unity was stressed during the formative years, partly from the sheer exuberance of reviving Dene identity and discovering common causes. Unity was essential for a "peoples' movement", as heard clearly in the rhetoric of what the Dene involved expressed as their struggle. The pressure in the 1970s to unite Dene and Métis was needful, if provocative, since not all Dene nor all Métis were persuaded of the need and government authorities for Indian Affairs at the time were not supportive of non-Treaty people. Unity was a useful tool, but tended to camouflage cultural diversity. As noted before, distinct regions within the Dene Nation are not recent political developments, but have existed culturally for many generations. As issues confronting the Dene became increasingly localized and multi-focused, the cultural regions responded differently C just as First Nations throughout Canada are developing discrete arrangements for, for instance, wildlife management or self-government. Reasons or pressures for maintaining Dene unity within a single political organization C in order to articulate responses or to plan pro-active strategies C are not as persuasive at this time.

The overall effectiveness of the Dene Nation as an organization is reflected through the evident respect C in both aboriginal and non-aboriginal senses C with which it is regarded, in particular by other First Nations and other Indigenous Peoples. The political proficiency of the Dene is readily indicated by the many individuals who have moved from the National Office into every kind of formal institution in the western NWT, as well as in Edmonton and Ottawa. Former Dene Nation leaders and employees are now elected Chiefs and MLAs; trainers and educators; and program co-ordinators or managers for community or tribal councils, for ongoing land negotiations, for non-political organizations, and for the Grand Council Treaty 8 and the Assembly of First

Nations. While inconsistent funding has resulted in less effective distribution of information, Dene with skills learned in the National Office have become catalysts for awareness building, capacity development, and strategic planning elsewhere in Denendeh.

Perceptions of the organization's scope from within the Dene Nation have changed as the needs of the membership and the capabilities of the leadership have altered. The organization's constitutional mandate has been tinkered with but not drastically altered since 1970. However, there has been a recurring preoccupation with changes to the structure and the styles of manage-ment to meet internal demands (eg, IBNWT 1972 General Assembly minutes; Dene Nation 1979b, c, 1980b, 1984d, 1986a & b, and 1991). People who study membership-based organizations point out that internal assessment is essential for the organization to adjust to the evolving needs of its members (ie, Shragge 1990). Dene Nation self-assessments, from this perspective, were healthy attempts to improve the ability of the organization to reflect rapid changes in the Dene communities and regions. These reviews, however, have been construed by outsiders C notably northern media C and often by some Dene as signs of the organization's incompetence or inability to represent its members. On the strength of the establishment of the most recent Review Committee, local media prophesied the demise of the Dene Nation in 1992 and again in 1993, rather than commending the organization for trying to improve itself.

Dene Nation self-assessments or reviews were thorough, but tended to focus on organi-zation charts and job responsibilities, perhaps experimenting with Canadian-style structures and procedures. However, these assessments generally neglected to consider whether the consti-tutional mandate and Assembly directives were followed up, whether structures and responsi-bilities encouraged accountability or authentically Dene ways to operate, or whether the programs offered or the processes through which staff worked were effective. Only the 1993 Review Committee examined some of these issues; its findings were reported to the Royal Commission's Intervenor Program.

National Office staff, in general, have been effective in maintaining critical awareness of relevant issues, developing political acuity, and giving voice to Dene aspirations. The early years are marked by the intensity of staff efforts to analyze circumstances, devise strategies, match funding sources to the organization's plans, and distribute analytical skills and information outward to the leadership and communities. Programs run by the National Office, notably those in the past decade, have tended to be project-driven based on the submission of individual funding proposals. Thus, programs provided were those deemed acceptable to external agencies that agreed to fund them. This ad-hoc and incremental approach to managing programs, by comparison to the planned strategies of the earlier years, seems less intently linked to the goals of the constitutional mandate and to specific Assembly directives. The organization has yet to develop consistent and, preferably, qualitative ways to show its effectiveness. Having been able to evaluate its effectiveness would have been useful for the Dene Nation not only to detect administrative or process weaknesses and fix them, but also to demonstrate to its membership and to external funding sources what progress it had been making. Still, formal Dene organiza-tions have been in existence only a brief time and may yet develop measures of their efficacy.

PART FOUR: SUMMARY

Determining the Dene Future

Dene Nation leaders for the past 25 years have sought the means to self-determination. For them, self-determination is a gathered bundle of long-held ideas and practices encompassing self-reliance (rather than dependency), collective collaboration (rather than individual consumption), spiritual inheritance (rather than propertied estates), and holistic well being for individuals, families, communities, and Nations (rather than assimilation). For the NWT Dene, a Canadian-style town rather than the land of their ancestors has been "home" and "community" for less than four decades. Self-determination is not a dim memory. It is not surprising that, through their political organization, the Dene have been such strong, persistent, and outspoken advocates for a return to their former autonomy.

In some senses, changing circumstances in the western NWT represent what is happening in the rest of Canada. Federal and Territorial authorities have been haggling over the distribution of their jurisdictional powers, while they both assume that First Nations will settle for being handed delegated authority within the European-based system. First Nations continue to press for recognition of their existing authority to govern themselves and to determine the style, pace, and values of their own development. Some First Nations (such as the Sechelt, Inuit, and some NWT Dene) have opted for a form of public or delegated-municipal form of government as their aboriginal self-government. (See Boldt 1993 for a comprehensive discussion of the risks.) In the self-government debate in the NWT, one hears the underlying clash between the pressures to modernise and the aspirations to develop in authentically aboriginal ways.

Many observers C particularly in the northern media C characterise the current situation of the Dene Nation as a fractured organization that is a ghost of its former spirited self. Many of these observers also claim that, since so many of the Dene regions seem to be supporting some form of unsegregated delegated local government, the proponents of public government for the western NWT C among them a former Dene Nation President C have won. This might suggest, ironically, that the Dene whose protest against the 1969 White Paper resulted in the formation of the Indian Brotherhood/Dene Nation now seem to be in favour of the White Paper's objectives. Even if this stance is rationalized as the unwilling acceptance that no other option is being offered, this abrupt about-face seems improbable.

During the 1980s, when the Western Constitutional Forum was active, the Dene Nation supported public government (ie, DN/MANWT 1981). At that time, the combined Dene and Métis populations outnumbered the non-aboriginal population, and prospects for the uneasy Dene/Métis unity remained optimistic, if unrealistic. Their adherence to public government was linked to land settlements. Since the 1973 *Statement on Claims* C the federal government's self-protective response to the *Calder* judgment C Indian Affairs negotiators, as their opening and final positions, have negotiated public or delegated-municipal forms of government as the self-government component of "claims". This has been uniformly applied to "claims" in the NWT, as DIAND officials reported in their paper to the Royal Commission on Aboriginal Peoples on the evolution of northern governments (DIAND 1993b). The self-government component of the

Agreement-in-Principle was one of those included for renegotiation in the 1988 Hay River Assembly motion (*see* Appendix A of this report). However, Gwich'in and Sahtú regions, settling their "claims" based on the 1990 Dene/Métis initialled Final Agreement, have agreed to a form of self-government within the framework of public government.

Preliminary evidence demonstrates that self-government proposals emanating from these regions may disappoint observers looking for conventional municipal models. Proposals such as the Inuvialuit-Gwich'in Dene-Métis approach for Inuvik are highly autonomous, reflecting aboriginal authenticity and little perceived role for central (ie, Territorial) administration. Local First Nation councils have not been fooled by federal or Territorial policies, such as the Community Transfer Initiative, or ongoing programs that are suddenly re-labelled "community based". In practice, they mean that highly paid and professionally trained federal or Territorial public servants devise programs, and expect under-resourced local administrations to accept responsibility for them while receiving no additional funding or expertise toward their efforts. Since such delegated authority has been a feature of northern administration for some years, most local Dene staff have become adept at adjusting external government plans to meet some of their immediate needs. But, given the extent of chronic neglect by external governments of local social and environmental circumstances, such juggling C however dextrous C is never enough.

As noted earlier, the Dene have only in recent decades been exposed to EuroCanadian towns and governments. They have shown great agility in learning new ways C too often with tragic results C and combining them with the teachings of their Elders, when those have been learned and understood. The 1969 White Paper galvanized the Dene leadership to unite under a formal structure, the Indian Brotherhood. Since then, many Elders, Chiefs, and Dene Nation staff have pulled themselves out of the shock resulting from relocation and enforced residential schooling. They have not simply objected to government imposition of EuroCanadian structures and procedures, but have prepared alternatives to the assumption that delegated styles of government would result in socio-economic advancement for their people. The Dene Nation has steadfastly resisted assimilation into a modern northern state. From the earliest days of the Indian Brotherhood, Dene leaders recognized that community development C their way of achieving self-determination C was the vital issue, and that self-government is only one tool to move the Dene along the path toward it.

Calls from all Dene regions for the highest forms of citizen participation for First Nations C self-government C are consistent with those heard elsewhere in Canada. Individuals leading and staffing Dene organizations have made tremendous gains in a very short time. On Arnstein's ladder of citizen participation (see page 59), they have climbed from being limited to the lowest rung to having their aspirations for the highest rung taken seriously. The Dene have not resorted to violence or civil disobedience to accomplish change. Their contribution has been to demand that the Canadian polity grant equitable, genuine participation to its aboriginal citizens within their homelands: not just "consultation" nor "partnership", but recognition and implementation of their inherent right to legal political authority.

PART FOUR: SUMMARY

The principles of the most highly participatory forms of community development took firm root among the Dene involved from the earliest days of the Indian Brotherhood. Logically, the attraction to these principles for the Dene would seem to be the ease with which they fit or could be linked to the customary ways of Dene decision making, conflict resolution, and self-determination. Subsequently, when individuals left the Dene National Office and returned to their local or tribal councils, they took these principles with them. As a result of this distribution of political acuity from the National Office, every region of Denendeh continues to advocate community development in some form. Since the mid-1980s, each cultural region has been preparing its unique approaches to self-government, so that local people can determine their own development according to their own terms. This is likely to be the long-lasting legacy of the broad scope and analytical effectiveness of the Indian Brotherhood/Dene Nation.

Many observers now confuse the Dene Nation, the original inhabitants of Denendeh, with the Dene Nation, the political organization formed to unite the different Dene cultures against organized government assimilation. At present, the Dene in Denendeh collectively may not feel inclined to give the kind of guidance they once did to the national political organization that has continually drawn the hostile wrath of non-Dene governments. But the Dene as Indigenous Nations have not diminished. The Dene as Indigenous Nations have not lost their commitment to recovering their autonomous self-determination: the processes for doing so are continuing separately, in ways that are suitable for each cultural region. Interest in healing and cultural revitalization is everywhere, and self-confidence among Dene members is spreading. Younger Dene in greater numbers appeal to Assemblies for the opportunity to learn their own language, to learn the ways the Elders can show them, to begin to understand what their Elders know.

The energies and attention of the Dene leadership have shifted away from the single central political organization to focus instead on strengthening and transforming their local and tribal councils into governments. Considering that no Dene Band in the NWT had any funding until the Indian Brotherhood lobbied for and obtained it in 1972, it is remarkable that such a transformation is receiving supportive attention only 20 years later. What the Dene may achieve C separately within their cultural regions, or collectively C in the next 25 years is likely to be just as remarkable, just as worthwhile to watch unfolding.

Dene Nation: An Analysis

appendices

A The 1988 Joint Dene/Métis Assemblies Hay River Motion
To Improve the Agreement-in-Principle

B Dene Cultural Institute Elders Council Guiding Principles

C Comprehensive Chronology of Dene History

people consulted

materials consulted

A The 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the Agreement-in-Principle

MOTION NO. 15

DENE NATIONAL ASSEMBLY
HAY RIVER RESERVE, N.W.T. / XAH O DEH, DENENDEH
JULY 04B11, 1988

WHEREAS aboriginal rights were never surrendered in Treaties 8 and 11 or the related Scrip Agreements, and they cannot be taken away in the future; and

WHEREAS the Dene are committed to implementing their aboriginal rights; and

WHEREAS the Dene national Assembly has discussed the AIP; and

WHEREAS through the Iqaluit Agreement, agreements on political rights including the following have been reached between Dene/Metis and the Legislative Assembly of the Northwest Territories which bear directly or indirectly on aspects of the AIP, and these negotiations have been held with the full support of the Federal Government:

" ... the (two) constitutions (of the Northwest Territories) must recognize, affirm and guarantee the unique rights of the Inuit, Dene, Metis and Inuvialuit, including their land claims rights and their rights of self-government"

" ... communities should have control over those matters which affect them exclusively and they should have input and influence over those decisions which affect them as well as others"

"Aboriginal rights relating to language, culture and any other political rights which are not included in claims agreements shall be entrenched in the constitution and means shall be found to help ensure that all aboriginal rights are protected"

"There shall be a guarantee of aboriginal participation in government and significant impact on decision-making in the future, including perhaps exclusive aboriginal jurisdictions in limited areas of concern to aboriginal people; the focus would be on cultural matters and on the special relationship that exists between aboriginal peoples and the land, and the political protections required to ensure its maintenance"

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

DENE NATION: AN ANALYSIS

"The constitution or those parts which address each of these principles and objectives must not be amendable without the approval of aboriginal and non-aboriginal peoples"

"It is intended that, if negotiations toward a western constitution succeed, they will result in a constitution whose relevant sections are designed to constitute, together with provisions in land claims agreements, the definitions of aboriginal self-government in the western jurisdiction. Any such definition must fully reflect any right of self-government held by Dene, Metis, and Inuvialuit"

WHEREAS the attached conditions, together with acceptable sections of the proposed AIP, are consistent with the Federal Government's Comprehensive Claims policy and the negotiating mandates of the Dene/Metis;

BE IT RESOLVED THAT

1. The Dene National Assembly hereby informs the Government of Canada that it has mandated its appropriate signatories to sign the AIP when the Government of Canada agrees, in the AIP, to negotiate or renegotiate the matters set out in Appendix A.

2. The Government of Canada is hereby given notice of the attached instructions to the Dene/Metis negotiators, as set out in Appendix B.

3. The Government of Canada is hereby given notice that the Dene will not ratify a Final Agreement until it is fully satisfied with the results of the negotiations of Aboriginal self-government for the Dene/Metis.

MOVED BY: Gabe Hardisty, Voting Delegate, Wrigley, N.W.T.

SECONDED BY: Francois Paulette, Voting Delegate, Fort Smith, N.W.T.

PASSED: July 10, 1988

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX A [of Motion No. 15/1988]

[ie, Items Dene/Metis wanted negotiated or renegotiated; numbers refer to AIP articles]

1. Political Rights
   a) Self-government (3.1.24; 25.8.1)
   b) Laws of General Application (3.1.18; 28.1.1(c))
   c) Jurisdiction of Boards (13.3.1; 13.10.1; 13.10.2; 28.1.1(a); 28.2.5; 28.3.1; 28.4.1(a))

2. Dene/Metis Lands
   a) Remaining Aboriginal Title on Dene/Metis Lands (3.1.9(a)(i); 3.9(b); 21.1.1)
   b) Dene/Metis Lands in Alberta (new item)
   c) Status as Indian Lands (21.1.14)
   d) Public and Commercial Access (22.1.6; 22.2.1; 22.2.4; 22.4.1; 22.4.3)
   e) Changes to Municipal Boundaries (25.6)
   f) Selection Criteria (21.1.7; 21.1.8)
   g) Band/Local Ownership (5.1.2)
   h) Water Rights (27.1.7; 21.1.3; new items)
   i) Taxation on Dene/Metis Lands (11.4; 11.5.1; 11.5.2)

3. Land and Water Management
   a) Relationship between Boards and Minister (16.5.3; 28.2.10; 28.4.2(b))
   b) Terms for Implementation (28)
   c) Impact Review (28.3.6; 28.3.7)
   d) Land Use Planning (28.2.11)

4. Renewable Resources
   a) Legislative Restrictions on Harvesting Rights (13.3.2; 13.3.6; 14.1.3)
   b) Other Government Restrictions on Harvesting Rights (13.4.14; 14.1.4(b); 15.1.3(b); 16.8.1; 17.1.5)
   c) Harvesting Compensation (14.1.8(d); 15.1.7(d); 20)
   d) Wildlife Management Board (13.10.5; 13.10.14; 13.10.10; 13.10.28; 13.10.31; new item)
   e) Economic Measures related to Harvesting (new item; 12.1.2; 12.1.4)

5. General Provisions
   a) Interpretation Clauses (3.1.15; 3.1.16)
   b) Indemnity Clause (3.1.12)
   c) Surrender of Rights South of 60 (3.1.9(a)(1))
   Protection of Non-Resident Rights (new item)

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX A [of Motion No. 15/1988]

[ie, Items Dene/Metis wanted negotiated or renegotiated; numbers refer to AIP articles]

6. **Settlement Corporations: Permitted Activities** (11, Annex A)

7. **Language and Incidental Amendments**

APPENDIX B [of Motion No. 15/1988]

INSTRUCTIONS TO NEGOTIATORS

1. Political Rights

a) Self-Government

The Final Agreement should recognize the continuing opportunity of the Dene/Metis to achieve recognition of their right to self-government through the Constitutional Alliance process or its successor. The Agreement should also recognize the Principles for Consti-tutional Development agreed upon by the Dene/Metis and Legislative Assembly of the Northwest Territories through the Iqaluit Agreement.

b) & c) Laws of General Application, & Jurisdiction of Boards

These clauses must be made to the results of the political rights negotiations. The Agree-ment should allow for Dene/Metis jurisdiction over wildlife and land and water manage-ment on Dene/Metis lands.

2. Dene/Metis Lands

a) Retaining Aboriginal Title on Dene/Metis Lands

Aboriginal title on Dene/Metis lands should not be surrendered.

b) Dene/Metis Lands in Alberta

Provisions for Alberta land in the vicinity of Fort Fitzgerald and satisfactory to the South Slave Region should be negotiated.

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX B [of Motion No. 15/1988]

continued ... INSTRUCTIONS TO NEGOTIATORS

c) Status as Indian Lands

Dene/Metis lands should remain federal Indian lands under the Constitution Act, s.91(24) unless otherwise agreed in the political rights negotiations.

d) Public and Commercial Access

The access provisions should not permit commercial fishermen or outfitters to use Dene/Metis lands without charge or other reasonable terms set by the Dene/Metis.

The application of public access rights should be identified in land selections.

Public access across Dene/Metis lands to reach places of recreation should only be by public roads or with consent of Dene/Metis consent.

Pre-existing commercial access rights should only be extended in any way where there is a legal right to renew or extend such rights, or with Dene/Metis consent.

No building of roads or airstrips without Dene/Metis consent should be permitted except by expropriator, unless specifically agreed upon during land selection.

Except as public access, there should be no access across Dene/Metis lands to neigh-bouring lands for "commercial purposes", without Dene/Metis consent.

e) Changes to Municipal Boundaries

Changes affecting Dene/Metis lands should not be made without Dene/Metis consent, or by the expropriation process.

f) Selection Criteria

The clauses requiring that lands be of average value and topography, and that lands be set aside for public community purposes should be dropped.

g) Band/Local Ownership

The Agreement should recognize that Dene/Metis may hold title to their lands through the Band/Local.

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX B [of Motion No. 15/1988]

continued ... INSTRUCTIONS TO NEGOTIATORS

h) Water Rights

The Dene/Metis should be able to own part of the waterbed of a river or lake. Compensation should be payable by authorized users of water if their authority did not specifically permit the damage caused.

Dene/Metis ownership of water on Dene/metis lands should be negotiable.

Hydro revenues should be negotiable as part of the resource revenue sharing, and leading to an increased share of resource revenue in the AIP.

i) Taxation on Dene/Metis Lands

Tax-free activity on Dene/Metis lands should be negotiable.

3. Land and Water Management

a) Relationship between Boards and Minister

This should be set out in the Final Agreement. Ministerial review should only be by disallowance.

b) Terms for Implementation

These should be set out in the Final Agreement.

c) Impact Review

There should only be one review process, with 50 : 50 Dene/Metis and government representation.

d) Land Use Planning

Plans should be binding on government agencies and users of the land.

4. Renewable Resources

a) Legislative Restrictions on Harvesting Rights

There should be no such restrictions except as are necessary.

Reference to restrictions under the Migratory Birds Act should be removed.

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX B [of Motion No. 15/1988]

continued ... **INSTRUCTIONS TO NEGOTIATORS**

b) Other Limits

Limits on Dene/Metis harvesting of trees where it would conflict with authorized activities on Crown lands should be removed. Park management plans should not be allowed to override Dene/Metis harvesting of trees.

The protected area clause should be deleted.

The arbitration clause should be deleted.

c) Harvesting Compensation

Compensation should be payable for losses relating to all renewable resources. It should be based on loss of opportunity as well as past use. It should be payable on a family or community basis.

d) Wildlife Management Board

The Minister should not select the chair; the Dene/metis component of the quorum should be in the Agreement, and Dene/Metis Board Members should not be removed without Dene/Metis consent.

The Minister should not be entitled to change an interim decision of the Board.

Negotiations respecting the Boards responsible for land and water management should also be based on these instructions.

Ownership and management of a herd of free-roaming bison in the Slave River Lowlands should also be negotiable.

e) Economic Measures related to Harvesting

There should be negotiation regarding income tax and other taxes on activities related to traditional harvesting. In the Economic Measures section, government's commitments should be binding, and reform of existing programs should be required where necessary.

continued ... 1988 Joint Dene/Métis Assemblies Hay River Motion To Improve the AIP

APPENDIX B [of Motion No. 15/1988]

continued ... INSTRUCTIONS TO NEGOTIATORS

5. General Provisions

a) Interpretation Clauses

The clause requiring that doubt should not be settled in favour of either party should be removed. The clause permitting the Final Agreement to be used to assist in under-standing settlement legislation should also refer to the Treaties.

b) Indemnity Clause

The indemnity clause should be removed.

c) Surrender of Rights South of 60; Protection of Non-Resident Rights

Aboriginal rights and all Treaty rights south of 60, outside Wood Buffalo National Park should not be surrendered.

Dene/Metis in the Provinces should not be prejudiced by the provisions of the Final Agreement.

6. Settlement Corporations: Permitted Activities

This entire part should be reviewed. If t is kept, the Final Agreement should clearly state that the Settlement corporations will not be requested to spend money on programs and services that should be provided by the Government of Canada or the Government of the Northwest Territories.

7. Language and Incidental Amendments

Amendments which follow from the changes noted above, but which are not mentioned, should be made in the Final Agreement.

Prior to the Final Agreement, there should be a comprehensive review of the wording of the Agreement, to make it more precise, and to clarify government's commitments.

B Dene Cultural Institute Elders Council Guiding Principles

1. Serve as a **RESOURCE CENTRE** for individuals and communities who want to do something for themselves.

2. **PROMOTE THE PRACTICES OF CULTURE** within our people and communities: don't just talk about it.

3. **DEVELOP MODELS AND EXAMPLES** of what can be done by people to strengthen their language and Culture.

4. **SHARE** with other people and communities the models, examples, and experience that have been developed.

5. Don't **WASTE TIME AND ENERGY** always reacting to others.

6. Always keep this goal in mind: **TO KEEP CULTURE ALIVE FOR FUTURE GENERATIONS**.

7. **ENCOURAGE AND SUPPORT** those who are practising our Culture.

8. Help our own people **UNDERSTAND AND RECOGNIZE** the value of our own Culture.

9. **HELP NON-DENE** understand and recognize the value of Dene Culture.

10. **ELDERS** hold the knowledge of our Culture and must be part of decisions and plans for the future.

11. Work in **PARTNERSHIP** with others who share our cultural survival goals.

12. Find **ANSWERS** to modern problems from our own Culture, and take these answers and adapt them to modern times.

13. Don't forget our **RESPONSIBILITIES** given to us by the **CREATOR** to take care of each other and the land and animals.

14. Give **LEADERSHIP** through living examples not by talk.

continued ... **Guiding Principles Established by the Denendeh Elders Council for the Dene Cultural Institute**

15. Don't make decisions for people. Help them **MAKE THEIR OWN DECISIONS**.

16. Try **NOT TO DEPEND TOO MUCH ON GOVERNMENT** because you give them power to control you.

17. Don't ask other for **RIGHTS**. Your rights will be recognized sooner or later if you practice them.

18. **PRACTICE DENE SELF-GOVERNMENT** in the way you work with our people and the way you relate to others.

19. Be **KIND** to each other and **LOVE** each other.

20. **TRUST** Dene Culture. It has worked well for us for thousands of years.

21. Don't try to become **LIKE WHITE PEOPLE** just because you believe their way is better.

22. **SHARE OUR WAYS** with others. They may want to learn from them.

THESE PRINCIPLES SHOULD GUIDE ANY AND ALL DENE ORGANIZATIONS AT THE COMMUNITY, REGIONAL, AND TERRITORIAL LEVELS

Reprinted from Dene Cultural Institute newsletter.

C Comprehensive Chronology of Dene History

SHELLY: PLEASE ADD THE MOST UP-TO-DATE LIST FROM THIS YEAR'S ANNUAL REPORT. *MAHSI* SUSAN

DENE NATION: AN ANALYSIS

people consulted

The Dene Nation and the authors of this report are grateful to the individuals who took time to be interviewed for this study:

George Blondin, Dene Cultural Institute Elders Council and a former Vice-President of the Dene Nation

Mona (Jacob) Fox, founding Interim President, Indian Brotherhood of the NWT

Bill Erasmus, current National Chief of the Dene Nation

Georges Erasmus, former manager of Community Development Program and former President of the Indian Brotherhood of the NWT/Dene Nation

Stephen Kakfwi, former President of the Dene Nation

Ethel Liske, Executive Director, Dene Nation, and on staff since 1981

Barney Masuzumi, Environment Department Manager of the Dene Nation and former assistant to Indian Brotherhood President, early 1970s

Kevin O'Reilly, former Executive Assistant to Dene National Chief and Land-Use Planning Co-ordinator of Dene Nation, and resource person to Dene/Métis Negotiations Secretariat

The researchers are grateful, too, to past and present Chiefs and Dene Nation staff who gave attentive and thoughtful responses to our questions posed informally, many of which we asked before we were certain we would be doing this study. From such discussions, we were able to build coherent atmospheres for events at which we were not present. We appreciate the endless patience of National Office staff in helping us place documents or events within a suitable context and, at times, to relate materials to one another. We regret we were not able to quote you all.
Thanks are due the Finance Department of the National Office for their assistance in the admini-stration of this study with the Royal Commission, despite the lack of recognition or compensation from Commission staff for these efforts.

Without unlimited access to the written and taped records in the Dene Nation Library/Archives, this study could not have been undertaken. To all past Indian Brotherhood and Dene Nation staff, who have faithfully recorded events and carefully retained administrative materials that are now part of this archive: *Mahsi cho*!

materials consulted

NOTE: The following materials include documents reviewed from the Dene Nation Library/Archives as well as scholarly literature that contributed to the contextual background against which the history of the Indian Brother-hood/Dene Nation has been analyzed. **Please note that any documents we have viewed from the admini-strative archives remain confidential to the organization.** We do not quote from them in the text of the report.

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International law and Secession

Nigel Bankes, BA, LLM
Professor Emeritus
University of Calgary Faculty of Law, Calgary
27 April 2026

1. What is the right of self-determination and what is its status in international law?

A statement of the right of self-determination

The right of self-determination, in its broadest terms, refers to the right of a people to freely determine their own political, economic, social and cultural future. Common Article 1(1) of the International Covenant on Social and Political Rights[1] (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)[2] (the "1966 Covenants") describes the right as follows:

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The collective right of self-determination of a people "is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."[3]

The legal status of the right of self-determination

In its opinion in the *Reference re Secession of Quebec*[4] the Court confirmed that the right of self-determination arises, not simply as a matter of treaty law binding the parties to the treaty, but as a general principle of law:

> While international law generally regulates the conduct of nation states, it does, in some specific circumstances, also recognize the "rights" of entities other than nation states -- such as the right of a <u>people</u> to self-determination.

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[1] International Covenant on Social and Political Rights, New York, 16 December 1966, in force 23 March 1976, Canada acceded 19 May 1976, 999 UNTS171.
[2] International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, in force 3 January 1976, Canada acceded 19 May 1976, 999 UNTS 3. The right of self-determination is also affirmed in Articles 1(2) and 55 of the Charter of the United Nations. Canada is a party to all three instruments.
[2] Ibid at paras 113 – 114.
[3] Human Rights Committee, General Comment No 12, Article 1, The right to self-determination of peoples (1984). The Human Rights Committee (HRC) is the treaty supervisory body for the ICCPR.
[4] *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217.

> The existence of the right of a people to self-determination is now so widely recognized in international conventions that the principle has acquired a status beyond "convention" and is considered a general principle of international law.[5]

The Supreme Court of Canada embarked upon an analysis of the right of self-determination because it concluded that international law would likely follow the domestic law of Canada in concluding that unilateral secession would be incompatible with Canada's constitution, "subject to the right of peoples to self-determination."[6] In other words, it examined the international law of self-determination as a possible constraint on domestic law.[7]

The International Court of Justice (ICJ) in its more recent *Advisory Opinion on the Legal Consequences of the Separation of the Chago Archipelago from Mauritius in 1965*[8] (*Chagos Advisory Opinion*) confirmed that the right of self-determination "crystallized as a customary rule binding on all States"[9] with the adoption by the General Assembly of Resolution 1514 (XV) of 14 December 1960, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples". The Court also referred to the right of self-determination "as an obligation *erga omnes*, [that] all States have a legal interest in protecting …".[10] Even more recently, the ICJ has confirmed that, at least in some circumstances, "the right to self-determination constitutes a peremptory norm of international law."[11] A peremptory norm (also known as *jus cogens*) is a fundamental norm from which no derogation is permitted, either by treaty or by customary law, except by a norm of an equal peremptory character.[12]

As a general principle and a rule of customary international law, the right of self-determination is part of the common law of Canada. As the Supreme Court of

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[5] Ibid at paras 113 – 114.
[6] Ibid at para 112.
[7] The Court did not need to address the third question posed to it, namely, "In the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?" Ibid at para 147. In the Court's view there was no conflict between international law and domestic law.
[8] *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* [2019] ICJ Reports 95.
[9] Ibid at para 148.
[10] Ibid at para 180.
[11] Advisory Opinion, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, [2024] ICJ Rep 753 ("*Policies and Practices of Israel*").
[12] Vienna Convention on the Law of Treaties (VCLT), Vienna, May 23, 1969, in force January 27, 1980, 1155 UNTS 331, Articles 53 and 64.

Canada noted in *Nevsun Resources Ltd. V. Araya*,[13] "customary international law is automatically adopted into domestic law without any need for legislative action".[14]

The content and implementation of the right of self-determination

The content and the means of implementing the right of self-determination vary with the circumstances. In the *Quebec Secession Reference,* the Supreme Court of Canada emphasised that "The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states."[15] Hence,

> The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination -- a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.[16]
>
> …
>
> There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, … and the right of a "people" to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.[17]

External self-determination may only be exercised: (1) by a people under colonial rule or occupation, (2) where (outside a colonial context) a people is subject to alien subjugation, domination or exploitation,[18] and (possibly) (3) a people "blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession."[19]

External self-determination may take the form of:

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[13] *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 (CanLII).
[14] Ibid at para 86.
[15] *Quebec Secession Reference* (n 4) at para 127.
[16] Ibid at para 126.
[17] Ibid at para 130.
[18] Ibid at paras 131 – 133.
[19] Ibid at para 134.

(a) Emergence as a sovereign independent State;

(b) Free association with an independent State; or

(c) Integration with an independent State.[20]

Respect for internal self-determination for a distinct people within a State may take the form of a variety of arrangements of autonomy aimed at fostering the political, economic, social and cultural aspirations of the people.

Both external and internal self-determination must recognize the core content of common Article 1 of the two 1966 Covenants, namely that the people in question should "freely determine their political status and freely pursue their economic, social and cultural development."[21] As the Court in the *Chagos Advisory Opinion* recalls " … while the exercise of self-determination may be achieved through [different options] … it must be the expression of the free and genuine will of the people concerned."[22]

The Court focused on external self-determination (potentially the assertion of a unilateral right to secession) because that was the question put to the Court, specifically:

> [Question 2] Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

The Court concluded that even if the population of Quebec constituted a people (a point that the Court did not decide – see below), the population could not establish an external right of self-determination, because Quebecers could not establish that they fell within any of the two (possibly three) exceptions to the primacy of territorial integrity. More specifically, Quebecers could not demonstrate that they were a people "blocked from the meaningful exercise of its right to self-determination internally". As the Court summarized:

> The population of Quebec cannot plausibly be said to be denied access to government. Quebecers occupy prominent positions within the government of

[20] *Chagos Advisory Opinion* (n 8) at para 156 quoting from Principle VI of General Assembly resolution 1541 (XV), adopted on 15 December 1960.
[21] Aureliu Cristescu, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, "The Right to Self-Determination: Historical and current development on the basis of United Nations instruments" (1981), https://docs.un.org/en/E/CN.4/Sub.2/404/Rev.1
[22] *Chagos Advisory Opinion* (n 8) at para 157.

> Canada. Residents of the province freely make political choices and pursue economic, social and cultural development within Quebec, across Canada, and throughout the world. The population of Quebec is equitably represented in legislative, executive and judicial institutions. In short, to reflect the phraseology of the international documents that address the right to self-determination of peoples, Canada is a "sovereign and independent state conducting itself in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction".[23]

2. Are the residents of Alberta a people for the purposes of the right of self-determination under international law?

In order to claim the benefit of a right of self-determination (internal or external) a sub-set of persons within a nation state claiming a distinct and separate right of self-determination from that held in common with all citizens of the nation state, must establish that they constitute a people.[24] The right to self-determination is concerned with the right of a collective, that is to say, a people "with its own social, cultural, and political attributes richly rooted in history."[25]

In the *Quebec Secession Reference,* the Court found it unnecessary to determine whether Quebec's population (in its entirety or just a portion thereof) might claim a right of self-determination. It reached that conclusion because it found that "whatever be the correct application of the definition of people(s) in this context, their right of self-determination cannot in the present circumstances be said to ground a right to unilateral secession."[26] Nevertheless, the Court did offer the following comments:

> …. the precise meaning of the term "people" remains somewhat uncertain.
>
> It is clear that "a people" may include only a portion of the population of an existing state. The right to self-determination has developed largely as a human right, and is generally used in documents that simultaneously contain references to "nation" and "state". The juxtaposition of these terms is indicative that the reference to "people" does not necessarily mean the entirety of a state's population. To restrict the definition of the term to the population of existing states would render the granting of a right to self-determination largely duplicative, given the parallel emphasis within the

[23] *Quebec Secession Reference* (n 4) at para 136 and see also at para 151.
[24] Ibid at paras 123 – 125.
[25] S James Anaya, *Indigenous Peoples in International Law*, (2nd edition), Oxford (2004) at 100.
[26] *Quebec Secession Reference* (n 4) at para 125 and see discussion above.

> majority of the source documents on the need to protect the territorial integrity of existing states, and would frustrate its remedial purpose.
>
> While much of the Quebec population certainly shares many of the characteristics (such as a common language and culture) that would be considered in determining whether a specific group is a "people"… it is not necessary to explore this legal characterization to resolve Question 2 ……. Nor is it necessary to examine the position of the aboriginal population within Quebec.[27]

The population of Alberta exhibits tremendous ethnic, cultural and racial diversity that does not correlate with identification of a people that shares a cultural, political and linguistic experience rooted in history.[28] For example, over a quarter of Albertans self-identify as racialized persons,[29] and according to the 2021 census approximately 23% of Albertans are first generation Canadians.

I conclude that residents of Alberta do not qualify as a people or rights holder capable of asserting a right of self-determination distinct and separate from the right of self-determination held in common with all citizens of the nation state of Canada. Furthermore, even if Albertans could establish that they were a people (which I reject), they would still need to meet the burden of establishing that they fell within one of the two (possibly three) exceptional categories outlined above before they could credibly advance a claim to the right of external self-determination (unilateral secession). The Supreme Court of Canada concluded that such a claim was not plausible for Quebecers and there is no reason to think that the claim of Albertans could be any more plausible.

3. May an Indigenous population claim to be a people for the purposes of the right of self-determination under international law?

International law recognizes Indigenous communities as peoples

Modern international law recognizes that an Indigenous population may claim to be a people for the purposes of the right of self-determination in international law. This follows from the recognition of the equality of all people and the understanding that Indigenous peoples fall within the protection of common Article

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[27] Ibid at paras 123 – 125.
[28] Canada Census (2021), Alberta, https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/details/page.cfm?Lang=E&SearchText=Alberta&DGUIDlist=2021A000248&GENDERlist=1,2,3&STATISTIClist=1,4&HEADERlist=0
[29] 2021 Census of Canada Racialized Groups of Albertans (2025), https://open.alberta.ca/dataset/04545424-2b43-48f4-9ce9-e26ac408f637/resource/25d9df2d-3e38-4639-b3ab-d0bf94a8af07/download/tbf-osi-2021-census-of-canada-racialized-groups-of-albertans-2025.pdf

1 of the 1966 Covenants (i.e. all peoples, not just some peoples). The Human Rights Committee (the treaty supervisory body for the ICCPR) routinely references both Article 1 and Article 27 (minorities) when discussing the status of Indigenous peoples in the Committee's assessments of State Party reporting on national implementation of the ICCPR.[30]

This recognition of Indigenous populations (people) as peoples is reflected in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP" or "Declaration") adopted by the General Assembly, September 13, 2007[31] in terms that mirror common Article 1 of the 1966 Covenants.

> Article 3
>
> Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> Article 4
>
> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

The Declaration is not a treaty, but, to the extent that the above two articles declare the necessary implications of recognizing that Indigenous peoples have the same legal status as all other peoples, they have the status of customary international law.

Three jurisdictions in Canada have adopted legislation to accord legal effect to the entire text of the Declaration, regardless of the customary law status of particular provisions.[32] The federal statute is representative:

> 4 The purposes of this Act are to
>
> (a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and

---

[30] Martin Scheinin, "Indigenous Peoples' Land rights Under the International Covenant on Civil and Political Rights" (2004), archived as https://scispace.com/pdf/indigenous-peoples-land-rights-under-the-international-w0uolnntqw.pdf Scheinin is a former member (Finland) of the Human Rights Committee.
[31] UNGA Resolution 61/295, September 13, 2007.
[32] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 and *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, SNWT 2023, c 36.

> (b) provide a framework for the Government of Canada's implementation of the Declaration.

In its unanimous decision in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families,*[33] the Supreme Court of Canada confirmed that "the Declaration has been incorporated into the country's positive law" by the federal statute.[34] Furthermore, noting that Canada had made an international commitment in 2016 "to support the UNDRIP 'without qualification' and to implement it"[35] the Court went on to recite that:

> In 2021, Parliament enacted the UNDRIP Act, s. 4(a) of which affirms the Declaration "as a universal international human rights instrument with application in Canadian law". It is therefore through this Act of Parliament that the Declaration is incorporated into the country's domestic positive law.[36]

The Court also quoted extensively from Articles 3 and 4 of the Declaration at paragraph 14 of its judgment.

Alberta's position (as reflected in the recent Alberta/Canada Co-Operation Agreement on Environment and Impact Assessment[37]) that the Declaration "is non-binding" is not a legally tenable position with respect to those parts of the Declaration that have the status of customary international law.[38]

Who may claim to be an Indigenous people?

The Declaration does not contain a definition of who may may claim to be an Indigenous people for the purposes of the Declaration. Instead, the Declaration contemplates that this is a matter of self-definition.[39] Other sources have offered a definition of Indigenous peoples, most notably that developed by José Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his 1986 "Study on the Problem of Discrimination against Indigenous Populations." Cobo proposed that:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other

---

[33] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.
[34] Ibid at para 4.
[35] Ibid at para 14.
[36] Ibid at para 15.
[37] April 2, 2026, https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/canada-alberta-cooperation-agreement.html
[38] *Nevsun Resources* (n 13).
[39] UNDRIP (n 31) Articles 33 and 34.

> sectors of the societies now prevailing on those territories, or parts of them. They form at present nondominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.[40]

Indigenous peoples and communities have, in many circumstances, been divided by national and international boundaries. As noted by Shin Imai and Kathryn Gunn:

> The territories of Indigenous peoples long predate the borders of the modern nation-State, and in most cases national borders do not conform with the pre-existing territories of Indigenous peoples.[41]

Article 36 of the Declaration recognizes this reality and obliges States to take effective measures to assist Indigenous peoples divided by international borders, to maintain and develop contacts and activities for spiritual, cultural, political, economic and social purposes.

In sum, Indigenous peoples have a right to self-determination on the basis of equality with all other peoples. This may be expressed in an exceptional case, as with all other peoples, in the form of an external right of self-determination, but more likely, and as envisaged by Article 4 of the Declaration, in the form of arrangements that respect the autonomy of the Indigenous people(s) concerned, while also respecting the territorial integrity of the State.[42]

4. Given the content of the right of self-determination as outlined above, does international law permit a State to agree to secession of part of its territory occupied by an Indigenous people, without the consent of that people?

In answering this question, I make the assumption that the secession involves secession by a population that cannot claim to be a people for the purposes of exercising the right of self- determination.

---

[40] As quoted in Shin Imai and Kate Buttery, "Indigenous Belonging: A Commentary on Membership and Identity in the United Nations Declaration on the Rights of Indigenous People" (2013) at 2. http://digitalcommons.osgoode.yorku.ca/all_papers/49.

[41] Shin Imai and Kathryn Gunn, "Indigenous Belonging: Membership and Identity in the UNDRIP: Articles 9, 33,35 and 36" in Jessie Hohmann and Marc Weller (eds), *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*, Oxford (2018) 213 – 246 at 238

[42] Article 46 of the Declaration reiterates the importance of the territorial integrity of the State.

The duty to promote the realization of the right of self-determination of peoples

Paragraph 3 of common Article 1 of the 1966 Covenants provides that

> The States Parties to the present Covenant … shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Paragraph 3 imposes a positive obligation on a State Party to the Covenant to promote the realization of the right of self-determination of peoples, both within its territory and beyond. The obligation must be performed in good faith.[43] The obligation is in part an obligation of result (a State Party must promote) but also, when read with Article 2(2) of the ICCPR, a duty of conduct.[44] A duty of conduct requires a State Party to exercise due diligence and employ all means reasonably available to them to meet its obligations.[45]

It must also follow from this that a State Party has a duty not to take any steps to impede or impair the right of a people to self-determination. More specifically, albeit in a different context, the ICJ, in its *Advisory Opinion on the Policies and Practices of Israel*, observed that "by virtue of the right to self-determination, a people is protected against acts aimed at dispersing the population and undermining its integrity as a people."[46]

The right of self-determination applies to the entire territory of a people

The *Chagos Advisory Opinion*, by analogy,[47] suggests that a State must take particular care not impede or impair the right of self-determination by allowing the partition or detachment of part of a territory over which a people may claim the right of self-determination:

> States have consistently emphasized that respect for the territorial integrity of a non-self- governing territory is a key element of the exercise of the right to self-determination under international law. *The Court considers that the peoples of*

---

[43] Vienna Convention on the Law of Treaties (n 12) Article 26: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."
[44] ICCPR (n 1) Article 2(1) "Each State Party … undertakes to respect and to ensure … the rights recognized in the present Covenant …".
[45] Advisory Opinion, *Obligations of States with respect to Climate Change* (2025), especially at paras 135 – 139 and 280 – 300, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf and Nigel Bankes, "What Are The Implications of the International Court's Climate Change Advisory Opinion for Provinces?" (26 January 2026), online: ABlawg, http://ablawg.ca/wp-content/uploads/2026/01/Blog_NB_ICJAOProvinces.pdf
[46] Advisory Opinion on the Policies and Practices of Israel, (n 11) at para 239.
[47] The *Chagos Advisory Opinion* (n 8) deals with the responsibilities of the United Kingdom as the administering power for Mauritius as a non-self-governing territory.

> *non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole*, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self- governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.[48] (Emphasis added.)

In sum, a State Party to the ICCPR has a solemn, due diligence duty to protect and promote the right of a people to exercise its right of self-determination including its right of internal self-determination. A necessary corollary of the duty to respect that right requires State Parties to avoid measures that may impede or impair the right of self-determination. It would therefore be unlawful for a State Party to permit the secession of part of its territory occupied by an Indigenous people without the consent of that people, freely given. Insofar as the provisions of Article 1 of the ICCPR represent customary international law, the same conclusions hold as a matter of customary law.

5. Where a treaty between state A and state B deals with the circumstances under which states A and B share sovereignty and territory, under what circumstances, if any, would international law permit state A to allow the secession or alienation of part of territory subject to the treaty, without the consent of state B?

The Vienna Convention on the Law of Treaties (VCLT) is the principal authority governing the conclusion, interpretation, amendment and modification of international treaties i.e. written agreements between States governed by international law.[49] While the VCLT as a treaty only binds the parties to the treaty, it is generally considered that most provisions of the VCLT also reflect customary international law.

A bilateral treaty may be amended[50] or terminated[51] by agreement between the parties or in conformity with the provisions of the treaty. A treaty that does not provide for the denunciation or withdrawal from a treaty is not subject to denunciation or withdrawal unless:

> (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or

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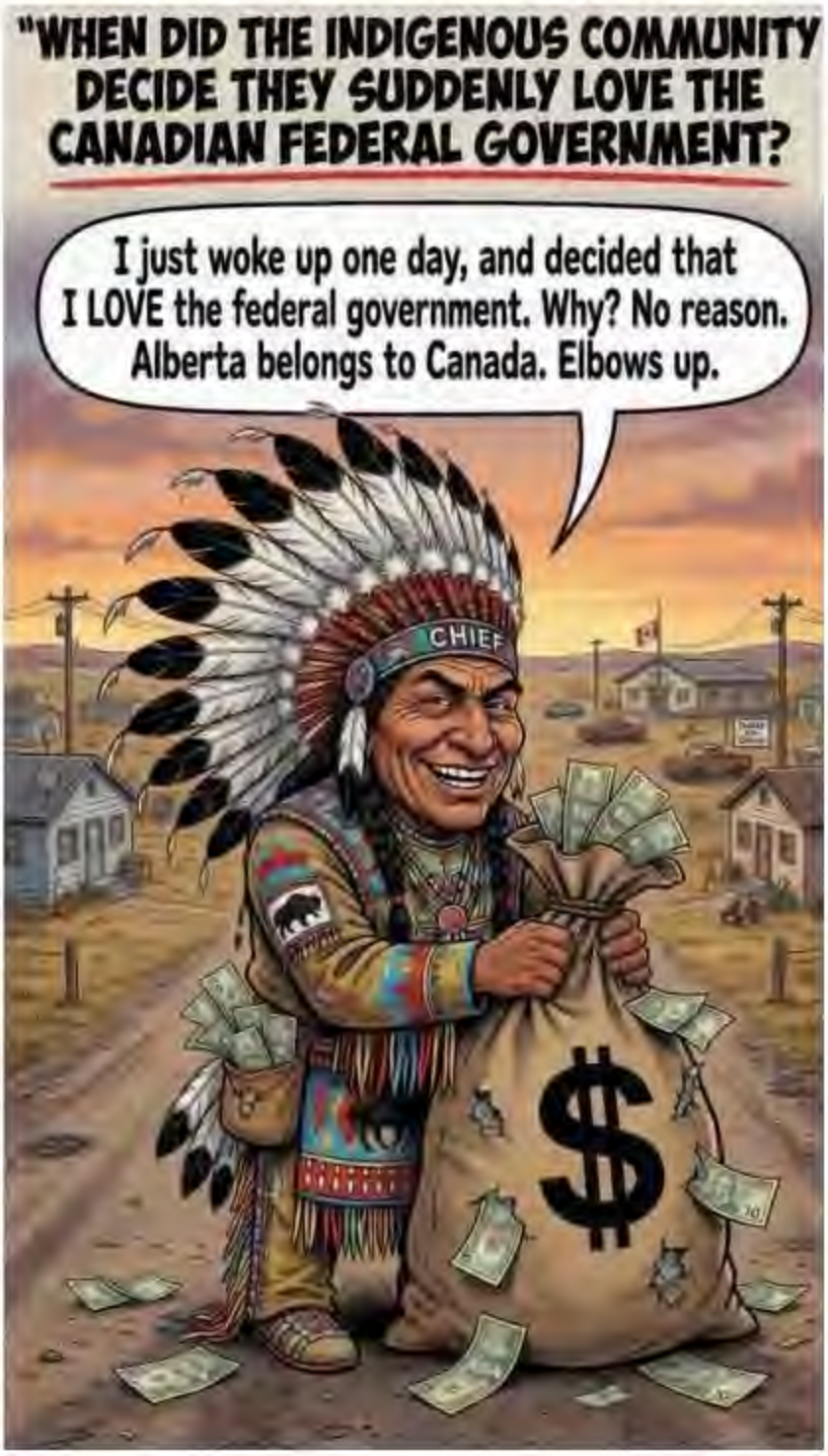
[48] *Chagos Advisory Opinion* (n 8) at para 160. The Court makes similar observations in its *Advisory Opinion on the Policies and Practices of Israel* (n 11) at paras 237 – 238.
[49] VCLT (n 12), Article 2(1) definition of treaty.
[50] VCLT, Article 39.
[51] VCLT, Articles 42 and 54.

(b) a right of denunciation or withdrawal may be implied by the nature of the treaty.[52]

Accordingly, unless the treaty between States A and B otherwise provides, there is no unilateral power on the part of State A to amend the treaty or to provide for its non-application to a part of territory governed by the treaty. Conduct inconsistent with the treaty (such as the purported non-application of the treaty by State A to a part of territory governed by the treaty) would constitute a breach of the treaty that would engage the responsibility of State A (unless the treaty otherwise provides).[53] State A has a continuing responsibility to cease its internationally wrongful act and to give appropriate assurances or guarantees of non-repetition.[54]

Nigel Bankes

[52] VCLT, Article 56.
[53] International Law Commission (ILC), Draft Articles on the Responsibility of States for Internationally Wrongful Acts, (2001), Articles 1, 2 & 12 (the "ILC Draft Articles on State Responsibility"). The ILC Draft Articles are generally considered to reflect customary international law.
https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf
[54] Ibid, Article 30.



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How about a forensic audit of every Chief of every tribe and all council members and their immediate family members? Then we'll talk!
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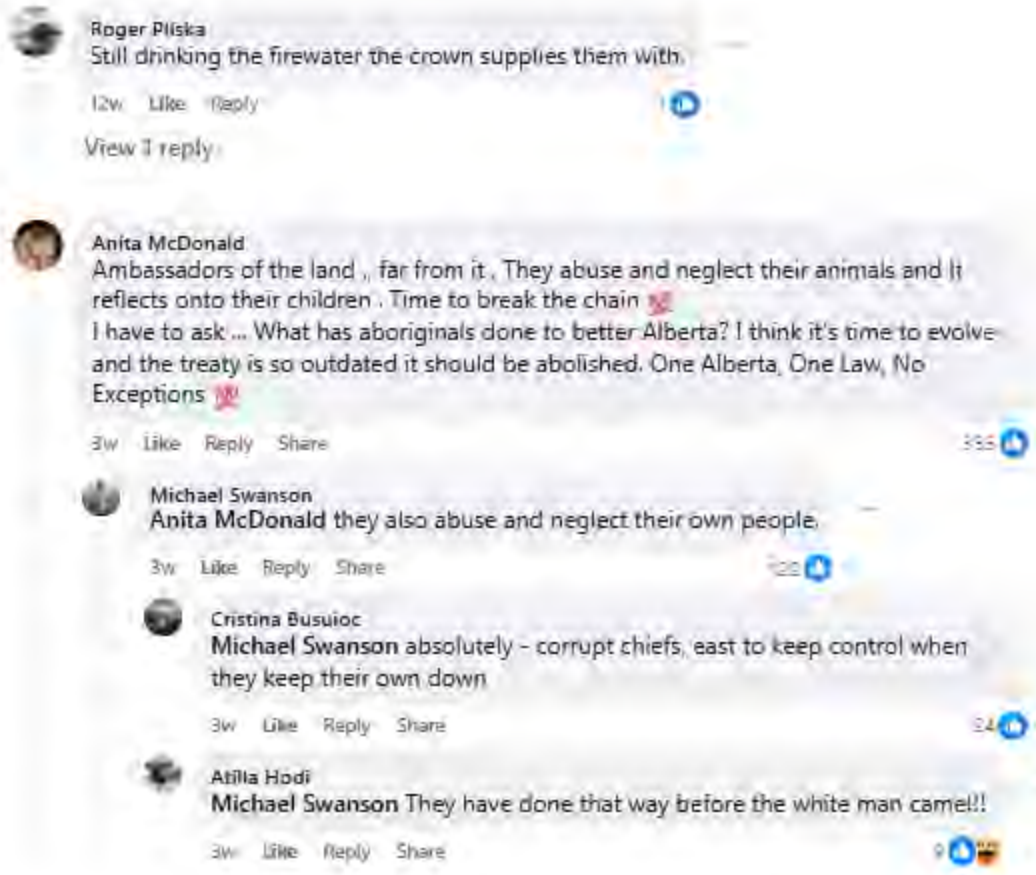
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Criminals and corrupt people love socialist
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Alan May
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Donald Troy Gage
They will release their claims to the land for a gallon of glue. Alberta will be the wealthiest state in the Great USA🇺🇸❤️❤️❤️❤️❤️❤️❤️❤️❤️❤️❤️❤️
12w Like Reply 82



Roger Pliska
Still drinking the firewater the crown supplies them with.
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Anita McDonald
Ambassadors of the land , far from it . They abuse and neglect their animals and it reflects onto their children . Time to break the chain
I have to ask ... What has aboriginals done to better Alberta? I think it's time to evolve and the treaty is so outdated it should be abolished. One Alberta, One Law, No Exceptions
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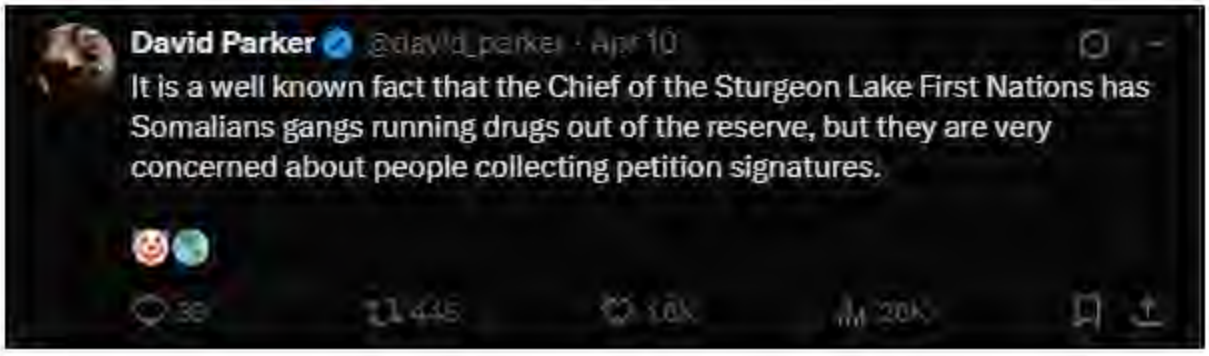
Michael Swanson
Anita McDonald they also abuse and neglect their own people.
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Cristina Busuioc
Michael Swanson absolutely - corrupt chiefs, east to keep control when they keep their own down
3w Like Reply Share 24

Atilla Hodi
Michael Swanson They have done that way before the white man came!!
3w Like Reply Share 9



David Parker @davkl_parker · Apr 10
They are attacking democracy in Alberta, and I really hate it when they do that. Game on your bastards. This is my life's work, I'll teach an army your stupid games, and they will play them better than you.
15 22 206 4.4K



David Parker @david_parker · Apr 10
It is a well known fact that the Chief of the Sturgeon Lake First Nations has Somalians gangs running drugs out of the reserve, but they are very concerned about people collecting petition signatures.
38 445 1.6K 204



Alberta Separation · **Join**

Linda LaBine · 1d ·

What is going to happen when the courts side with treaty 8 and stop the referendum. Then what will we do?

185 419 3



Bo Dawgs · 16h

Time to play cowboys and injuns with these chiefs that keep threatening us..maybe couple of them get caught out back and little therapy from some patriots be the answer..like enough is enough..groomed libtard hands greased conmen trying to line their grubby Lil pouches...I am metis and sick of this bullshit from first nations chiefs. I see their people in cities in trap houses, homeless, addicted, and alberta government is ones looking out for them ..definitely not federal or chief and counsels

Reply

Greg Gramlich · 18h
I guess we're going to have to circle the wagons all over again.
Reply

Randy Turcotte · 19h
That particular group of indigenous people are the very best living example of Stockholm syndrome on public display!
Reply

Shirley Forrest Leraand · 19h
Celebrate!!!
Reply

Billie Liddell · 20h
Pull an Ireland move
Reply

Dave Currie · 1d
No native from Asia wearing made in China feathers is going to stand in the way of my grandchildrens future. At my age life in prison means shit.My eyes are still good & my hands are steady.
Reply

Bonnie Tucker · 1h
They must love living this way. Should send the third world live amoungst them they will feel right at home.



Cowichan Tribes member handed pollution prevention order over huge dumping site - BC | Globalnews.ca Visit ›

Reply

Ragin' Canadjun · 18h
Audit all reservations
Reply

Jay Michaels · 3h
It's long overdue for another game of Cowboys and Indians anyways!!!
Reply

Lon Oquist · 5h
They will be Alberta's new Sheriff's I bet?
Reply

Yllek Daniels · 19h
You shout Haku Machante and Charge!!!!
Reply

John Richard · 20h
If your kids tell you they dont want the food you made, do you concede to them or tell them "tough shit, if your hungry you will eat" ? Dont let 3% of the Population dictate to you.
Reply



Stacey Valleau
Is someone sending them a gift of smallpox blankets, because society really needs them distributed.

3h **Like** **Reply**



Elaine Leavitt
Go read treaty 8 and read the last 2 words it says "and more".

8h **Like** **Reply**



Ken Crossman
Just a dress up show for a western movie

10h **Like** **Reply**



Frank Meneen
As a First Nation or PretIndian ..affiliated with which Nation?

13h **Like** **Reply**

Write a comment... GIF

Nick Gaulton
Cheri Anderson listen to you, terrified she might have to get a job and actually work for a living lol and yet your so undereducated that you living on treatys all your life and still depending on what someone else told you it says instead of reading it for yourself. crazyness. its an absolute shame what your people have become now, if your ancestors could see it they never woulda signed the treatys to make you dependant on federal handouts to survive while addiction and alcohol tear you

Write a public co...

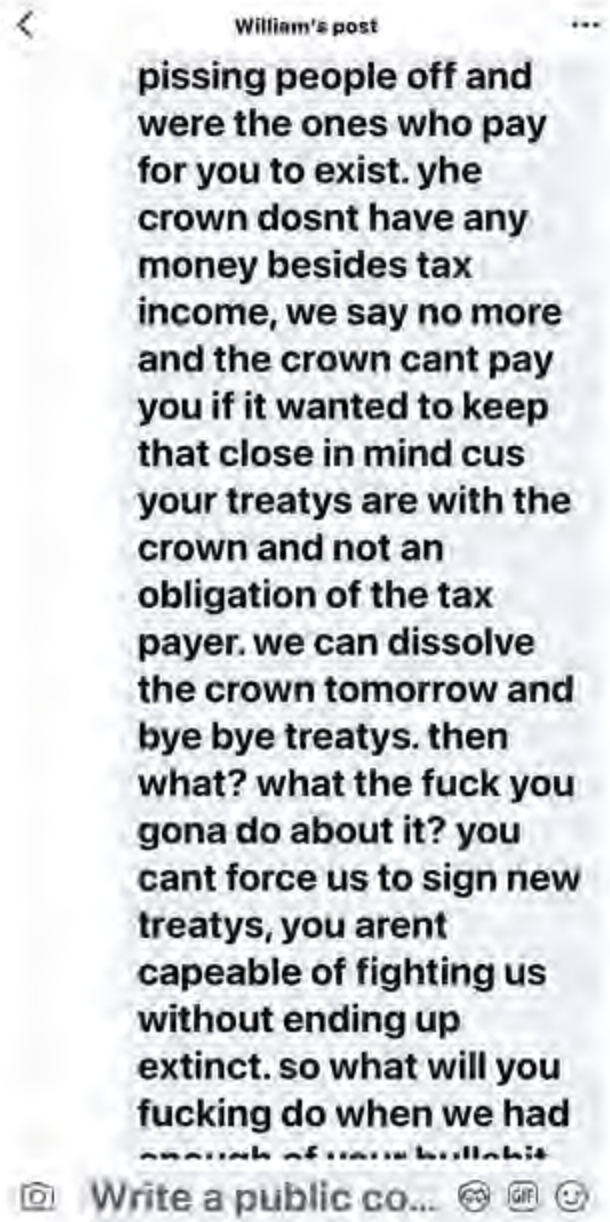
7:24 5G

William's post

apart, where the women have a buncha kids for the government check not cus they want to raise a family. with a large number, unheard of anywhere else in the world, highest per capita people in jail of any group of people. violence and sex crimes rampage through the reserves. you have the right to govern yourself and what a joke thats been, and somehow you still think that with the incredibly shitty job you've done with your own people, that you are gona get to govern ours too? itll be a cold day in hells deepest layer befor

we take advise of how to run our government from the ones who wouldnt survive 6 months if the checks stopped tomorrow without robbing and stealing and commiting crimes even more then currently. all land was ceded to the crown years befor you were around. it dosnt infact matter if you agree or think it's fair or pretend it didnt happen cus in reality, it did. the documents are signed and legal and you simply do not get a say in that. the reserves are your land. stay the fuck on it. you dont participate in our society you don't

contribute you dont pay taxes you dont get to reap the benefits of a society you chose not to participate in. its simple. the treatys were ment for you to be able to hunt and fish to live. it was made to preserve the way of life of your ancestors and you cant even survive without walmart and 711 and liquor stores. youve been given enough money that the reserves should be Dubai compared to the rest of canada not like some 3rd world slum that they mirror. deal with your own shit befor you run your mouth about ours cus your


William's post
pissing people off and were the ones who pay for you to exist. yhe crown dosnt have any money besides tax income, we say no more and the crown cant pay you if it wanted to keep that close in mind cus your treatys are with the crown and not an obligation of the tax payer. we can dissolve the crown tomorrow and bye bye treatys. then what? what the fuck you gona do about it? you cant force us to sign new treatys, you arent capeable of fighting us without ending up extinct. so what will you fucking do when we had
Write a public co...

LA NATION, C'EST MOI: THE ENCOUNTER OF QUÉBEC AND ABORIGINAL NATIONALISMS

Julián Castro-Rea

2005 CanLIIDocs 450

INTRODUCTION

Proponents of Québec's independence justify their goal with the claim that their province is the cradle of one of Canada's "Founding Nations." In so doing, they bypass the self-perception of the dominant, politicized Aboriginal peoples, who perceive themselves as forming the "First Nations" of what is now Canada. These contending views, neither of which is yet constitutionally fully recognized, are bound to clash whenever issues of self-government are raised within Québec's boundaries. Such a situation arose at the time of the 1995 Québec referendum on sovereignty, which was met with adamant opposition from Aboriginal groups, especially the Cree, the Inuit and the Mohawk. In reaction, Québec's pro-independence government at the time accused Aboriginal peoples of being Ottawa's instrument, and repeated the debatable argument that Québec has maintained the most respectful policy towards Aboriginal peoples among all Canadian provinces.

The aim of this article — written under the assumption that the reader is acquainted with the basic facts of the political and legal situation of Aboriginal peoples and the province of Québec within Canada — is to track the origins and assess the current status of this clash of nationalisms. Later on, I suggest that beyond the myths and political bickering entertained by both sides in the debate, there is a common ground that may bridge both nationalist projects: the joint search for recognition within the Canadian constitutional order. Mutual recognition seems to be the first step towards a complementary, common endeavour for the recasting of Canada as a multinational state. I will conclude by assessing how likely that kind of reform is under current political circumstances.

THE CLASH OF NATIONALISMS IN CANADA

Among the various concepts historically used to refer to a culturally defined human community — culture, civilization, race, community, ethnic group, people, minority, etc. — the term "nation" is no doubt the most prestigious, politically speaking. While definitions of this concept abound, and have changed a great deal over time,[1] I adopt here Benedict Anderson's, for whom a nation is an "imagined community."[2]

Anderson's definition, besides its brevity, has the advantage of avoiding the pitfalls into which other attempts to determine the essential elements of a nation generally fall. Among those elements frequently mentioned are territory (thus excluding nations with a distinct identity but without a land base), common ethnic origins (thus stepping into the complex and politically controversial issue of racial differentiation), and common language (thus questioning multilingual states that present themselves as nations). The definition I adopt here stresses only one of the often cited components of nations: the sense individuals in a human group have of sharing a common past, a common history that binds them together; "the possession in

[1] Eric J. Hobsbawm, *Nations and Nationalism since 1870: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990).

[2] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 2d ed. (London: Verso, 1991).

common of a rich legacy of remembrances," to borrow Ernest Renan's words.[3] Certainly, this history is constructed through a careful selection of facts in an often teleological interpretation of them, but it serves nonetheless as a powerful cement to tie individuals together into something they call their nation. This feeling of belonging, rooted in an individual decision to consider oneself a part of the nation, is enough for the individual to become a member of it. As the shared identity is constructed and based not on material facts but on beliefs, it is an imagined community.

Building on this cultural definition of nationhood, some social movements, aware of the momentum this self-identification may give them for political battles, have called themselves "nations." Groups as diverse as the Black populations in the United States, the Chicanos and Islamic fundamentalists have at some point appealed to nationalist discourse. Perhaps the most conspicuous example of this syndrome is the idea of a "Queer Nation," born in 1990.[4] We must therefore qualify exactly what kind of imagined communities may aspire to nationhood, to support the principle that not just any social group may be a nation. I would argue that national imagined communities must also:

a) Be based upon "totalizing identities" that define every aspect of everyday life. This identity must be the most important, spontaneous way by which people in that group choose to define themselves. Single-focused identities based on ideological convictions, religious beliefs, or sexual preference, are in principle only "partial identities" unless they define the whole life and social reality of people involved.

b) Sustain a totalizing identity so unique it cannot be assimilated or equated with another one, usually manifested in a specific language. This is especially important when several nations belong to a single state. Whenever they are in minority situation, national communities refuse assimilation to the majority. They do not seek equality with the majorities; they rather wish to preserve the differences as a condition for the expression of their uniqueness. No policy of equal treatment, of non-discrimination and respect of minorities, of affirmative action, or multiculturalism would suffice to accommodate true nations: they would always claim recognition of an inassimilable identity.

c) Have some historical attachment to a territory, whether they govern over it or not. This attachment must be manifested in place names, everyday life habits, generational presence validated by historical and even archaeological records. Simple residence or regional concentration, which some social groups have, is not enough to define historical attachment to a territory.

d) Claim some kind of self-government in order to be in charge of the nation's affairs. A true national culture is so complete (totalizing) that it is able to take its own affairs in hand; it is not only able to assert its uniqueness but may handle the tools to preserve it, mainly because it has already done so at some point in time.[5]

The semantic evolution of the concept of nation is the result of a political process: the building of nation-states first in Europe, and later in peripheral regions. War played a significant role in that process. The idea of nation became the ideological core of the nascent territorial political entities called states. Later, both concepts became almost synonymous.[6] The appeal to nationhood became necessary to claim political, and state sovereignty over a territory. That is why nation became the utmost form of recognition, the highest status to which any human group may

[3] Ernest Renan, "Qu'est-ce qu'une nation?" in John Hutchison & Anthony D. Smith, eds., *Nationalism* (Oxford: Oxford University Press, 1994) 17. This essay was originally published in 1882.

[4] See Brian Walker, "Une critique du nationalisme culturaliste: l'idée d'une nation gaie" in François Blais *et al.*, eds., *Libéralismes et nationalismes : Philosophie et politique* (Ste.-Foy, Que.: Presses de l'Université Laval, 1995) 211 and Brian Walker, "Social Movements as Nationalisms or On the Very Idea of a Queer Nation" in Jocelyne Couture, Kai Nielsen & Michel Seymour, eds., *Rethinking Nationalism* (Calgary: University of Calgary Press, 1998) 505.

[5] Ferrán Requejo Coll, "Pluralismo, democracia y federalismo: Una revisión de la ciudadanía democrática en Estados plurinacionales" (1996) 7 Revista internacional de filosofía política 93.

[6] See for instance Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983). He considers that a single language, a shared sense of belonging, and a similar appreciation of institutions – in sum, a single national identity – are necessary pre-requisites for the viability of a state.

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aspire in its claim for universal acceptance of its ability to govern itself within a territorial base.[7]

With that perspective in mind, it is hardly surprising that in the Canadian context both Québécois and Aboriginal peoples eventually claimed their right to be considered as nations. Their respective processes of assertion of nationhood are very different from each other, but similar in their ultimate goal: to claim recognition as groups with defined identities and with the ability to govern themselves within a defined territory they consider being theirs. Whether these claims are framed inside or outside the Canadian federation, it is clear both human groups are contesting on historical grounds the homogeneity of the single nation supposedly contained within the Canadian state.

Québec's nationalism has a long history. Political groups in the province adopted the nationalist discourse quite early, inspired by the example of the strongly nationalistic and state-centred France and as a way to underline the specific nature of Québec's society and culture relative to the rest of Canada. References to Québec as a nation were already used by the turn of the nineteenth century, and were largely accepted during the constitutional conferences that would lead to the Canadian confederation in 1867. In 1885, a National Party was created under the leadership of Honoré Mercier, and was able to form a bi-partisan unity government two years later. By the turn of the twentieth century, journalist and intellectual Henri Bourassa referred to the "French-Canadian nation" as a specific cultural entity.

This national aspiration would soon reach into the formal political institutions in that province. In 1935, the provincial party Union Nationale was created. It came to power the year after and ruled the province, on and off, for over twenty years until it gradually disintegrated after 1970. Likewise, the Legislative Assembly of Québec changed its name in 1968 to become the National Assembly.

In contrast, widespread adoption of nationalist discourse by Aboriginal peoples is a more recent development. Legally speaking, the term Aboriginal encompasses three different peoples: Indians, Inuit and Métis.[8] The Métis — typically descendants of French Canadians and Cree, Ojibway or Saulteaux Indians — were the first Aboriginal group to claim a national status, at least since 1816, calling themselves "the New Nation."[9] They are presently gathered in an organization they call the Métis National Council (MNC), created in 1983.[10]

During the last thirty-five years, however, the Indians have been at the forefront of the struggle for recognition of a national status. Many of them continuously claimed that status, supporting their claim through the early sovereign nation-to-nation relations they established with the British Crown. However, Victorian colonial policy[11] and the *Indian Act, 1876*[12] relegated Indian communities to the status of "bands." By the early 1970s, Indians increasingly adopted the term "First Nations" as a political strategy in federal politics, in reaction to the policies aimed at assimilation proposed in the White Paper of 1969[13] and to the rise of Québec nationalism. The National Indian Brotherhood thus became the Assembly of First Nations in 1982, in the midst of the constitutional reform review process. The Inuit followed their example with their pan-Canadian association, the Inuit Tapirisat of Canada, which presents itself as the standard-bearer of the Inuit nation.

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7 This being said, international law grants the right to self-determination to "peoples" not "nations." Despite the obvious *legal* strength this fact gives to the term people, our analysis will centre on the concept of nation because of its *political* uses.

8 These three distinct categories were recognized in s. 35 of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

9 On June 19, 1816 the Métis asserted their rights to freely hunt and trade in furs, independently from the Hudson Bay Company, in the incident known as the Battle of Seven Oaks. That day, a Métis brigade seized the company post at Brandon House, in present-day Manitoba. As a result, Governor Semple and 21 of his men were killed, as well as one Métis. See "Métis Land Title," online: Métis National Council <http://www.metisnation.ca/MNC/land_title.html>.

10 Online: Métis National Council <http://www.metisnation.ca/MNC/about_MNC.html>.

11 Thomas O. Hueglin, "Federalismo constitucional vs. federalismo por tratado en Canadá: pensamiento político indígena 'más allá del Estado'" in Paz Consuelo Márquez-Padilla & Julián Castro-Rea, eds., *El nuevo federalismo en América del Norte* (Mexico City: CISAN-UNAM, 2000) at 184-190.

12 S.C. 1876, c. 18.

13 Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy, 1969* (Ottawa: Queen's Printer, 1969).

The Indians called themselves First Nations in a direct challenge to Québec's claim of being one of Canada's Founding Nations.[14] The political elite in Québec who participated in the creation of the Canadian federation in 1867 presented that new political regime as the result of a pact between two nations to create a single state. Although this bi-national nature of the Canadian state is not made explicit in the Constitution and as yet has not been formally accepted by either the federal government or the rest of the Canadian provinces, it has been the source of inspiration for Québec's claim of nationhood. Aboriginal peoples have been reluctant to recognize this claim, arguing that long before the supposedly Founding Nations existed, they were already thriving as nations in what is now Canada. The term First Nations is thus strongly political, underlining the historical legitimacy of the first inhabitants on the Canadian land. They claim to be endowed with rights at least equal to those of the "newer nations," namely English-Canada and Québec.

The competing visions of First Nations or Founding Nations may coexist as the ideological cement of the respective human communities that gave birth to them. They may also serve as political tools to be used by these communities in their dealings with the Canadian state. However, they are bound to clash when the issue of territory is addressed.

As of December 2004, there were 77,626 Aboriginal persons in Québec, living in 58 communities scattered all over the provincial territory.[15] They belong to eleven ethnic groups: Inuit, Cree, Mikm'aq, Malecite, Algonquin, Huron (Wendat), Innu (Montagnais), Abenaki, Atikamekw, Naskapi and Mohawk.[16] Besides the land they share with people of European lineage, they occupy 14,786.5 km^2.[17] In that province, both Aboriginal peoples and Québécois of French origin claim historical legitimacy to govern themselves and determine their own future under the internationally accepted right to self-determination. As they consider themselves nations, they also claim their right to practice self-determination within a certain territory. To the extent that large areas of the same territory are claimed by both groups, Aboriginal claims in Québec overlap with the ones of Québec nationalists.

This confrontation reached a peak in 1995, when the government of Québec attempted to obtain a popular mandate to create an independent country out of this province. Aboriginal peoples in the province rejected the project, considering it unilateral and undemocratic.[18] They defended their right to decide their future, and they organised parallel consultations in which they rejected the sovereignty project and asserted the right of Aboriginal peoples to stay in Canada if they so wished.[19] From then on, Aboriginal peoples in Québec have affirmed that if the Québec government is able to lead the province to quit Canada based on the international right to self-determination, then under the same right they may also decide to quit Québec. In other words, if Canada is divisible on self-determination grounds, so is Québec.[20]

This sour confrontation of nationalisms has given birth to a series of myths, which are often used either by Québec or Aboriginal leaders as arguments in the political debates engendered by this confrontation. Similar to many myths, they are partially based on facts. However, these facts are either incomplete and thus present a one-sided

14 Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) at 166.

15 Government of Canada, "Indian and Inuit Populations in Québec as of December 31, 2004," online: Department of Indian Affairs <http://www.ainc-inac.gc.ca/qc/aqc/pop_e.html>.

16 Michel Noël, *Le Québec amérindien et inuit* (Quebec City: Sylvain Harvey, 1997) at 21.

17 Government of Québec, "Eleven Contemporary Nations," online: Secrétariat aux Affaires autochtones <http://www.autochtones.gouv.qc.ca/publications_documentation/publications/onze_nations_en.pdf>.

18 The Cree were the most vocal group in that rejection; see their comprehensive position in Grand Council of the Crees (of Québec), *Sovereign Injustice: Forcible Inclusion of the James Bay Crees and Cree Territory into a Sovereign Quebec* (Nemaska: Grand Council of Crees (of Québec), 1995).

19 The Cree voted 96.3 percent to stay in Canada, with a turnout of 77 percent. The Inuit voted 96 percent rejecting Québec sovereignty, with a 75 percent turnout. See Jill Wherrett, *Aboriginal Peoples and the 1995 Referendum: A Survey of the Issues* (Ottawa: Library of Parliament-Research Branch, 1996) at 6.

20 Claude G. Charron, *La partition du Québec: de Lord Durham à Stéphane Dion* (Montreal: VLB, 1996).

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picture of reality, or are interpreted in distorting ways. Since this article seeks to understand the origins of this clash of nationalisms, it is important to analyze these myths and sort fiction from reality.

FIRST MYTH: NATIVE PEOPLES ARE AN INSTRUMENT OTTAWA USES TO UNDERMINE QUÉBEC'S NATIONALISM

This myth acquired credence in the aftermath of the Oka crisis during the summer of 1990 and became widely supported by nationalist circles. It was articulated in a book written by Robin Philpot.[21] According to Philpot, Aboriginal peoples in Québec are a puppet manipulated by Ottawa to undermine Québec's national aspirations from within. Aboriginal peoples' allegiance to Ottawa is demonstrated by the fact most of them speak English, and they insist in dealing directly with the federal government instead of addressing their claims to Québec.

The realities concealed by this myth are manifold. Above all, if Aboriginal peoples are hostile to Québec's independence, it is not because they are manipulated by Ottawa but because Québec nationalists refuse to fully recognize that Aboriginal claims to self-determination have the same validity and scope as Québec's. In fact, international law supports self-determination mostly for peoples living under colonial situations, deprived of sovereignty, and suffering from oppression, racial and cultural discrimination.[22] This is exactly the situation under which most Aboriginal peoples in Canada have lived for decades, whereas Québec shares sovereignty with the government of Canada. So, under international law, the Aboriginal peoples have a stronger case for self-determination than does Québec.[23]

Aboriginal groups rightfully fear the consequences that the eventual independence of Québec might have on their future, because indications that their rights would be recognized in an independent Québec, at least to the extent that they currently are in Canadian law, are ambiguous at best. During the 1995 referendum campaign, art. 8 of Bill 1, *An Act respecting the future of Québec*, recognized the status of Aboriginal peoples as nations, their right to self-government and their existing constitutional rights, but also clearly stated that these rights were conditioned on the integrity of Québec's territory.[24] As a result, there was a restriction imposed upon the right of Aboriginal peoples to govern themselves and their ancestral territories from the outset, both important components of self-determination as defined by international law.[25] It is a sad paradox that proponents of Québec independence appealed to an internationally enshrined right to decide their own future, while at the same time denying it to Aboriginal peoples.

Moreover, Québec's pro-independence government acknowledged it was willing to recognize Aboriginal rights only because it was a necessary condition for the acceptance of an independent Québec by the international community.[26] That is, art. 8 of Bill 1 expressed a political strategy rather than a sincere belief in the legitimacy of Aboriginal rights.

This approach explains why Aboriginal peoples were never consulted in the drafting of the Bill or for any other matter regarding the set-up of the sovereignty project. The commission established in the months prior to the referendum to gather public opinion in Québec regarding the sovereignty project, held meetings in every region of the province, and established special sub-commissions for youth and the elderly. However, there were no such efforts to hear and discuss the concerns of Aboriginal peoples. Their concerns were simply merged into the regional

[21] Robin Philpot, *Oka: Dernier alibi du Canada anglais* (Montréal: VLB, 1991).

[22] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

[23] Mary-Ellen Turpel-Lafond, "Oui the People? Conflicting Visions of Self-Determination in Quebec" in Bruce Hodgins & Kerry Cannon, eds., *On the Land: Confronting the Challenges to Aboriginal Self-Determination in Northern Quebec and Labrador* (Toronto: Betelgeuse, 1995) 43 at 53.

[24] 1st. Sess., 35th. Leg., Québec, 1995. A former version of this law did not explicitly recognize the existing constitutional rights of Aboriginal peoples. See, Draft Bill, *An Act respecting the sovereignty of Québec*, 1st. Sess., 35th. Leg., Québec, 1994, art. 3.

[25] International Labour Organisation, *Convention 169 on Indigenous and Tribal Peoples in Independent Countries* (Geneva: ILO, 1989), especially arts. 7 and 13-15.

[26] David Cliche *et al.*, "Commentaires" in Pierre Trudel, ed., *Autochtones et Québécois: la Rencontre des nationalismes; actes du colloque tenu les 28 et 29 avril 1995, au Cégep du Vieux-Montréal* (Montréal: La Société Recherches Amérindiennes au Québec, 1995)141 at 145-146. David Cliche was parliamentary assistant to the Premier of Québec on Aboriginal issues at the time.

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commissions, and were thus treated as those of any other Québec minority, with no recognition whatsoever of their special rights.

In other words, while Québec nationalists were elaborating a project to build a new country, arguing the internationally enshrined right to self-determination of peoples, they acted in a unilateral, imperialistic, neo-colonial way towards Aboriginal groups. The hypothetical Québec republic would seemingly be a unitary state, which would consider all of its inhabitants as plain citizens without regard to special rights to self-determination for Aboriginal peoples. The Québec state would treat them as minorities; that is, exactly the way Québécois presently refuse to be treated by the Canadian state. In the tradition of the French absolutist state, Québécois supporting independence seem to assert: "La nation c'est moi."

During the Oka crisis, progressive Canadians stood in defence of Aboriginal peoples in Québec, a situation that was offered as further evidence of Ottawa's conspiracy to discredit Québec over its treatment of Aboriginal peoples. This alignment of interests, however, was not unusual. Left-wing groups and intellectuals throughout Canada tend to be against the violation of civil and Aboriginal rights by any government in any province within Canada, be it in British Columbia, Nova Scotia or Québec. Ottawa could not possibly have manipulated these critical political actors who, in fact, also targeted the federal government over the way it managed the crisis. To pretend otherwise is to ignore the important political debate that was occurring in the rest of Canada. To be sure, some rhetorical excesses against Québec were also committed, but they do not negate the basic political dynamics just outlined.

If most Aboriginal peoples in Québec or elsewhere speak English rather than French, it is because of specific historical realities. For centuries, their main everyday interlocutors were either Protestant missionaries, Hudson Bay Company (HBC) traders, representatives of the British Crown, or, more recently, representatives of the federal government, all of whom spoke English. Besides, until the 1960s, the government of Québec refused to provide education to Aboriginal communities within the province, under the excuse that Aboriginal issues fall within federal jurisdiction.[27] The federal government thus provided educational services mostly in English.[28]

This being said, many Aboriginal individuals in Québec do speak French. Most of them descend from the peoples who became allies of the French in the early times of colonization, like the Wendat, Mikm'aq, Algonquin, or Abenaki, who developed military and commercial relations with these European settlers with the help of Jesuit missions.[29] Old alliances last; they have left their imprint on the languages used by the Indians to relate to modern society and the extent to which they mixed with descendants of either the French or British settlers.

Finally, if Aboriginal peoples, during the Oka crisis or at any other moment, insist on dealing with the federal government rather than the Québec government, it is because Ottawa is their main interlocutor in the Canadian legal system. Indians and Inuit are a matter of federal jurisdiction under the *Constitutional Act, 1867*,[30] and the federal government has fiduciary obligations towards them. Their rights and obligations lie in a contract with the federal government, not with the provinces. Even if provinces may be involved in land-related negotiations with First Nations or Inuit, any agreement must also be negotiated with or, at the very least, ratified by the federal government in order to acquire legal validity.

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27 See *infra* note 30.

28 Brian Callaghan, *Inuit Educational and Language Programs in Nouveau Québec, 1912-1991* (M.Ed. Thesis, University of Alberta, 1992) [unpublished] at 110.

29 Alain Beaulieu & Roland Viau, *La Grande Paix: chronique d'une saga diplomatique* (Montréal: Libre Expression, 2001) at 15. See also Olive P. Dickason, *The Myth of the Savage and the Beginnings of French Colonialism in the Americas* (Edmonton: University of Alberta Press, 1997) at 235-270.

30 30 & 31 Victoria, c 3 (U.K.), s. 91 (24). The Inuit are included under this federal jurisdiction (*Re Eskimos*, [1939] S.C.R. 104), but whether the Métis are a federal responsibility is a matter of ongoing dispute; see Mark Stevenson, "Section 35 and Métis Aboriginal Rights: Promises Must Be Kept" in Ardith Walkem & Halie Bruce, eds., *Box of Treasures or Empty Box? Twenty Years of Section 35* (Penticton: Theytus Books, 2003) 62 at 65.

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SECOND MYTH: NATIVE PEOPLES ARE TREATED BETTER IN QUÉBEC THAN IN THE REST OF THE CANADIAN PROVINCES

The James Bay Agreement (JBA) — concluded between the Cree, the Inuit and the government of Québec in 1975 and later ratified by the federal government[31] — is portrayed by nationalist Québécois as proof of the will of the government of Québec to come to terms with Aboriginal claims in a consensual manner.

Again, this myth plays on half-truths and fictions. True, socioeconomic indicators regarding Aboriginal peoples may show they are better off in Québec than in other Canadian provinces, but Aboriginal persons in the French-speaking province are worse off in terms of employment, suicide rates, health, education, housing, etc., than the average Québécois. Besides, unlike in other Canadian provinces, no Aboriginal individuals hold senior positions within the Québec government's institutions — the National Assembly, the cabinet, senior bureaucracy, political parties, etc. — who could speak on behalf of their peoples and have some influence on public decisions affecting them.[32]

In 1983, the Council of Ministers of the government of Québec issued a document known as the "Fifteen principles" with the purpose of guiding its policies towards Aboriginal peoples.[33] The first principle states Aboriginal groups are distinct nations, endowed with the right to develop their own identity.[34] But the third principle explicitly states that "les droits des autochtones doivent être exercés par eux au sein de la société québécoise et ne sauraient par conséquent impliquer des droits de souveraineté."[35] Principle eleven maintains the same tone: Québec is open to consider that existing rights protected by the *Royal Proclamation of 1763*[36] might be recognized; however, actual recognition is not guaranteed.[37]

In 1985, the Québec National Assembly ratified the principles in a declaration which allowed Aboriginal peoples in Québec "to develop as distinct nations with their own identity, exercising their rights within Québec" and recommended that the provincial government conclude agreements with them.[38] The idea is thus the same: Aboriginal peoples may be recognized as nations provided they accept that the ultimate sovereignty belongs to the government of Québec.

The JBA was reached after comprehensive negotiations whereby the provincial government gave Aboriginal peoples important financial compensation in exchange for their acquiescence to the construction of large hydro-electric projects in their traditional territories. However, Aboriginal peoples were also compelled to give up something far more important: their rights over those lands. Extinguishment of rights was the ultimate goal of non-Aboriginal negotiators, the Québec government among them. The agreement was concluded by a government that did not favour independence, yet it was nonetheless expanded and ratified by a pro-independence government. The paradoxical behaviour goes on: a government that claims for itself the right of self-determination as an absolute, eternal right, seeks the extinguishment of that right for other peoples.[39]

The huge hydro-electrical projects carried out in Northern Québec have had important environmental impacts, affecting the caribou and

[31] The Naskapi living in Québec joined the agreement in 1978. From then on, the JBA was formally called the "James Bay and North-Eastern Québec Agreement." It was implemented federally by the *James Bay and Northern Québec Native Claims Settlement Act,* S.C. 1976-1977, c. 32, and provincially by the *Act Approving the Agreement Concerning James Bay and Northern Québec*, S.Q. 1976, c. 46.

[32] Renée Dupuis, *Justice for Canada's Aboriginal Peoples* (Toronto: James Lorimer, 2002) at 20-21

[33] Included as Annex IV in Trudel, *supra* note 26 at 192-193.

[34] *Ibid*. at 192.

[35] *Ibid.*

[36] *Royal Proclamation, 1763*, R.S.C. 1985, App. II, No. 1.

[37] Trudel, *supra* note 26 at 193.

[38] Quoted in Renée Dupuis, "Les politiques canadiennes et québécoises relatives aux Autochtones" in Trudel, *ibid.*, 56 at 65-66 [author's translation].

[39] Paul Rynard, "'Welcome in, but Check you Rights at the Door': The James Bay and Nisga'a Agreements in Canada" (2000) 23 : 2 Canadian Journal of Political Science 211 at 217-218.

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fishing supplies in that land.[40] Regardless of whether this situation was intended or even foreseen by the Québec government, the reality is that it has disturbed the ability of Aboriginal peoples to pursue their traditional lifestyle, their everyday lives and their ability to escape from marginality in many ways. As in any other province, financial compensation is not accompanied by social programs, which makes this second myth untenable.

THIRD MYTH: QUÉBÉCOIS ARE MORE RACIST TOWARDS ABORIGINAL PEOPLES THAN THE REST OF CANADIANS

This myth has been spread by opponents of Québec's independence, convinced that independence is a project dictated by primitive ethnic nationalism, comparable to the ones that gave birth to fascism and nazism. They nourish this vision with interpretations of Québec nationalism elaborated notably by Pierre Elliott Trudeau and, more recently, writer Mordecai Richler. The latter author recalls how racist — and more specifically, anti-Semitic — nationalist Québécois were around the time of World War II; a fact validated by recent historical research.[41]

This myth builds on an important ambiguity entrenched in Québec's nationalist discourse and practice. Québec's nationalism has gone through a series of significant conceptual transformations. Originally, descendants of French immigrants called themselves "*les Canadiens*," not only because Canada was originally limited to what is now the St. Lawrence valley, but also because descendants of British settlers considered themselves British only. The creation of the Canadian federation and its gradual coming of age as an independent state stripped "*les Canadiens*" of their distinct identity, which thus needed to be qualified. That was the origin of the term "French Canadian," whose purpose is to draw a line between "*les Canadiens*" and the newly converted Canadians. Associated sometimes with a "people," usually with a "nation," often with a "race," this new term would become the main identifier for people of French descent living anywhere in Canada.

The Quiet Revolution and the rise of radical nationalism produced a new identity shift. Rejecting their belonging to the already well-established Canadian state, French Canadians started to call themselves Québécois, a process that was consolidated with the creation of the Parti Québécois in 1968. This seemingly innocuous twist of words had important political consequences. The French Canadian identity became circumscribed to a provincial territory. From then on, the Québécois would be both French Canadians and residents of Québec: nationality within the French Canadian nation became synonymous with citizenship within the province of Québec. Non-French Canadians living in Québec, including English Canadians, immigrants and Aboriginal peoples, were included by default under the new label. Conversely, French Canadians living outside Québec were excluded from, and indeed abandoned by, the nationalist project promoted from Québec.[42]

The ambiguities promoted by this identity shift are at the centre of many controversies and political misunderstandings. The reality is that the French Canadian nation and the province of Québec overlap, but they are simply not the same thing. To put it another way, belonging to the French Canadian nation is not synonymous with being a citizen of Québec. Proponents of Québec independence have tried to bridge the gap using the French language as an equivalent of the nationality bond (the "imagined community") to include non-French Canadians living in Québec into the nationalist project. They also defend the principle of a "civic nationalism" that would allow any non-French Canadian to be included into the nationalist project.

However, these bridges are clearly not enough; the core of Québec neo-nationalism is

[40] Alan Penn, "Uneasy Coexistence: La Grande and the James Bay Cree" in Hodgins & Cannon, *supra* note 23, 129.

[41] Pierre E. Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 169 and *The Essential Trudeau* (Toronto: McClelland & Stewart, 1998) at 108-116; Mordecai Richler, *Oh Canada! Oh Quebec!: Requiem for a Divided Country* (Toronto: Penguin Books, 1992). On racism in Québec's past, see Esther Delisle, *The Traitor and the Jew: Anti-Semitism and Extremist Right-Wing Nationalism in Québec from 1929 to 1939* (Montreal: R. Davies Publishing, 1993) and, from the same author, *Myths, Memory and Lies: Québec's Intelligentsia and the Fascist Temptation, 1939-1960* (Westmount: R. Davies Multimedia, 1998).

[42] Marcel Martel, *Le Canada français: récit de sa formulation et de son éclatement, 1850-1967* (Ottawa: La société historique du Canada, 1998) at 20-27.

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still defined in terms of French Canadian nationalism. This reality was made clear in a clumsy way by Premier Jacques Parizeau's catastrophic declaration the evening of the 1995 referendum, blaming "money and the ethnic vote" for the defeat of the independence option.[43] Rephrasing that declaration within my framework of analysis, Parizeau made the point that the economic elites (of which English Canadians represent an important part) and other non-French Canadians living in Québec failed to embrace the French Canadian nationalist project of transforming the French Canadian defined nation into a sovereign state.

The myth nonetheless magnifies this ambiguity of Québécois nationalism and makes a bogeyman out of it. Earlier this century, racism was common currency all over Canada.[44] Moreover, the term "race" was used as an equivalent of "nation." Fortunately, these attitudes have faded, having come under attack since the adoption of the *Canadian Charter of Rights and Freedoms* in 1982.[45] The net result is that racist discourse is now less prominent in Canada, be it in Québec or elsewhere, especially if we compare Canadians to their neighbours to the south.

Specifically regarding Aboriginal peoples, three out of every four Canadians believe Aboriginal cultures are beneficial to Canada and therefore should remain strong.[46] Significantly less (53 percent) think their land claims should be settled and Aboriginal peoples given self-government.[47] However, even fewer Canadians consider that improving the living conditions of Aboriginal peoples should be a high priority for the federal government.[48] Québec is no exception to those trends. In 2003, 47 percent of Québec respondents thought Aboriginal claims are mostly valid.[49] However, the following year, only 22 percent of respondents in that province considered that improving the quality of life of Aboriginal peoples should be a high priority for the federal government.[50]

THE SEARCH FOR RECOGNITION

I believe it is possible to go beyond the current clash of nationalisms in Québec through an honest review of the assumptions at the basis of apparently irreconcilable approaches.

First, a nation is not the only possible form of recognition of the right of human communities to be different and take their own affairs in hand. If this applies to nations, it especially does to nation-states. As James Tully points out, the nation-state form of recognition has been dominant and prestigious since the creation of modern states, but it would be impractical, and politically non-viable, to extend this form of recognition to the over fifteen thousand cultural communities existing in the world today that may claim nationhood.[51]

Furthermore, the prevailing vision of nation-state was elaborated within the Western political tradition of the eighteenth and nineteenth centuries. This vision emphasizes the need for a homogenizing principle as the core of the state, a common single identity that would act as articulator of that political entity. That was the role assigned to nationhood. Homogeneity usually involves some degree of centralism as well, to the extent that a central government is supposed to represent the "national soul." This kind of vision is portrayed in J. G. Fichte's *Addresses to the German nation*, in J. Seeley's *The Expansion of*

43 Michel Venne, "Rethinking the Nation, or How to Live Together" in Michel Venne, ed., *Vive Québec! New Thinking and New Approaches to the Québec Nation* (Toronto: James Lorimer, 2001) 5.

44 For example, restrictions to immigration of non-European people, the existence of a Canadian Ku Klux Klan, the internment of Japanese and German Canadians during World War II, the forced relocation of Inuit communities in the early 1950s, and residential schools for Aboriginal children, among other disturbing occurrences. See Normand Lester, *The Black Book of English Canada* (Toronto: McClelland & Stewart, 2002) and Stanley A. Barrett, *Is God a Racist? The Right Wing in Canada* (Toronto: University of Toronto Press, 1987).

45 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

46 "The CRIC Papers (#14). Facing the Future: Relations Between Aboriginal and Non-Aboriginal Canadians" (June 2004) at 12, online: Centre for Research and Information on Canada <http://www.cric.ca/pdf/cahiers/cricpapers_june2004.pdf>.

47 *Ibid.*

48 29 percent ("The CRIC Papers (#16). Portraits of Canada 2004" (January 2005) at 2 and 11, online: Centre for Research and Information on Canada <http://www.cric.ca/pdf/cahiers/cricpapers_jan2005.pdf>).

49 *Supra* note 46 at 20.

50 *Supra* note 48 at 11.

51 James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) at 8.

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England and, paradoxically, in *The Federalist Papers*.[52] It is especially strong in the French tradition where, under King Louis XIV, Cardinal Richelieu built the nation-state with an iron fist against regional powers and at the expense of the different cultures (nations) the kingdom encompassed.[53] In France, the French (Parisian) language was a powerful political tool for assimilation and annihilation of the rich variety of local cultures comprised within the borders of the state — Catalan, Provençal (langue d'oc), Basque, Breton, Corsican, Flemish, German, Italian. The Republic simply carried on this tradition, pushing regional harmonization even further in the name of national unity.

Clearly, this vision of the nation does not allow for the coexistence of different identities within a single state; rather, it leads to competition between nations to be the one to prevail, often by violent means, in a zero-sum situation. Coexistence asks for institutional forms of accommodation, in which the different nations may express themselves and exercise self-determination without putting in jeopardy state unity. These features fit with the principle of authentic federalism: autonomy for the constituent units; some powers devolved to the central government; the units working mainly for their self-interest in local matters, the central government mainly for state unity.

There is no reason why this could not be put into practice in Québec. Paradoxically, even if nationalist Québécois despise the federal status quo in Canada, true federalism may be the key to reconcile Québec and Aboriginal nationalisms, both with one another and with Canadian nationalism. As Carol Hilling points out,

> [J]e ne vois pas pourquoi l'intégrité des territoires autochtones serait nécessairement incompatible avec l'intégrité du Québec au sens du droit international. La division du Canada en provinces, par exemple, n'a jamais eu pour conséquence de remettre en question l'intégrité territoriale du Canada.... L'intégrité des territoires autochtones peut fort bien être respectée à l'intérieur des frontières de l'État.[54]

Furthermore, if they so wished, Québécois and Aboriginal peoples might even become powerful constitutional allies for reshaping the Canadian federation along multinational lines.

Hilling's starting point for mutual recognition seems promising because some kind of recognition of Québec and Aboriginal peoples is built into existing Canadian law and institutions. The first such basis is *The Royal Proclamation of 1763*, in which the British crown simultaneously granted Québec the status of a British colony and protected Aboriginal peoples from deprivation of their lands and resources. With this legal instrument, Québec and Aboriginal peoples acquired legal personality within the British legal apparatus at the same time. This proclamation, still upheld today, laid down the bases for subsequent recognition of Aboriginal rights. Québec obtained its equivalent legal instrument eleven years later, with the *Québec Act, 1774*,[55] which recognized the right of Québec to be different in terms of religion, law and language.

Second, the *Constitution Act, 1982*, including the *Charter*, also implies a basis for mutual recognition. The amending formula (s. 38), although never formally accepted by the government of Québec, gives the French-speaking province a potential veto power, since any constitutional amendment must be approved by at least two-thirds of the legislative assemblies of the provinces in which at least 50 percent of Canada's population lives. Effectively, this formula means that no amendment can be approved without either Québec's or Ontario's consent. As for Aboriginal peoples, this constitutional text recognizes the rights enshrined in the *Royal Proclamation* and the ones resulting from land claims and treaties (ss. 25 and 35).

There is, then, a legal basis for mutual recognition

[52] *Ibid.* at 7. Johann Gottlieb Fichte, *Addresses to the German Nation*, trans. by R. F. Jones & G. H. Turnbull (Chicago: The Open Court Publishing Company, 1922); Sir John Robert Seeley, *The Expansion of England: Two Courses of Lectures* (London: Macmillan, 1911); and, Alexander Hamilton *et al.*, *The Federalist Papers* (New York: New American Library, 1961).

[53] Aldous Huxley, *The Devils of Loudun* (New York: Barnes & Noble Books, 1996).

[54] "L'avant-projet de loi sur la souveraineté du Québec et les peuples autochtones" in Trudel, ed., *supra* note 26, 134 at 137.

[55] (U.K.), 14 George III, c. 83.

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within the framework of existing institutions. The main obstacles to this recognition are thus not legal, but political. However, there is room and, indeed, there is a necessity to go beyond the current state of confrontation, because

> Québécois et autochtones souhaitent l'autonomie et ont un projet nationaliste. Ils cherchent la reconnaissance d'un droit à l'auto-détermination et de leur existence comme peuples. Ni le Québec ni les peuples autochtones ne peuvent logiquement nier à d'autres le droit qu'ils réclament pour eux-mêmes. Les uns et les autres veulent lever ce que d'aucuns appellent le joug du colonialisme et du paternalisme; les uns et les autres ont intérêt à trouver leur niche constitutionnelle particulière. *Et il y a là une convergence politique*.[56]

I am convinced that many political problems in Canada originate in a lack of understanding of history and of what made this country possible the way it is. Many answers to Canadian dilemmas lie in alternatives that were abandoned in the past. We need to recall some historical facts which show that convergence between Québec and Aboriginal peoples is not only possible, but had also been a reality during the nineteenth century.

In the nineteenth century, there was indeed a close relationship between French Canadians and Aboriginal peoples. This closeness explains the birth and development of the Métis culture west of Québec's heartland, which constituted a continuity between the Québec *habitant* and Native populations on the land and along trade routes. The Métis culture is proof of the possibility of co-operation and understanding between French Canadians and Aboriginal peoples. Most Métis descend from French and Scottish ancestors who intermarried with Aboriginal peoples. During the nineteenth century, Métis of Scottish heritage were often known as "Half-breeds" rather than Métis. These groups became mediators between European traders and settlers and Indians living on the land. Over time, they developed a distinct cultural identity, neither European nor Indian, with several original attributes: a way of life, attachment to a specific territory, specialized economic activities, a language — the Michif, a mix of French, English, Cree and Ojibway[57] — clothing and food habits, etc. The Cree called them "Otehpayimsuak," literally "their own boss," meaning "the independent and self-reliant ones." No wonder they soon acquired a sense of autonomy and sought self-determination. They were able to assert this autonomy when they defeated the Sioux (Lakota) Indians over the buffalo hunt, and again in 1849, when they broke the monopoly of the powerful HBC over fur trade with the United States.[58]

The centre of the Métis culture was the Red River settlement; they constituted over 80 percent of this settlement's population.[59] They became concerned about the takeover of their settlement and hunting lands by the Canadian government in 1869, when Ottawa purchased these lands from the HBC. The Métis seized the administrative centre of the region and established an autonomous provisional government to negotiate with Ottawa the terms of their inclusion into the newborn Canadian federation. Under the leadership of Louis Riel, the provisional government was able to unite the Métis and the Halfbreed around a common political project. They would eventually obtain what they wanted: an elected legislature; their own members of parliament in Ottawa; official status for both French and English languages; local control of education; protection for the Catholic faith; and, 1.4 million acres of land promised to the Métis. Recognition of Métis rights was accompanied by the creation of the province of Manitoba in May

[56] René Boudreault, "Par-delà nos différends juridiques: à la recherche d'une réciprocité" in Michel Seymour, ed., *Nationalité, citoyenneté et solidarité* (Montréal: Liber, 1999) 341 at 348 [emphasis added].

[57] Interestingly, these four languages are still the most used in Canada. The first two are the official languages, the other two are the Indian languages most widely spoken and with best possibilities of survival. Cree is spoken by about 50 percent of the 120,000 Cree, while Ojibway is used by 40 percent of the 75,000 people belonging to this group living in Canada. See Renée Dupuis, *La question indienne au Canada* (Montréal: Boréal, 1991) at 32. A study carried out by Statistics Canada comes to a similar conclusion, with data updated to 1996: 87,555 people speak Cree, and 25,885 speak Ojibway; see Mary Jane Norris, "Canada's Aboriginal Languages" (1998) 51 Canadian Social Trends 8 at 13.

[58] Emma LaRocque, "Native Identity and the Métis: Otehpayimsuak Peoples" in David Taras & Beverly Rasporich, eds., *A Passion for Identity. Canadian Studies for the 21st Century* (Scarborough: Nelson Thomson, 2001) 381-399.

[59] *Ibid*. at 385.

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1870, the first new province to join the federation created three years earlier.

Métis settlers west of Manitoba attempted to repeat the exploit fifteen years later, now allied to Blackfoot and Cree Indian groups. Even more than in the past, they were wary of the federal government, because it had only partially honoured the promises made in Manitoba regarding land. The Métis had been dispossessed from their land grants through a mixture of manipulation, maladministration, coercion and speculation.[60] The settlers asked Riel, in exile in the United States since 1874, to lead their movement, and he agreed. After sealing alliance with Indian leaders, they issued a "Bill of Rights" that compounded Indian grievances with Métis land claims, and control of natural resources. If these demands were not met, they were ready to create an autonomous British colony, separate from Canada.[61]

This time, however, the movement faced adamant resistance from Ontarians, supported by Ottawa. The Métis organised armed resistance, under the leadership of Riel and Gabriel Dumont, a charismatic buffalo hunter and negotiator. They were defeated in May 1885. Riel was tried and charged with high treason, and hanged on November 16, 1885.

Québec supported the Métis movement politically and ideologically. There was a measure of solidarity towards francophone Métis in the province. The solidarity of Québécois came from the fact that they saw the Métis as an outgrowth of the French Canadian nation, a feeling shared by Riel himself.[62] His execution provoked outrage in Québec. Newspaper articles expressed the popular mood: "The cause of the Métis is dear to us"; "We are too closely related to be indifferent to their fate"; "Riel is only a symbol: it's the French-Canadian and Catholic element that they'd like to see dancing at the end of a rope."[63]

Thus, the Métis were seen in Québec as the standard-bearers of the French Canadian nation in the newly colonized western Canadian lands. In Montréal, a crowd of 50,000 people — the biggest popular demonstration thus far in that city — gathered to listen to thirty-seven speakers condemn the decision to execute Riel. Honoré Mercier, leader of the provincial Liberal Party, capitalized on that show of popular outcry. Mercier declared in his speech to the masses that Riel's execution was "a blow struck at the heart of our race" because Riel was a "brother of the Northwest" to French Canadians.[64] He built on that mobilisation to create a National Party, uniting the Liberals and radical Catholic Conservatives for the defence of the French Canadian nation. He was able to form a national unity government in 1887.

TOWARDS A COMMON QUEST FOR RECOGNITION?

As we saw, in the past, Québécois and Aboriginal peoples were drawn towards each other because they were both populations marginalized by British colonialism. The dawn and fall of Métis nationalism was a rallying cause for their nationalisms. Today, both groups are struggling to obtain recognition and protection of their collective rights from the Canadian state. Thus, their interests are similar. Instead of trying to exclude each other, Québécois and Aboriginal peoples might be interested in finding a common ground not only for mutual recognition but also for a common struggle to reshape the Canadian federation, taking their national interests into account.

Acknowledgement of this history may be the basis for reconciliation and mutual recognition of competing nationalisms. Maybe the revival of the "Riel spirit," the feeling of belonging to the same

60 Paul Chartrand, "Aboriginal Rights: The Dispossession of the Métis" (1991) 29 Osgoode Hall Law Journal 457.

61 John F. Conway, *Debts to Pay. A Fresh Approach to the Québec Question* (Toronto: James Lorimer, 1997) at 37-38

62 In 1869, the Red River provisional government adopted as its symbol a flag with the *fleur-de-lys* (white lily) symbol, to underline its allegiance to its French roots. The *fleur-de-lys* would later become the official crest of Québec, as seen in its contemporary flag, adopted in 1948. See "Un drapeau pour le Québec," online: Radio-Canada <http://archives.radio-canada.ca/IDC-0-17-527-2591-10/politique_economie/drapeau_fleurdelise_quebec/>.

63 Quoted in The Institute for Research on Public Policy, ed., *As I recall/Si je me souviens bien Historical Perspectives* (Montréal: IRPP, 1999) at 70-72.

64 Paul Romney, *Getting it Wrong. How Canadians Forgot Their Past and Imperilled Confederation* (Toronto: University of Toronto Press, 1999) at 135.

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cultural community, is the starting point for mutual recognition through a shared identity composed by equal parts of the two nations. Certainly, this fusion around the Métis nationalism is now mostly symbolic. Over the course of over one century, the Métis, Québec and Indian nationalisms have developed along different lines. The integration of this past into the respective nationalistic narratives, however, may become a powerful political tool for reconciliation.

Whether this reconciliation is a step towards the reform of federalism or a previous stage towards independence of Québec is a matter that must be decided afterwards by the concerned actors. But it is clear that Québec cannot afford to bypass the participation of Aboriginal peoples in this decision. In fact, the government of Québec has the opportunity to show to the rest of Canada and to the world, through the concrete example of its treatment to Aboriginal peoples, just what "respecting the differences," "honouring the right to self-determination," and "a pact between nations" mean. It just cannot afford to behave in an imperialistic, neo-colonial way while accusing Ottawa of doing so, thus giving credence to those who contend that Québec nationalism is exclusionary and ethnocentric. Québec nationalists could also reconcile themselves with French Canadian nationalism, thus embracing and supporting French Canadian communities outside Québec.

Mutual recognition is important not only to solve disputes within Québec, but also to seek a recasting of the Canadian federation. Together, Aboriginal peoples and Québécois can push Ottawa and the other provinces to correct the shortcomings of Canadian federalism that affect their ability to fully exercise their right to self-determination. Authors such as Guy Laforest and Roger Gibbins, Bernard Cleary, René Boudreault and Michel Seymour have suggested this joint effort.[65] Boudreault identifies a series of convergences between Aboriginal peoples and Québécois, beyond the constitutional debates:

a) Political: both populations seek the recognition of collective rights, associated with autonomy and a nationalist project. Aboriginal sovereignty may be harmonised with and be complementary to sovereignty of the National Assembly through recognition of specific spheres of government.

b) Economic: through the participation of Aboriginal peoples in commonly defined programmes of regional development.

c) Social: through the opening up of social organizations of both nations to participation of each other's members, and co-operation in the management of natural resources and the environment.

d) Cultural: by supporting each other in the defence of their uniqueness in North America, both being minorities and thus threatened by homogenizing forces. [66]

The authors mentioned above have in common a deep comprehension of the respective nationalisms and rights involved and lucidity about the stakes involved. Unfortunately, these features are scarce in the minds and behaviour of most respective nationalist leaders. A first opening seemed possible in 1983, when Premier René Lévesque participated in the first conference for the review of constitutional reforms related to Aboriginal issues, largely because he was asked to do so by Aboriginal groups. At that time, there was a common interest to fight simultaneously for Québec and Aboriginal rights, both overlooked by the constitutional patriation.[67] This co-operation died with the replacement of Lévesque at the head of the provincial government in 1984.

Since then, subsequent nationalist leaders spent their time accusing each other of misunderstanding one another's causes, and trying to make their rights prevail over the ones of the opposite side. Québec nationalists try to subordinate Aboriginal rights to Québec's rights to self-determination — acting as if to say: independence first, then negotiation with

[65] Roger Gibbins & Guy Laforest, eds., *Beyond the Impasse: Toward Reconciliation* (Montréal: IRPP, 1998); Bernard Cleary, "Les trois peuples fondateurs: l'assise du Canada de demain" in Seymour, ed., *supra* note 56 , 336; Boudreault, *supra* note 56; and, Michel Seymour, *La Nation en question* (Montréal: L'Hexagone, 1999) at 177-189.

[66] Boudreault, *ibid.* at 347-353.

[67] Sylvie Vincent, "Le Québec et les Autochtones: trois décennies de rapports politiques" in Trudel, ed., *supra* note 26, 116 at 123.

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Aboriginal peoples. Aboriginal leaders oppose Québec nationalists by underlining their attachment to Canada, thus implicitly endorsing the status quo. However, in their dealings with Ottawa, both groups constantly express their dissatisfaction with the place they occupy in the current federal system. Instead of waging two separate constitutional battles — one against each other and one against the federal government — there is room, I believe, to present a common front before Ottawa with a coherent joint strategy and a single objective in mind: reform of federalism to recognize national rights.

Back in 1990, in the aftermath of the failure of the Meech Lake Accord, then-Assembly of First Nations chief Ovide Mercredi paid a visit to Premier Robert Bourassa to propose a strategic alliance for the coming constitutional negotiations. Nobody in Québec, starting with the Premier himself, seemed to give the proposal the historical importance it deserved. Rather, a back-and-forth calumny campaign followed, with Aboriginal and Québec nationalist leaders accusing each other of representing "tribes" instead of nations. The confrontational approach chosen by subsequent pro-independence provincial governments led by Jacques Parizeau and Lucien Bouchard seemed to indicate that the doors were still closed for the reconciliation of nationalisms and mutual recognition.[68]

As for Aboriginal leadership, quite often their strategy consisted of backing Ottawa against Québec in constitutional matters. This was clear in the way the Cree opposed the 1995 referendum on sovereignty. Often at that time, the defence of Aboriginal rights was followed by support of the positions of the federal government in the referendum debate.[69] This strategy may seemingly give more political clout to Aboriginal claims *vis-à-vis* Québec, but it is certainly incoherent to side with the supporters of the constitutional status quo which in other political arenas often overlook the rights of Aboriginal peoples.

More recent developments, however, indicate there is perhaps an effort of mutual recognition and co-operation developing. Quebec's nationalist government led by Premier Bernard Landry made important strides toward the establishment of a new relationship with Aboriginal peoples. First, in February 2002, this government reached an agreement with the Cree known as "The Peace of the Braves." This agreement, valid for fifty years, was explicitly negotiated on a "nation to nation" basis, aiming at the creation of a new "partnership" between them. Legitimated by 70 percent support in a referendum held in all Cree communities within the province, and praised by the leadership of the Cree nation, the agreement provides for Cree involvement in community and economic development of the region and substantial compensation of 3.5 billion dollars, to be delivered to them over the duration of the agreement with an initial payment of 139 million over the first three years. In exchange, the Cree agree to allow major hydro-electric projects to be developed within their traditional territories and to withdraw the multi-billion lawsuits against the Québec government.[70]

Secondly, the same government concluded a preliminary agreement with the Innu, under similar principles of partnership and mutual recognition as nations. This preliminary agreement, called the "Common Approach," was made public in July 2000. Although it simply sets the basis for negotiation of a final agreement in the short term, it nonetheless provides for the creation of an autonomous Aboriginal government in a limited region named Innu Assi, and grants harvesting rights and participation in resource development in a considerably larger area called Nitassinan. Again, there would be a financial

[68] Pierre Trudel documents this acrimonious clash of nationalisms in "De la négation de l'autre dans les discours nationalistes des Québécois et des Autochtones" in Michel Sarra-Bournet, ed., *Les nationalismes au Québec du XIXe au XXIe siècle* (Ste.-Foy: Les presses de l'Université Laval, 2001) 203-230.

[69] See the "Conclusions and Recommendations" issued by the Grand Council of the Crees, *supra* note 18 at 429-460. Several of the 125 recommendations support the views of the federal government in the Canadian unity debate.

[70] "La 'Paix des Braves' ouvre la voie à une nouvelle ère de coopération et de prospérité pour la région de la Baie-James," online: Premier of Québec <http://www.premier.gouv.qc.ca/general/comuniques/archives_commumiques/2002/fevrier/com20020207a.htm>.

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compensation in exchange for the Innu dropping their legal suits against the province.[71]

However, both processes are explicitly based on the "Fifteen Principles" adopted in 1983 and ratified in 1985, which assert Québec's ultimate sovereignty over the whole territory, stipulate that Aboriginal rights must be exercised within Québec's legal framework, and, most importantly, persevere with the requirement of extinguishment of Aboriginal title as a condition for reaching any agreement.[72]

In conclusion, present prospects for reconciliation of Québec and Aboriginal nationalisms seem promising but still incomplete. There is room, and indeed a real need to move beyond those partial achievements. There is still a good deal of misconception, resentment and misunderstanding *vis-à-vis* Aboriginal peoples in Québec, emanating from vocal nationalist sectors within the province.[73] These attitudes need to be changed if more meaningful progress is to be achieved.

There is even a potential symbol to this reconciliation. The Métis identify a coloured sash as one of the symbols of their nationhood – originally called "L'Assomption sash" after the Québec town where it was produced. A similar sash is also an element of Quebec's self-imagery, where it is called *la ceinture fléchée* and is associated with *les habitants*, the early French rural settlers and colonizers of the Canadian west. Will we one day witness a full reconciliation, symbolized by the Métis sash/Québécois *ceinture fléchée*, as some sort of a wampum belt for the new millennium?

Julián Castro-Rea
Associate Professor
Department of Political Science, University of Alberta

[71] Government of Québec, "Message du ministre [des Affaires autochtones] Rémy Trudel concernant le projet d'entente de principe d'ordre général avec les Innus de Mamuitun et de Nutashkuan," online: Vigile <http://www.vigile.net/ds-societe/docs2/02-8-28-trudel-cris.html>.

[72] See the "second myth" discussed above.

[73] For instance, see the critique to those agreements issued by Mouvement estrien pour le français, "La Paix des braves," online: Mouvement estrien pour le français <http://www.mef.qc.ca/paix-des-braves.htm>.

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JUDICIAL CENTRE	EDMONTON
APPLICANT	ATHABASCA CHIPEWYAN FIRST NATION
RESPONDENTS	CHIEF ELECTORAL OFFICER OF ALBERTA, MITCH SYLVESTRE and HIS MAJESTY THE KING IN RIGHT OF ALBERTA
DOCUMENT	**Affidavit of Lily Polenchuk**

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Olthuis Kleer Townshend LLP
4902 49th Street, 3rd Floor, PO Box 1470
Yellowknife, NT X1A 2P1
Phone: 867-675-1131
Fax: 867-675-1269

Kevin Hille
khille@oktlaw.com

James Shields
jshields@oktlaw.com

Counsel for the Applicant, Athabasca Chipewyan First Nation

AFFIDAVIT OF LILY POLENCHUK

I, Lily Polenchuk, of Edmonton, Alberta SWEAR AND SAY THAT:

1. I am a fourth-year honors student at the University of Alberta, studying English and Political Science. I worked at *The Gateway*, the university's student newspaper, from 2022-2025. I served as a staff reporter, news editor, and managing editor, before serving as the 2024-2025 editor-in-chief. I am also a Junior Fellow at the Canadian Institute for Far-Right Studies and a recipient of the University of Alberta Roger S. Smith Undergraduate Student

Research Award for my research into politics in Alberta. Within the university, I sit on the University of Alberta Senate as an undergraduate student representative.

2. After finishing my term as the Editor in Chief at *The Gateway* I wanted to continue my work in journalism. At the time the Alberta Prosperity Project ("**APP**") was organizing townhalls to promote their Alberta independence initiative. I decided to combine my journalism work with my research interest in politics in Alberta by independently reporting on these meetings and live "tweeting" the events on X.com.
3. Remarks at these events were delivered by APP leadership, which typically included:
    a. Mitch Sylvestre, Chief Executive Officer of the APP;
    b. Dr. Dennis Modry, former Chief Executive Officer of the APP; and
    c. Jeffrey Rath, co-founder of the APP.
4. I have attended five of these townhall events so far. In particular:
    a. On May 21, 2025, I attended the townhall held in Mundare, Alberta;
    b. On June 3, 2025, I attended the townhall held in Whitecourt, Alberta;
    c. On August 12, 2025, I attended the townhall in Edmonton, Alberta;
    d. On January 22, 2026, I attended the townhall in Stony Plain, Alberta; and
    e. On January 27, 2026, I attended the townhall in Edmonton, Alberta.
5. At each townhall I have recorded audio of the event, and I have used Otter.ai (an artificial intelligence transcription service) to generate transcripts of these recordings. For the excerpts of transcripts included in this affidavit, I have personally verified their accuracy. As such, I have personal knowledge of the facts stated in this affidavit.
6. I have also been watching online videos in which APP leadership discusses the topic of Alberta secession. I have indicated where my information comes from these videos, and

based on my knowledge of the speakers and the common topics of discussion at the events I have attended, I believe that this information is true.

A. APP leadership and Premier Smith

7. I watched a recorded video of Premiere Danielle Smith speaking at an event hosted by Rebel News on or about August 25, 2022. An excerpted transcript of the video I saw is included at **Exhibit A.** In the video I heard Premier Smith make the following statement:

> The 'or else' is Dennis Modry and the Alberta Prosperity Project. It's true. We proclaimed into law on April the 7th the *Citizen Initiative Act* which gives the people the power to collect signatures for a petition campaign to propose an amendment. If it's a simple matter of policy, it's a 10% threshold. If it's a constitutional change, it's a 20% threshold. That would mean 600,000 signatures. And as I understand it, Dr. Modry has a million people on his database. So part of when I decided I wanted to run, I knew how important it was to make sure that we addressed the issues of autonomy. And I talked to Dr. Modry as one of my first steps. I said 'let's try this together. Let's get as much autonomy as we can'. Full well knowing that he's got the power. You've got the power if we are not successful and this is why I take your movement very, very seriously, and why Justin Trudeau should take it very, very seriously, too. Because you have the power to be the 'or else'.

8. On January 22, 2026, in Stony Plain, Alberta I heard Dennis Modry make the following statement:

> Remember, you probably heard this, but [Premier Danielle Smith] has stated publicly that she would honor the results of the referendum. So in my conversations with her, I've asked her the question, would she be willing to govern the sovereign country of Alberta as president or prime minister? And her comments be, well, I don't really like President I prefer prime minister. So I then went on and I asked her, or I stated, you know, during Brexit, David Cameron, who campaigned against Brexit, did the honorable thing. He resigned when Brexit was successful, and she said to me, 'Well, I'm not going to David Cameron myself.' So that obviously means she'd be willing to lead a sovereign country.

9. An excerpted transcript of this Townhall is attached as **Exhibit B**.

10. On May 21, 2025, in Mundare, Alberta I heard Mitch Sylvestre make the following statement:

> Danielle Smith won the election. I had a lot to do with putting her as a premier. I did a lot of work for her. I did a lot of canvassing for her. I probably put as many people at the UGM last year as anybody, more than anybody, actually, and Danielle's not saving us either. So here's the face of this project. The face of this project is you, and you have to accept the responsibility, because if you don't accept the responsibility, we cannot do this.

11. An excerpted transcript of this Townhall is attached as **Exhibit C**.

B. Unilateral Declaration

12. On June 3, 2025, I attended the townhall held in Whitecourt, Alberta in person ("Whitecourt townhall"). An excerpted transcript of this townhall is attached as **Exhibit D**. I heard Dennis Modry make the following statement:

> In February of 2008 Kosovo had a referendum. Was wildly successful, forming a sovereign country, and that was in February 2008. One month later, Japan and Canada were the first two countries to acknowledge that Kosovo was a sovereign nation. There you go. So if Canada can do it to Kosovo, then there's no way that they can do anything about the premier with that successful referendum announcing Alberta as a sovereign nation, particularly when there's already international recognition that Alberta has become a sovereign nation. And we know firsthand that the US will acknowledge Alberta sovereignty, but it's exactly like that, all right, so that is, that is the process

13. I have watched a recorded video of Dennis Modry, Mitch Sylvestre, and Jeffery Rath speaking at an APP event in Red Deer, Alberta on or about June 9, 2025 ("Red Deer townhall video"). An excerpted transcript of this event is attached as **Exhibit E**.

14. In the Red Deer townhall video I heard Dennis Modry make the following statements:

> I can assure you that the question that was drafted by Jeff and Keith Wilson is crystal clear. It follows the letter of the of the *Clarity Act* in, in fact, some of the wording is virtually identical.
>
> What's unclear in the *Clarity Act* is what happens if negotiations fail. And I think that's a really important question. And because there is no clear answer, you can then go back and look at what is in the analysis by the Supreme Court, which led to the *Clarity Act*. And that analysis—and Jeff educated me on this as well is sections 154 and 155—that I think are it's it's, it's, it's, it's the brilliant solution. It's political legitimacy to have a referendum that's successful. That should be 50% + 1. And then when the international community acknowledges it, Alberta has the

> right, just like Kosovo did, to declare its independence unilaterally. That would be the easiest, fastest way. Then the negotiations are just on the terms and there's no muddying of the water of negotiations about, well, maybe if we get a better deal in in Canada, we'll stay.

15. On the same panel, I also saw Jeffery Rath make the following statement:

> You look at paragraphs 154 and 155 and you know, clearly Albertans are an oppressed people. We just look at the Senate balance. We look at the Supreme Court balance. You look at the way we've been treated throughout Confederation. Um, you know, we could, we could unilaterally secede under paragraph 154, or alternatively, we could simply unilaterally declare independence under Section 155.

16. I watched a video of Dennis Modry at Rebel News Live event in Red Deer, Alberta on or about June 14, 2025 ("Rebel News townhall video"). An excerpted transcript of this video is attached as **Exhibit F**. In this video I heard Dennis Modry make the following statement:

> When you look at the way the Supreme Court analyzed the whole issue of a unilateral Declaration of Independence, there's section 154 and 155 in that analysis. This is really important to understand is that if a region is subjugated, uni, dominated, exploited, and their aspirations of self-determination are not met, that region has the right to have a referendum on sovereignty. And it is political legitimacy. And it becomes legal legitimacy when other nations acknowledge that Alberta has had a successful referendum. And if the premier has the guts to do it, the day after that successful referendum, she will declare Alberta as a sovereign nation.

17. I watched a YouTube video of an interview that aired on or about December 24th, 2025 between Jeffrey Rath and Rachel Parker ("Rachel Parker video"). An excerpted transcript of this interview is attached as **Exhibit G**. In the video, I saw Jeffrey Rath make the following statement:

> Ottawa either behaves itself, or the, you know, at the negotiating table and behaves appropriately, or, you know, or Alberta could literally issue a unilateral declaration of independence outside of the scope of the Canadian Constitution.

18. I watched a recorded video of the townhall in Didsbury, Alberta on or about January 7th, 2026 ("Didsbury townhall video"). An excerpted transcript of the Didsbury townhall video

is attached as **Exhibit H**. In that video I heard Mitch Sylvestre say "If we get 1.8 million signatures, this is over. Right there. Before the referendum."

19. In the Didsbury townhall video I also heard Jeff Rath make the following statement:

> Our 120-day goal of getting over a million signatures, getting 1.8 million signatures, and showing the province that they don't even need to have a referendum on independence. We can just go straight to a declaration of independence, for a free independent Alberta.

C. United States Recognition

20. In the Didsbury townhall video I heard Jeffrey Rath make the following statement:

> And then the other thing that we've been talking to our friends in the United States about, and that's the next project that's on my desk that we're working forward on, is we are doing a feasibility study on a $500 billion US line credit. Or, you know, to ensure that the day Alberta declares itself independent from Canada upon a successful referendum result, that we will then be able to negotiate with Canada from a position of strength.

21. In the Red Deer townhall video I heard Jeffrey Rath make the following statement:

> And we have it on pretty good authority that if we, if we issued that Declaration of Independence, the Americans would, would recognize us the next day.

22. In the Rebel News townhall video I heard Dennis Modry make the following statement:

> And the US, we know this first hand 'cause we were there talking with them on April the 22nd, will acknowledge Alberta as a sovereign nation and we've done it.

23. I watched a YouTube video of an interview with Real Citizen and Merit TV Canada on November 14th, 2025 between Mitch Sylvestre, Jeffrey Rath and David Craig. An excerpted transcript of this interview is attached as **Exhibit** I. In the video, I saw Jeffrey Rath make the following statements:

> We've also spoken to the US about immediately recognizing Alberta as an independent country immediately upon a successful referendum result.

> We were meeting at a very senior level. Um, uh, you know, we're not going to disclose the identity of the people we were meeting with, but I mean, people were leaving our meeting and going directly to the Oval Office.
>
> We've been to DC twice, I'm in, I'm in touch with them, you know, on, on a, on a weekly basis.

24. I attended a meeting in Edmonton on January 27, 2026. An excerpted transcript of this meeting is attached as **Exhibit J.** At this meeting I heard Jeffrey Rath explain the APP's overall plan. His statements are consistent with what I have heard at other meetings:

> And you know, as far as, you know, day two after, you know, an independence vote, I mean, that's why we're working on contingency plans. And we have contingency plans on contingency plans, right? So, we have to be careful, because obviously there's all kinds of people that are screaming sedition, foreign interference, and all this other crap right. So, you know, but we are working on studies, is the best way to put it, right. Like right now, we are working on a feasibility study in air quotes, we're going to be meeting in the middle of February with State Department officials, Treasury Department officials, and we're going to be working on putting together a feasibility study to determine whether, hypothetically of course, hypothetically, it's all hypothetical, that we can enter into agreements with the United States or otherwise. And, hypothetically, whether or not a $500 billion US credit, would it be available to the independent country of Alberta to buttress our negotiations with Ottawa.
>
> ...
>
> Why don't we have an entire department that is busy, you know, planning for, you know, Alberta leaving Canada, putting together the things that need to happen to get Alberta out of Canada, which you know, effectively is what the Alberta Prosperity Project has been doing, right?
>
> ...
>
> we're sharing that information with our friends in the states that we're talking to, and this is a big irritant for Alberta. And you know, if you know the United States could, you know, get its head around providing a pipeline to the West Coast, it would solve a lot of Alberta's problems, blah blah blah. Lo and behold, three weeks later, there's Mr. Bessent saying, 'Hey, we love [inaudible], if an independent Alberta, you want a pipeline to the West Coast, come down to the United States. We'll give you a pipeline to the West Coast right?' Because the Americans want Alberta oil and gas to go to Japan, Korea, and our partners, our actual partners in the Trans Pacific Partnership.
>
> We have contingency plans on top of contingency plans and, you know, as far as, you know, our friends in the United States go, they're enthused. They, you know,

> their exact words are, 'we are enthusiastic about the prospect of a free and independent Alberta.'
>
> International recognition will certainly help us in terms of our negotiating position with Ottawa. You know, hypothetically right, if on the day after a successful referendum, the United States, Israel, Argentina, Hungary, you know, other like-minded countries around the world were to recognize Alberta as a free and independent country, right? You know, that puts us squarely in the middle of paragraph 155 of the secession reference, which is independence by way of international recognition. Now that's not under the Canadian Constitution. We're pursuing a constitutional process and a legal process, right? We're not advocating, you know, a paragraph 155 solution, right? But it certainly is not going to hurt our negotiating position with Ottawa. Under the Canadian Constitution it'd already have US recognition as an independent country in our back pocket.

25. A Globe and Mail article about the comments of Commerce Secretary Bessent referred to by Mr. Rath are attached as **Exhibit K.**

SWORN BEFORE ME at Edmonton, this the 30th day of January, 2026.

S. Metera

(Commissioner for Oaths in and for the Province of Alberta)

PRINT NAME AND EXPIRY OR LAWYER/STUDENT-AT-LAW

SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

(Signature)

Lily Polenchuk

Print Name - LILY POLENCHUK

This is Exhibit "A" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Metera.

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

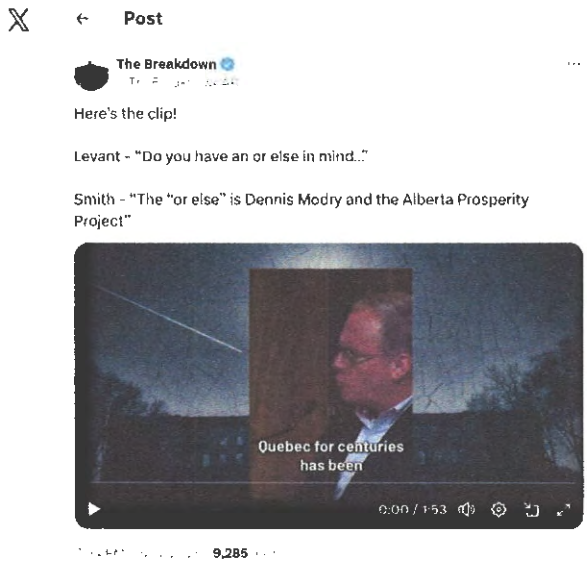
SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

Danielle Smith at a Rebel News event, video posted by "The Breakdown" on X.com

July 5, 2025

Online: https://x.com/TheBreakdownAB/status/1941634254271664463?s=20

1:53 minutes total



Transcript Excerpt:

0:00

Ezra Levant: Quebec for centuries has been minor, a minority, a linguistic minority, cultural, economic minority. But they did something different. They had an 'or else' added to the end of it. How far are you willing to go? Are you willing to say: 'we want these things, or else'? At what stage would you, for example, invoke the *Clarity Act*, as clarified by the Supreme Court? For example, calling a referendum on the *Clarity Act* question of secession? Do you have an 'or else' in mind? What is it and what would make you use it? And if not, how are you serious? And I'll start it off with Danielle Smith on that one.

0:50

Danielle Smith: The 'or else' is Dennis Modry and the Alberta Prosperity Project. It's true. We proclaimed into law on April the 7th the *Citizen Initiative Act* which gives the people the power to collect signatures for a petition campaign to propose an amendment. If it's a simple matter of policy, it's a 10% threshold. If it's a constitutional change, it's a 20% threshold. That would mean 600,000 signatures. And as I understand it, Dr. Modry has a million people on his database. So part of when I decided I wanted to run, I knew how important it was to make sure that we addressed the issues of autonomy. And I talked to Dr. Modry as one of my first steps. I said 'let's try this together. Let's get as much autonomy as we can'. Full well knowing that he's got the power. You've got the power if we are not successful and this is why I take your movement very, very seriously, and why Justin Trudeau should take it very, very seriously, too. Because you have the power to be able to be the 'or else'.

This is Exhibit "B" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Metera

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

Alberta Prosperity Project Townhall in Stony Plain, Alberta

January 22, 2026

Recorded by Lily Polenchuk

Transcribed by Otter.ai

1:29:07 minutes total [Part 1/2]

Transcript Excerpt:

...

1:28:36

Attendee: my question is, if the Alberta government, and we know Danielle Smith is a publicly admitted Federalist, if her government is the one to negotiate our way out. How do we know she's going to negotiate in good faith?

Derek Smith: I can say I have a little bit of bias, because I've spoken with the premier several times. One thing I can say is that you have to remember, folks that something again. I'll quote Pete Wilson bere. He told me is that the politicians follow the votes, they follow where the people are going otherwise, they're out of the job. Now if, Premier Smith wanted some form of a job in a new republic of Alberta, she would have to negotiate on good terms, or else she wouldn't [inaudible]. What you have to remember is that we're the ones voting for this. If they don't want to do the job, we find somebody who does. As far as I'm concerned, I don't know exactly again, how it works inside and out, but when it comes to how do we ensure that they negotiate the best for us? I think again, once the democratic process has concluded the people have spoken, it's time to go. That she's under just as much obligation as the country is to recognize and say, 'This is the best interest'. What people have to remember with Premier Smith is that whether you like or hate or you dislike some of our policies, there's nothing anybody can do 100% of the time

that's going to please everybody. But we have to remember that premier Smith has added Bill 14, which, by the way got the application out of the courts, that was about to be turned down. It gave us the ability to hold this, you know, this collection of signatures, and it's giving us the ability to have a referendum.

END OF PART 1/2

PART 2/2

2:35 minutes total

Transcript Excerpt:

0:12

Derek Smith: Bill 54 they brought forward Bill 54 that allows us to even have a

referendum. So, um, I don't think that premier Smith has it out for Albertans. I think that she's doing her job and allowing grassroots to move forward, and I think that the onus is on us now. We're the ones that push it over the finish line, and I don't know what you guys I don't want the government involved in this process. This has to be us, so let's get it done.

0:36

Dennis Modry: So, you have to remember, you probably heard this, but she has stated publicly that she would honor the results of the referendum. So, in my conversations with her, I've asked her the question, would she be willing to govern the sovereign country of Alberta as president or prime minister? And her comments be, 'well, I don't really like 'president' I prefer 'prime minister'.' So, I then went on and I asked her, or I stated, you know, during Brexit, David Cameron, who campaigned against Brexit, did the honorable thing. He resigned when Brexit was

successful, and she said to me, 'Well, I'm not going to David Cameron myself.' So that obviously means she'd be willing to lead a sovereign country. My expectation is, is, remember her gov, she and her government were elected, not as a as a with a priority for Alberta to become a sovereign country. She did implement Bill 1 the Alberta Sovereignty within a United Canada Act, which basically that can't do anything. It doesn't have any leverage with the federal government at all, anyhow, but, but the point is, is that we don't really know for sure, any of us exactly where she stands, despite the numerous conversations I have had with her, she has a caucus, which is a holdover from the Kenney government, where many of those caucus members are Federalists. Okay, so you know, she has to be careful that she doesn't get turfed by her own caucus members as well. That's another consideration…

…

This is Exhibit "C" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Metera

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

Alberta Prosperity Project Townhall in Mundare, Alberta

Recorded by Lily Polenchuk on May 21, 2025

Transcribed using Otter.ai

1:07:29 hours total



Transcript Excerpt:

...

1:04:37

Mitch Sylvestre: Hello everyone. Welcome. It's nice to see such a big group. Tanner alluded to the fact that we've done hundreds of town halls, over 100 town halls in the last year, and it's very nice to see all of you here. It's very nice of Mr. Carney to win that election for us. However, here's the problem. We're all in here. If we're going to go after this, we have to understand that if we don't win this, it's going to be very much harder on us. And there's no question in my mind

that that's the plan. We have to understand that politicians are not going to save us, leaders are not going to save us. We have to sing ourselves. And never has that been more true than right now. Pierre Poilievre, I and everybody in this room thought that he was going to win that election, and that was going to make life a whole bunch easier for us. And again, it happens he did not win that election, and life is not going to get easier. What we've got going on? Danielle Smith won the election. I had a lot to do with putting her as a premier. I did a lot of work for her. I did a lot of canvassing for her. I probably put as many people at the UGM last year as anybody, more than anybody, actually, and Danielle's not saving us either. So here's the face of this project. The face of this project is you, and you have to accept the responsibility, because if you don't accept the responsibility, we cannot do this…

…

This is Exhibit "D" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Metera.

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

Alberta Prosperity Project Townhall in Whitecourt, Alberta

Recorded by Lily Polenchuk on June 3, 2025

Transcribed using Otter.ai

1:31:29 hours total [Part 1/2]

Transcript Excerpt:

…

43:51

Dennis Modry: … What's the other path that you can take with a successful referendum on sovereignty? This is true political legitimacy, and speaks to international law. So one pathway, like I said, was going down the rabbit hole of dealing with all, with all the issues, in the, regarding to the *Clarity Act*. The other pathway is to immediately after it is known that the referendum was successful, the premier who's no longer the premier now that very next day, can say to the public of Alberta, the citizens of Alberta: "Today, I declare that Alberta is a sovereign nation." The US, that day, will call the premier who is now something different, a leader of a sovereign nation and acknowledge that Alberta has become a sovereign country. That's the legal process. Why can I say that? Why can I say that with assurance? It's international law, one thing. And the best example of this is what happened with Kosovo in February of 2008. Kosovo had a referendum. Was wildly successful, um, forming a sovereign country, and, that was in February 2008. One month later, Japan and Canada were the first two countries to acknowledge that Kosovo was a sovereign nation. There you go. So, if Canada can do it to Kosovo, then there's no way that they can do anything about the premier with that successful referendum announcing Alberta as a sovereign nation, particularly when there's already international recognition that

Alberta has become a sovereign nation. And we know firsthand that the US will acknowledge Alberta sovereignty, but it's exactly like that, all right, so that is, that is the process…

…

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Lily Polenchuk

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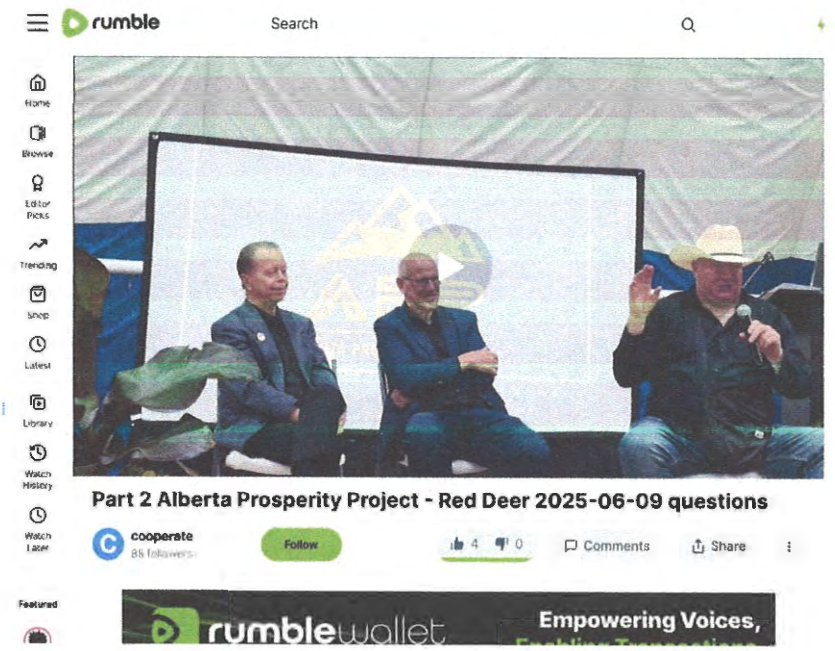
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MY COMMISSION EXPIRES:
JUNE 24, 2028.

"Part 2 Alberta Prosperity Project – Red Deer 2025-06-09 questions"

June 9, 2025

Online: https://rumble.com/v6un6yd-part-2-alberta-prosperity-project-red-deer-2025-06-09-questions.html

31:53 minutes total



Transcript Excerpt:

…

9:23

Unidentified Speaker: The *Clarity Act* says that there must be a clear majority on a clear question, but it doesn't identify what is a clear majority. It also says that those folks in the House of Commons are the ones that get to decide if it was a clear question or a clear majority. So, I'm just wondering, what's your sense of will we actually be able to negotiate a separation, or will we have to follow our neighbours from the south and just make a declaration of independence?

9:57

Dennis Modry: Well, I'll start off and then Jeff can deal with this as, as well, but, yes, you're correct that the House of Commons has to approve the question. I can assure you that the question that was drafted by Jeff and Keith Wilson is crystal clear. It follows the letter of the of the *Clarity Act* in, in fact, some of the wording is virtually identical. So um, but the issue of negotiations becomes another matter and what's unclear in the *Clarity Act* is what happens if negotiations fail. And I think that's a really important question. And because there is no clear answer, you can then go back and look at what is in the analysis by the Supreme Court, which led to the *Clarity Act*. And that analysis—and Jeff educated me on this as well is sections 154 and 155—that I think are it's, it's, it's, it's, it's the brilliant solution. It's political legitimacy to have a referendum that's successful. That should be 50% + 1. And then when the international community acknowledges it, Alberta has the right, just like Kosovo did, to declare its independence unilaterally. That would be the easiest, fastest way. Then the negotiations are just on the terms and there's no muddying of the water of negotiations about, well, maybe if we get a better deal in in Canada, it, we'll stay. None of that would be the topic of negotiation. It's we'll do this, that's your domain, and we're out. That would be the kind of thing. Jeff, you want to add to that at all?

11:45

Jeffrey Rath: No.

11:47

Dennis Modry: No. Alright, but I've got to tell you something else, because you brought up the *Clarity Act*. And Jeff, Jeff wouldn't say this. I'm not a lawyer but I'm going to say it. And that is

that whoever drafted the *Clarity Act* from a legal point of view finished at the bottom of the class. Okay? And I'll tell you why. Because it's internally conflicted, the fourth paragraph of the preamble of the *Clarity Act* states that the successful referendum forces negotiations, but the last line says negotiations 'might lead to secession'. Well, 'might lead to secession' also means might not lead to secession, right? But then you look at section 4(a) of the *Clarity Act* and it's very clear, you can't have a referendum if the purpose is to negotiate a better deal in Canada. So it's internally conflicted. It's the stupidest thing I've ever seen. Jeff, I don't know, if, do you agree?

12:52

Jeffery Rath: And I think at the end of the day, I mean you look at paragraphs 154 and 155 and you know, clearly Albertans are an oppressed people. We just look at the Senate balance. We look at the Supreme Court balance. You look at the way we've been treated throughout Confederation. Um, you know, we could, we could unilaterally secede under paragraph 154, or alternatively, we could simply unilaterally declare independence under section 155. And we have it on pretty good authority that if we, if we issued that Declaration of Independence, the Americans would, would recognize us the next day. So, and I'd far rather negotiate with Canada nation to nation than as a province on bended knee saying 'oh please great Canada, can we please have our money back' like we've been doing for the last 50 years. I'm just tired of it.

...

This is Exhibit "F" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Meeks.

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

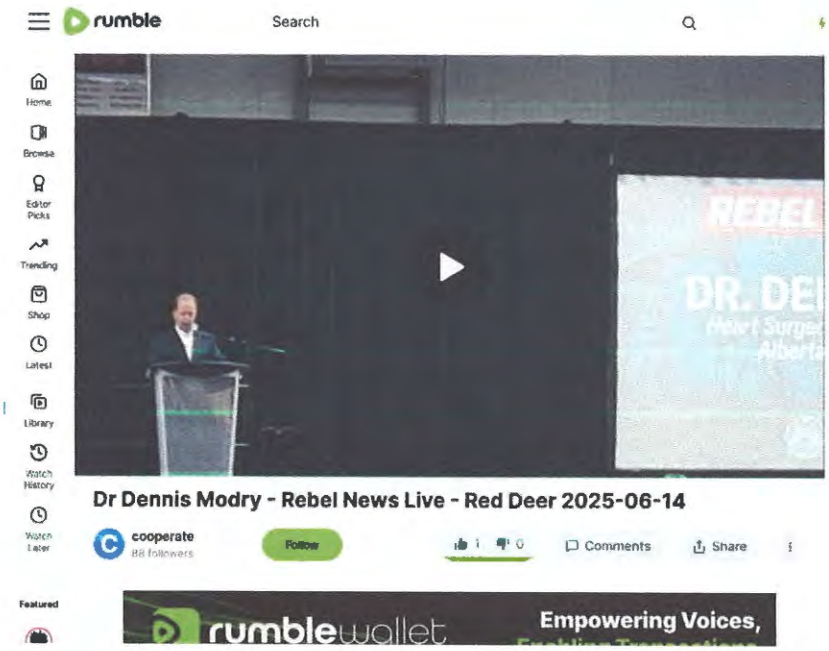
SHELLEY-JO METEKA
MY COMMISSION EXPIRES
JUNE 28

"Dr Dennis Modry - Rebel News Live - Red Deer 2025-06-14"

June 14, 2025

Online: https://rumble.com/v6ut1fx-dr-dennis-modry-rebel-news-live-red-deer-2025-06-14.html

30:00 minutes total



Transcript Excerpt:

...

19:15

Dennis Modry: ...So everything that we're doing follows the *Clarity Act*, right? This is the legal pathway for a province to leave Canada and become a sovereign nation. But I want to make one point very clear with respect to the *Clarity Act*. There's a section in the preamble that says that a successful referendum obligates the federal government and the other provinces to negotiate in good faith, but negotiations might lead to secession. Well what does that mean? That also means that it might not lead to secession. Well what does that mean? If it doesn't lead to secession, only

two outcomes. Number one, Alberta gets everything that it wants in the negotiations. However, section 4(a) of the *Clarity Act* says you can't have a referendum if the purpose, 4(a) and (b), if the purpose is to negotiate a better deal, right? So it can only mean then when it says negotiations might lead to secession and the corollary is might not lead to secession, means one thing. And that is, negotiations have failed and the federal government and the other provinces are not willing to open the Constitution and change it to remove Alberta from the Constitution. There's another solution to that. And when you look at the way the Supreme Court analyzed the whole issue of a unilateral Declaration of Independence, there's section 154 and 155 in that analysis. This is really important to understand, is that if a region is subjugated, um, dominated, exploited, and their aspirations of self determination are not met, that region has the right to have a referendum on sovereignty. And it is political legitimacy. And it becomes legal legitimacy when other nations acknowledge that Alberta has had a successful referendum. And if the premier has the guts to do it, the day after that successful referendum, she will declare Alberta as a sovereign nation. And the US, we know this first hand 'cause we were there talking with them on April the 22nd, will acknowledge Alberta as a sovereign nation and we've done it.

[clapping]

Dennis Modry: There you go. Questions?

...

This is Exhibit "G" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

S. Metera

Commissioner for Oaths, Justice of the Peace,
or Notary Public in and for Alberta

Print Name and Expiry Date

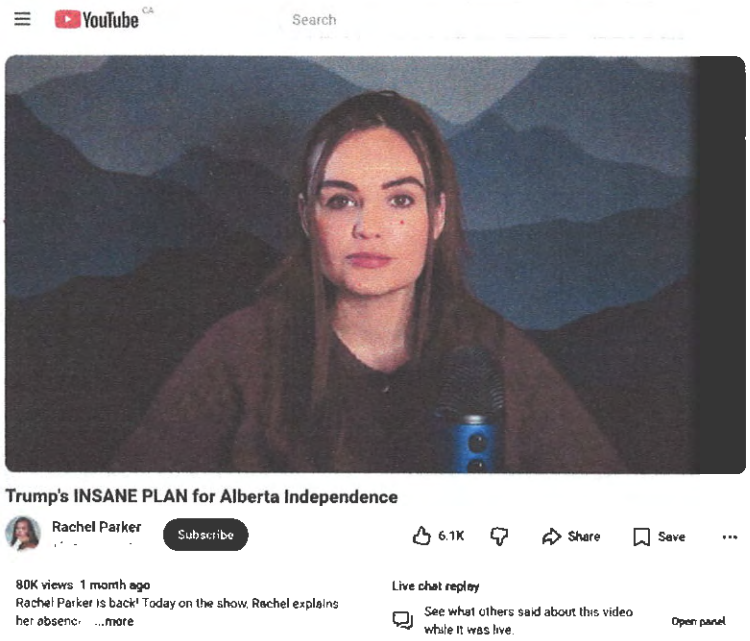
SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

"Trump's INSANE PLAN for Alberta Independence"

December 24, 2025

Online: https://youtu.be/voRmBN-JF2k?si=4u6aK5hfCt5fbqWx

36:57 minutes total



Transcript Excerpt:

...

15:20

Rachel Parker: You also spoke about how if there was to be a successful independence referendum that Alberta would move into the negotiation stage that you had talked about, you know, Alberta essentially having this massive line of credit while they go into those negotiations. I can't help but wonder, I mean, Donald Trump is someone who, you know, he often puts pressures on foreign governments to get what he wants. Do you think we could see a situation in which the Ottawa, is, is, making the negotiations very difficult for Alberta and we see Donald

Trump begin to put pressure on the Canadian federal government to help Alberta secure a better deal for itself in that separation?

15:58

Jeffrey Rath: I don't even know that at that point it's going to be necessary. I mean, Ottawa is either, you know, if we have a $500 billion line of credit, I mean, Ottawa either behaves itself, or the, you know, at the negotiating, negotiating table and behaves appropriately, or, you know, or Alberta could literally issue a unilateral declaration of independence outside of the scope of the Canadian Constitution. So, I mean, Canada, I think, needs to behave itself and needs to um, uh, needs to negotiate in good faith. In fact, the Clarity Act and the Secession Reference of the Supreme Court requires them to negotiate in good faith. But, you know, but by having a $500 billion line of credit in place, you know, it would allow Alberta to simply walk away from the table the minute it became apparent that Ottawa wasn't acting in good faith…

…

This is Exhibit "H" referred to in the Affidavit of:
Lily Polenchuk

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30 day of January, 2026

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or Notary Public in and for Alberta

Print Name and Expiry Date

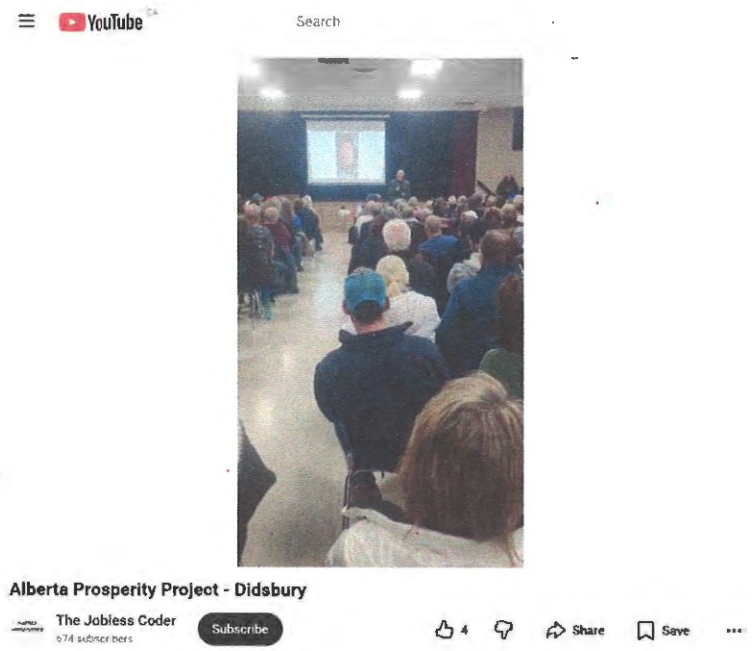
SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

"Alberta Prosperity Project – Didsbury"

January 7, 2026

Online: https://www.youtube.com/live/DjhlIQdA7hM?si=uEBF2OnqEDUQbUgK

1:56:29 hours total



Transcript Excerpts:

27:25

Mitch Sylvestre: Step one is they control the media. Step two is they're going to replace us. "The very concept of a nation founded by European settlers is offensive to me." This is our Prime Minister. Is that treasonous? Just say old stock white Canadians, old stock white Canadians, that's us. And we don't have to apologize for this room being full of white people. This, this used to be what Alberta was. I mean, we're not apologizing for being ourselves. And we welcomed immigrants like they came here for all the right reasons. They came here for what we have. But just understand that they're getting a raw deal out of this too, not just us. And quite frankly, we

will replace them. So our Prime Minister is telling the world this replacement theory is real, but they're going to replace the people of Alberta and, and we're doing it. So if we go back here to 2015 when Harper was in power, that's the number of, this is immigrants coming into the country. Look at this. So if we look at our numbers, we're 44 million people. And if they bring in 1.95 million people a year, how long is it going to take to replace us? 20 years. And they've been at it for 10, right? They've been at it for 10. If you pop over here from India, and we'll just use India as an example, it's anywhere in the world and you become a citizen and you stay here for three years, then you return home, it won't matter where your kids are born. They will be Canadian citizens and their children will be Canadian citizens and so on. And they can all vote in our elections, receive benefits and move to Canada at will. So we're basically creating baby factories in other countries. And they're going to come here and take over.

...

55:14

Mitch Sylvestre: ... 1.8 million signatures is a lot of signatures. Everybody is going to have to help. And if we get 1.8 million signatures, this is over. Right there. Before the referendum. So, I don't even know if we can do that. But I think we can if everybody tries...

...

1:00:47

Jeffrey Rath: ...Small business people in the room tonight. We already have a small business location in Didsbury that's been volunteered. But if anybody has a small business on Main Street or has a storefront somewhere, you know, in whether its in Didsbury or it's in Old or any of the surrounding towns and communities. And if you want to volunteer as a canvasser, get your staff

signed up as canvassers, so people can walk in off the street and sign petitions, please do that. That would be such a big help to us in terms of, you know, our 120 day goal of getting over a million signatures, getting 1.8 million signatures, and showing the province that they don't even need to have a referendum on independence. We can just go straight to a declaration of independence, for a free and independent Alberta…

…

1:18:41

Jeffrey Rath: …And then the other thing that we've been talking to our friends in the United States about, and that's the next project that's on my desk that we're working forward on, is we are doing a feasibility study on a $500 billion US line of credit. Or, you know, to ensure that the day Alberta declares itself independent from Canada upon a successful referendum result, that we will then be able to negotiate with Canada from a position of strength. We don't think we would need to draw on it or use it, but, if you think about how Ottawa has always behaved towards Alberta: 'Oh, we don't like what you're doing. We're going to cut off your health transfers, we're going to cut off this. We're going to cut off that.' For anybody, any pensioners in the room that are worried about their pensions, their pensions would be fully secured by the new independent Alberta government that would have a $500 billion US credit facility to draw on to make sure that anybody whose pensions were threatened by Ottawa would still continue to get paid their pensions without interruption, but paid in US dollars at par. So you would be far better off than you would if we stayed in Canada…

…

This is Exhibit "I" referred to in the Affidavit of:
Lily Polenchuk

☑ Sworn / ☐ Affirmed before me this
30 day of January, 2026

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or Notary Public in and for Alberta

Print Name and Expiry Date

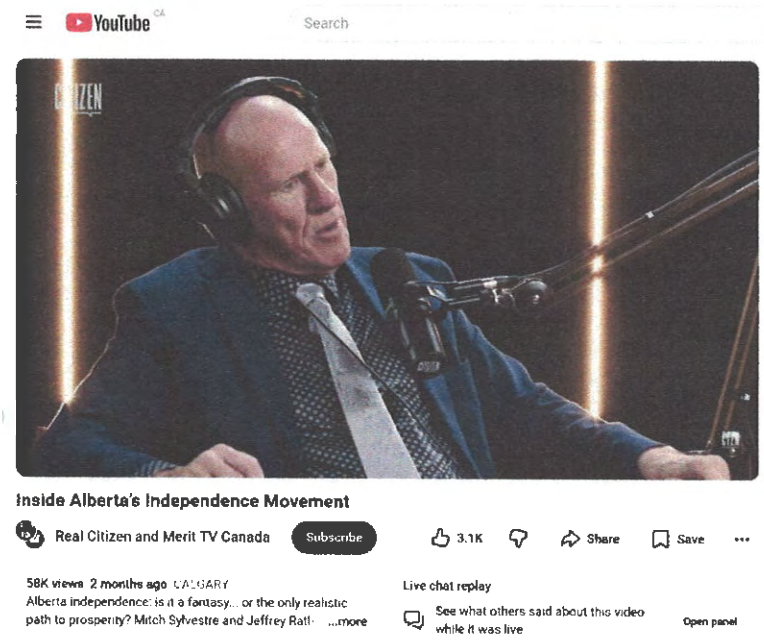
SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

"Inside Alberta's Independence Movement"

November 14, 2025

Online: https://youtu.be/rSs4TJMt4mg?si=bxnzHbEN3m5XWiYQ

1:24:43 hours total



Transcript Excerpt:

1:20:03

David Craig: …Trump administration. You, someone has mentioned that they would be willing to recognize –

1:20:07

Jeffrey Rath: Shortest –

David Craig: Alberta –

1:20:08

Jeffrey Rath: Shortest free trade agreement of all time. One page. Zero tariffs on both sides of the Alberta-US border.

1:20:13

David Craig: Alberta-US your talking about?

1:20:14

Jeffrey Rath: Yea, Alberta-US border on all goods and services. Uh, we've also spoken to the US about immediately recognizing Alberta as an independent country immediately upon a successful referendum result.

1:20:25

David Craig: Who did you guys speak with? You said Trump administration.

1:20:27

Jeffrey Rath: Yeah, we were meeting at a very senior level. Um, uh, you know, we're not going to disclose the identity of the people we were meeting with, but I mean, people were leaving our meeting and going directly to the Oval Office.

1:20:36

David Craig: And you went down to DC?

1:20:38

Jeffrey Rath: Yeah, we were, we've been –

Mitch Sylvestre: Twice.

Jeffrey Rath: – to DC twice, and I'm in, I'm in touch with them, you know, on, on a, on a weekly basis.

1:20:44

David Craig: Okay, yeah.

1:20:45

Mitch Sylvestre: New constitution, right away. New government within 6 months. Um, everything changes.

1:20:52

David Craig: Top to bottom.

1:20:53

Mitch Sylvestre: Top to bottom.

...

This is Exhibit "J" referred to in the Affidavit of:
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SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028.

Stay Free Alberta Event in Edmonton

Recorded by Lily Polenchuk on January 27, 2026

Transcribed by Otter.ai

1:11:35 hours total

Transcript Excerpts:

...

41:40

[Inaudible question to the effect of "What would happen if we were successful? What would the negotiations look like?]

42:56

Jeffrey Rath: well, it's not a question of negotiation. Our borders are our borders, right? And needless to say, I mean, you know, as far as we're concerned, um, you know, that's not negotiable. I mean, Alberta has put over $780 billion into Canada, if you actually run compound interest on the amount of money that Alberta's put into Canada, you know, we are owed trillions by the Government of Canada. So, I mean, that answers the national parks question. It answers the, you know, Canadian military base question. You know, they owe us so much money that we're going to keep all of the real estate, you know, Federal Real Estate within Alberta borders. There's no reason not to, right? And you know, as far as, you know, day two after, you know, an independence vote, I mean, that's why we're working on contingency plans. And we have contingency plans on contingency plans, right? So, we have to be careful, because obviously there's all kinds of people that are screaming sedition, foreign interference, and all this other crap right. So, you know, but we are working on studies, is the best way to put it, right. Like right now, we are working on a feasibility study in air quotes, we're going to be meeting in the middle of February with State Department officials, Treasury Department officials, and we're going to be working on putting together a feasibility study to determine whether, hypothetically of course, hypothetically, it's all hypothetical, that we can enter into agreements with the United States or otherwise. And, hypothetically, whether or not a $500 billion US credit facility would it be available to the independent country of Alberta to buttress our negotiations with Ottawa. right? Because we know what's going to happen. I mean, the day Alberta votes itself out of Canada, Ottawa is going to start screwing around, and they're going to try to cut off our money, and then they're going to mess around with transfer payments, and they're going to do all the stuff that they normally do. That would normally end up in Jason Kenney getting down on his knees and begging to offer our money back and all that foolishness, right? And, I mean, we're seeing that even now with Danielle, right? I mean, they won't even tell her what portion of the CPP, you know, the Canadian pension plan fund, belongs or is attributable to the people of Alberta, right? They don't want to tell us, they don't want to put a number on it, because, you know what?

They're terrified of it, of? We want it back. Give us our money back. We'll run it ourselves. We're sick and tired of you people with your hands, you know, your greedy hands on our money. You know, propping up dictators in the Ukraine and all the other foolishness that you do, right? So we want our money back, right? They won't even give Danielle the numbers, right? So, I mean, all of that stuff has to stop. And if we're buttressed by, you know, a theoretical, hypothetical $500 billion credit facility, it won't matter, right? If Ottawa tries to mess around with anybody's pensions, you know, we can cover it. You know, our seniors will actually be better off in a free and independent Alberta. But that being said, the contractual obligation under CPP. You know, that's one of the big lies that they tell all the time, right, remains right, because CPP is a contractual obligation. So what difference does it make if you live in Portugal, Palm Springs, Florida, you know, all these places that you know, Canadians retire, they still collect CPP. Why wouldn't they continue to collect CPP? In Alberta, you know

…

46:48

Jeffrey Rath: …They're not going to take your passports away. They're going to try to, you know, pretend that, you know, that you continue to hold the money for taxes and all that other stuff. But I mean, those are all issues that are going to be bumps on the road that we're going to have to deal with. But all of those things are going to be a lot easier to deal with, with a $500 billion credit facility…

…

47:50

Jeffrey Rath: …Why isn't the government actually preparing for independence, right? Because, you know the old saying, I mean, you know, if you're if, if you're not, if you're not planning, um, sorry, if you're failing to plan, you're planning to fail, right? I mean, it's an old axiom, but very true, right? And so, you know, so I've been saying that, and then I was digging around on the internet, and I saw my old prof sent this letter to Jason Kenney, saying exactly the same thing, right, in a much more eloquent fashion that I had in a very, you know, long letter to Kenny, saying, look, and if you want to position, you know, yourself with the federal government, so they're going to take you seriously when you threaten to leave, or talk about a firewall, like, why don't we have an entire department that is busy, you know, planning for, you know, Alberta leaving Canada, putting together the things that need to happen to get Alberta out of Canada, which you know, effectively is what the Alberta Prosperity Project has been doing, right? You know with the value of freedom and all the other projects that we've been involved in, including, you know, our Washington initiative, where we're going down on an educational basis, right, to talk to, you know, American officials about the Alberta or, I'm sorry, what the American attitude is towards Alberta independence and so on. And of course, we've seen the results of that. I mean, I was tickled the other day when the US Treasury Secretary Scott Bessent came out and literally

said, 'oh yeah, we love the idea of an independent Alberta. And like, they want a pipeline to the West Coast, we understand they want a pipeline to the West Coast, right?' And of course, we're sharing that information with our friends in the states that we're talking to, and this is a big irritant for Alberta. And you know, if you know the United States could, you know, get its head around providing a pipeline to the West Coast, it would solve a lot of Alberta's problems, blah blah blah. Lo and behold, three weeks later, there's Mr. Bessent saying, 'Hey, we love [inaudible], if an independent Alberta, you want a pipeline to the West Coast, come down to the United States. We'll give you a pipeline to the West Coast right?' Because the Americans want Alberta oil and gas to go to Japan, Korea, and our partners, our actual partners in the Trans-Pacific Partnership…

…

52:29

Jeffrey Rath: …we have contingency plans on top of contingency plans and, you know, as far as, you know, our friends in the United States go, they're enthused. They, you know, their exact words are, 'we are enthusiastic about the prospect of a free and independent Alberta,' right?

…

53:32

Jeffrey Rath: You know, moving forward, you know, international recognition will certainly help us in terms of our negotiating position with Ottawa. You know, hypothetically right, if on the day after a successful referendum, the United States, Israel, Argentina, Hungary, you know, other like-minded countries around the world were to recognize Alberta as a free and independent country, right? You know, that puts us squarely in the middle of paragraph 155 of the *Secession Reference*, which is independence by way of international recognition. Now that's not under the Canadian Constitution. We're pursuing a constitutional process and a legal process, right? We're not advocating, you know, a paragraph 155 solution, right? But it certainly is not going to hurt our negotiating position with Ottawa. Under the Canadian Constitution it'd already have US recognition as an independent country in our back pocket…

…

This is Exhibit "K" referred to in the Affidavit of:
Lily Polenchuk

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SHELLEY-JO METERA
MY COMMISSION EXPIRES:
JUNE 24, 2028

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U.S. Treasury Secretary Scott Bessent weighs in on Alberta separatism, calls province 'natural partner'

MATTHEW SCACE >

PUBLISHED JANUARY 23, 2026
UPDATED YESTERDAY



U.S. Treasury Secretary Scott Bessent's remarks were in response to a question about Prime Minister Mark Carney's World Economic Forum speech

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U.S. Treasury Secretary Scott Bessent on Thursday goaded Prime Minister Mark Carney and directly referenced Alberta's potential independence referendum, calling the Western province "a natural partner for the U.S."

Mr. Bessent's comments, made in a Thursday interview with American right-wing media personality Jack Posobiec, make him the highest-profile member of the Trump administration to weigh in on Alberta's potential independence vote – and adds to the steady drumbeat of allies of U.S. President Donald Trump who appear to be watching the campaign.

"Alberta has a wealth of natural resources, but they won't let them build a pipeline to the Pacific," Mr. Bessent said.

"I think we should let them come down into the U.S., and Alberta is a natural partner for the U.S. They have great resources; the Albertans are very independent people. [There's a] rumour that they may have a referendum on whether they want to stay in Canada or not ... people are talking."

Mr. Bessent's office did not immediately respond to a request for comment.

Tony Keller: A referendum in Alberta could be Donald Trump's 51st state opportunity

A referendum on Alberta independence will happen later this year if a group of residents can collect the nearly 178,000 signatures required to force a vote on the issue. That group, Stay Free Alberta, has until early May to gather support for the vote.

Sam Blackett, spokesperson for Premier Danielle Smith, said Alberta wants to build more pipeline capacity in all directions, including to U.S. markets.

"But the Premier also believes the overwhelming majority of Albertans are not interested in becoming a U.S. state," Mr. Blackett wrote.

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Mr. Bessent's remarks.

Mr. Champagne said he has a very good relationship with Mr. Bessent and he pointed to Ottawa's recent memorandum of understanding with Alberta related to energy resources.

"One thing I've learned over time is that you don't need to comment on every single comment," he said. "We have signed an MOU with Alberta. Canadians are a proud people. Canadians know how to build resources. Canadians know how to grow our economy."

Konrad Yakabuski: The hard truths Mark Carney left unsaid in Davos

Separatist leader Jeffrey Rath, lawyer with the Alberta Prosperity Project, said Mr. Bessent's remarks signal support for a province independent of the United States and Canada, and that its southern neighbour would welcome pipeline access to the Pacific coast. Mr. Rath said he and his colleagues are organizing a February meeting with the Treasury Department but he would not provide specifics.

Mr. Bessent's comments were in response to a question about Mr. Carney's much-celebrated Tuesday speech at the World Economic Forum in which he identified a "rupture" in the world order and publicly condemned economic coercion.

The Treasury Secretary derided Mr. Carney's background as a central bank governor and said he's a "globalist" who doesn't want to use Canada's vast natural resources.

President Trump on Monday, in his bid to take control of Greenland, posted an edited image of himself in the Oval Office with the American flag superimposed over a map of Canada, Greenland and Venezuela.

Earlier this week, Republican Congressman Andy Ogles also added to the fire, saying Albertans appear to want to secede from Canada.

CDMRN INCIDENT REPORT

SLOPAGANDA

The Inauthentic YouTube Network Selling Secession to Albertans

Chris Ross, Ben Steel, Zeynep Pehlivan, Mika Desblancs-Patel, and Aengus Bridgman

April 21, 2026

Key takeaways

- A network of inauthentic YouTube accounts with nearly 40 million views is targeting Albertan audiences, exploiting genuinely-held grievances and repurposing them to advance narratives that normalize the prospect of secession and U.S. annexation.
- These YouTube accounts perform an Albertan perspective, but we find no evidence to suggest any of them are Albertan. The AI avatars and paid American voice actors featured in these videos frequently mispronounce, miscontextualize, and misunderstand the politics they cover.
- These videos contain frequent and obvious lies, drawing on real news stories to reach exaggerated conclusions designed to exploit political divisions.
- We cannot confirm this network's origin or intent, and the available evidence is inconclusive on both counts.

Points saillants

- Un réseau de comptes YouTube inauthentiques, cumulant près de 40 millions de vues, cible les audiences albertaines en s'appuyant sur des griefs réels et légitimes, qu'il récupère et détourne pour diffuser des discours qui banalisent la perspective de la sécession et de l'annexion par les États-Unis.
- Ces comptes YouTube se donnent l'apparence de représenter un point de vue albertain, mais rien ne permet de croire qu'ils sont réellement albertains. Les avatars générés par intelligence artificielle et les acteurs vocaux américains rémunérés qui apparaissent dans ces vidéos prononcent fréquemment des mots de travers, sortent les événements de leur contexte et méconnaissent la réalité politique qu'ils prétendent couvrir.
- Ces vidéos contiennent fréquemment des mensonges flagrants, s'appuyant sur de vraies informations pour en tirer des conclusions exagérées, dans le but d'exploiter les divisions politiques.
- Nous ne sommes pas en mesure de confirmer l'origine de ce réseau ni ses intentions, et les éléments disponibles ne permettent de trancher sur aucun de ces deux points.

To explore the data for yourself, visit www.cdmrn.ca/incident-slopaganda

Context and incident assessment

Alberta secession is a prominent topic in Canadian news, driven in part by a petition campaign for a referendum in 2026. Online, Alberta secession inhabits its own distinct social media ecosystem. Many figures of the movement have large X and YouTube followings, with other highly-followed, sometimes anonymous, accounts on platforms like Instagram and Facebook. Social media conversations can be difficult for the public to navigate, as democratic discourse is often interspersed with financial interests and covert influence campaigns.

We have focused on YouTube for this research because of the presence of a network of 20 inauthentic channels boosting Alberta secession and U.S.-annexation. We commend prior journalism by Colleen Hale-Hodgson and research by the Digital Forensics Lab on the topic and build on their work. This pattern is increasingly being referred to as *slopaganda* due to its low quality, highly templated approach, made easier by generative AI technology, to push political objectives through lies and exaggerations.

These channels use a mix of human actors as well as AI-generated voiceovers and avatars to deliver the scripts. Where human actors are featured, it is clear they are not the original creators of the content, as they regularly mispronounce, miscontextualize or misunderstand what they deliver. Despite this, they often present as authentic Canadians and Albertans, using language that implies that they are integrated with the secession movement and passionate about the cause.

Because these channels offer no identifying information to real humans or organisations, nor ties to the secession movement in Alberta, we are flagging this phenomenon as a potential covert influence operation. The only person we can identify from these channels is an American voice actor based in Pennsylvania, almost certainly not the organizing force behind this phenomenon. We are concerned about the content that is deliberately inauthentic, produced by unknown actors pursuing unclear objectives.

Freedom of expression is a critical value to Canadians, one our research is committed to upholding. Advocacy for independence and sovereignty, whether from Quebec, Alberta or elsewhere, falls within that space. Our goal is to equip Canadians with the knowledge to navigate the online news ecosystem and ensure technology serves democracy. In that spirit, we believe Albertans and all Canadians deserve high quality, authentic, and fact-based news journalism. Albertan voices matter the most on topics relating to Alberta. And survey data collected by our centre earlier this year demonstrates this. Figure 1 shows the results of a question we fielded in February, 2026.

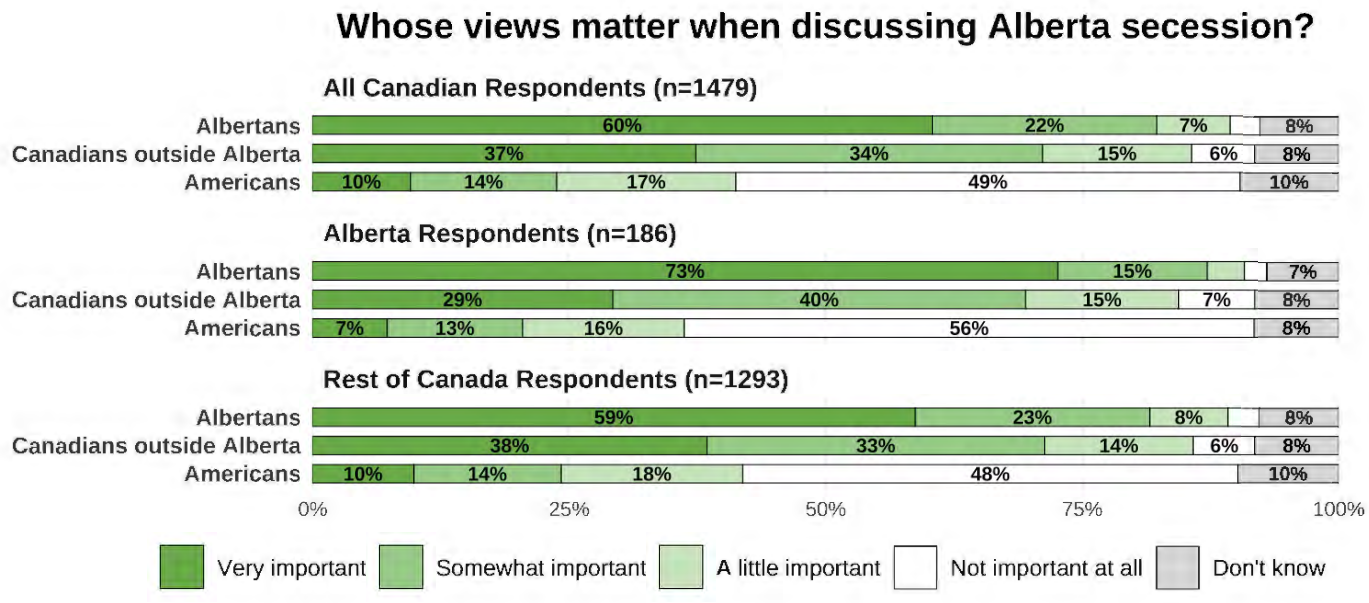


Figure 1. Whose views matter on Alberta secession?
Weighted responses to "How important is it to consider the views of the following groups when discussing Alberta secession?" MEO/Leger online panel, February 2026. Non-probability sample; see Annex for full survey methodology.

Methodology

Before analysis, we first define our scope. We began with the already-documented Canadian Reporter YouTube channel. We extracted all video titles of Canadian Reporter as a seed and searched YouTube, surfacing over 1,000 channels in results. We then measured title-level text similarity between each channel's titles and the Canadian Reporter's titles. By using a very high similarity threshold, we identified 35 channels that stood out for using near-identical phrasing in their video titles, suggesting coordinated or templated production rather than independent editorial decisions. From there, we manually-reviewed the channels and excluded real, or plausibly authentic accounts and those without a dedicated focus on Albertan secession. We restrict our scope to Alberta secession-focused channels, but these selected channels are part of a broader phenomenon that deserves attention from researchers and YouTube. Finally, we restrict our analysis from May 1st, 2025 to the present as a few of these channels are repurposed accounts which feature very different content from up to 18 years ago. No channel had videos fitting the pattern of our concern before May 1st, 2025. This process resulted in the identification following 20 YouTube channels:

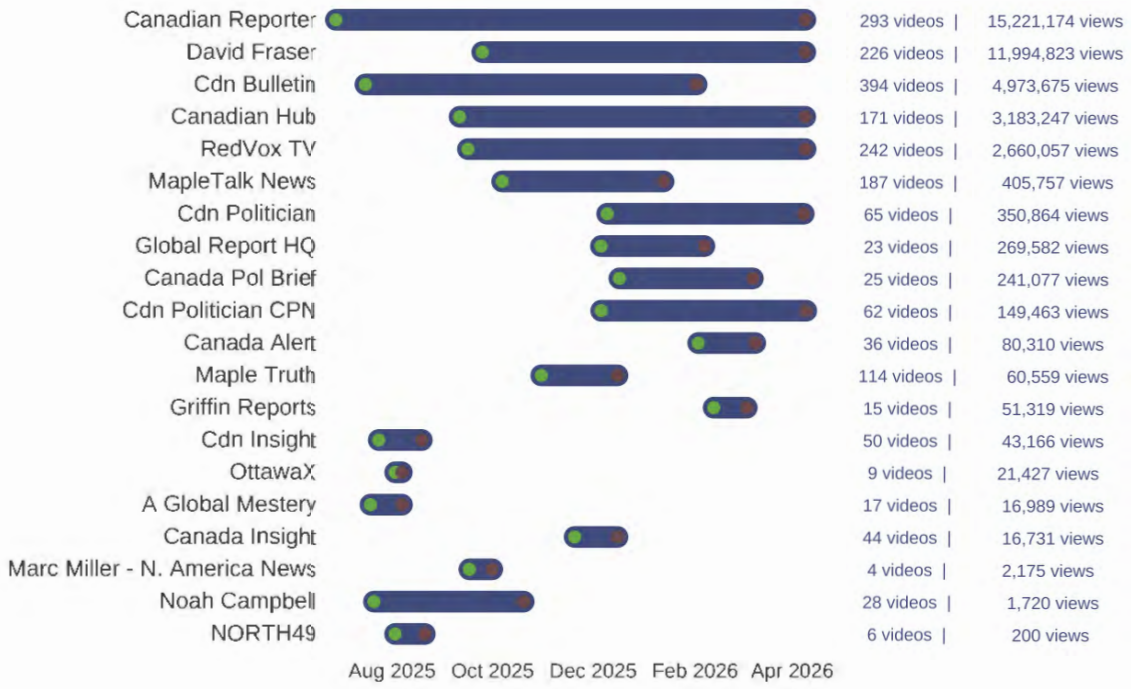


Figure 2. Inauthentic channel activity timeline
Active periods and descriptives for the 20 inauthentic channels we analyzed, with a cumulative sum of nearly 40 million views.

Research questions

What type of content do the channels cover? We downloaded and transcribed 4,474 videos across the 20 channels, segmented each into one-minute chunks (72,942 total), and used LLMs to classify each chunk for grievance framing and pro-U.S. annexation sentiment. We compare these rates against authentic Albertan secessionist channels.

Are inauthentic methods used in the creation and spread of the content? We combine qualitative review of production red flags with computational analysis of five coordination signals (linguistic similarity, shared news clips, title overlap, templated intros, and repeated claims) alongside measures of production consistency and lexical variety.

What are the channel objectives and who is the target audience? We examine comment-level location references and situate the channels within the broader *slopaganda* phenomenon to assess plausible objectives and audiences. Origin and intent remain unresolved.

What type of content do the channels cover?

These channels use headlines-of-the-day to discuss the news from a perspective of a highly aggrieved, anti-federal government perspective. The thumbnails of the videos, likely designed to grab attention and generate clicks, give a good impression of their content and perspective. They use AI-generated deepfakes of politicians, often Premier Smith and Prime Minister Carney, with maps in the background showing some combination of western provinces as part of the US (Figure 3).

The content of the videos is often a voice over of clipped news sources, ranging from traditional media news snippets to authentic secessionist YouTube account clips. There is a high degree of similarity in clips used between channels, suggesting a template-like approach which we discuss more later. The level of work required to source, splice and edit these video segments is significant. While the content is likely disseminated across a vast amount of channels through automated processes, the original footage represents a significant production effort.



Figure 3. Most viewed inauthentic video thumbnails
Top 16 most viewed video thumbnails from the inauthentic channels.

It is worth noting that these videos include frequent and obvious lies. For example, the Canadian Reporter channel, which has over 90k subscribers and over 15 million views, opens with the following quote in their most popular video (710k views):

> "The western provinces just dropped a political bombshell that is shaking Ottawa to its core, declaring moves towards the 51st through 56th statehoods with shocking authority."

And 50 seconds later:

> "I am witnessing decades of ignored comments, dismissed warnings, and brushed off facts finally exploding in Ottawa's face. And here comes the punch, 65% of Albertans, 61% of Saskatchewan residents, and 58% of Manitobans openly supporting separation or even U.S. statehood. At this point, anyone who is still calling this fringe is either blind, they're lying, or they're desperately hoping that everyone else stays clueless."

No published poll reports these numbers.

We downloaded and transcribed all the videos and used their transcripts to evaluate their content. We segmented each video into one-minute chunks then used LLMs to evaluate the presence or absence of grievance and pro-U.S. annexation framing for each chunk. Figure 4 shows these proportions for segments that include the word Alberta. We included this filter as some channels included videos on completely different topics, with only a subset dedicated towards Alberta secession content.

Our results indicate that these channels produce Alberta secession-related content characterized by substantial grievance framing alongside pro-U.S. annexation narratives. We classify grievances into three commonly recognized categories in the literature: political, economic, and cultural, consistent with leading academic research. In the inauthentic channels, grievance framing is overwhelmingly political and economic. On average, 65% of video segments in Alberta-mentioning videos contain such framing, while approximately 7% are favourable toward U.S. annexation.

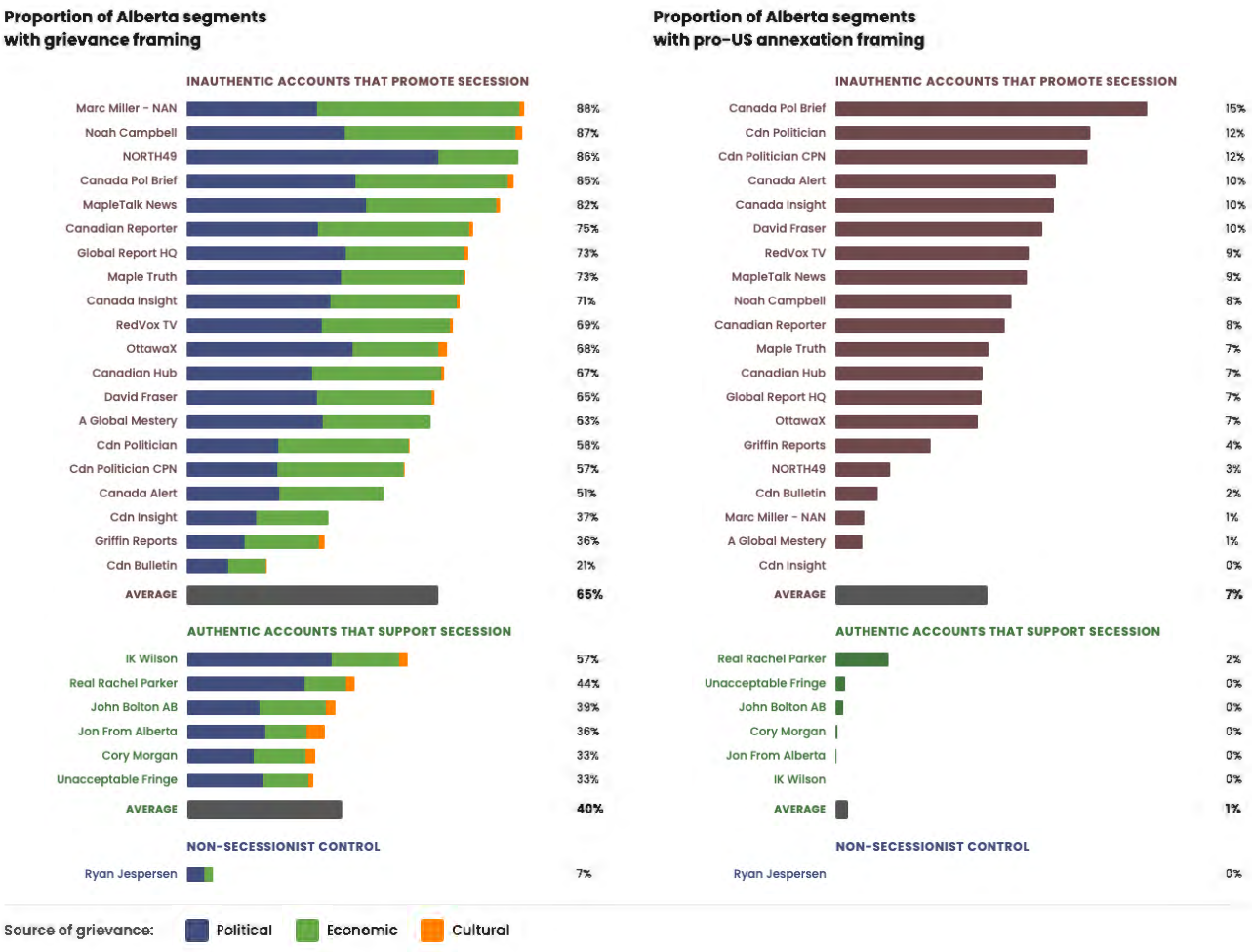


Figure 4. Grievance and US-annexation framing by channel

Channel content by grievance and US-annexation favourability. Inauthentic channels are featured with dark red font, where genuine Albertan secessionist channels are featured with green font. A daily talk show, Real Talk - Ryan Jespersen, is in blue font and used as a control for a real Albertan channel that is not secessionist. Grievance: share of 1-min chunks mentioning Alberta where Alberta is portrayed as treated unfairly. Annexation (strict): share explicitly advocating joining the US / 51st state.

When comparing these findings to real Albertan secessionist YouTube accounts, we find that the inauthentic channels feature roughly 60% more grievance framing (65% of segments in Alberta-mentioning videos vs. 40% for authentic channels) and around 12 times more video segments discussing US-annexation favourably (7% of segments vs. 0.6% for authentic channels). This is with using a conservative threshold for inclusion for annexation favourable content. Below are two examples:

CanadianReporter2025: *The West of Canada, Alberta, Saskatchewan, British Columbia and Manitoba have just declared their intent to form the 51st, 52nd, 53rd and 54th states of the United States if Ottawa continues blocking their independence bid. It's the kind of story that once lived in the corners of political forums, but now front and center.*

RedVoxTV: *Alberta, Saskatchewan, and even parts of British Columbia just dropped an earth-shattering WEXIT announcement. This isn't a drill. If we separate as an individual province or become part of the 51st state, either or, but I think we need to stand up because if we don't stand up, we're just going to be pulled over. If we did become Americans, maybe we might be better.*

While authentic Albertan secessionists discuss their politics with high amounts of grievance and low favourability towards US annexation, the inauthentic channels not only amplify grievance framing but also skew the discourse toward favourable characterizations of U.S. annexation. These inauthentic accounts target Albertan audiences, co-opt their real grievances within Canada, and repurpose them to advance narratives that normalize or legitimize the prospect of U.S. annexation.

Are inauthentic methods used in the creation and spread of the content?

Having established what these channels say, we now turn to how the content is produced and spread. We combine qualitative review of production red flags with computational analysis of coordination signals across the network to assess whether inauthentic methods are used in the creation and distribution of this content.

Qualitative analysis

Before turning to computational tools, we want to give a sense of the red flags that first drew our research interest. These channels present themselves as authentic Canadian commentary, but close listening reveals a pattern of errors that no Canadian political commentator would plausibly make. Through manual review of highly viewed videos in our channel set, we identified a series of timestamped indicators that point to the script readers not being the original creators of the content:

- Mentioning the "Atlanta prosperity project" instead of Alberta prosperity project
- Mispronouncing Regina, the capital of Saskatchewan, in a way that no Canadian would
- The voice saying the word 'cough' aloud instead of performing one – reading a stage direction from the script
- Calling Dallas Brodie, an Independent MLA in BC, a "he" when she is a woman. This basic error that any viewer familiar with BC politics would catch: "even the calmest politicians in BC are losing it. Independent MLA Dallas Brodie, who normally talks like *he* is reading from the hotel pillow menu…"
- Falsely claiming first-hand contact with British Columbians: "I've spoken to those people in Terrace, Kamloops, Fort St. John. They don't speak the same political language as Vancouver anymore." The script is read by a voice actor based in Pennsylvania.

These are only a small sample. Across hundreds of videos, the pattern is consistent: scripts written with surface-level familiarity with Canadian politics, performed by narrators who lack the local knowledge to catch even basic errors. The cumulative effect is a body of content that sounds like Canadian political commentary but is not produced by anyone embedded in the politics it claims to cover.

Coordinated channel introductions

The channels we analyzed used a variety of script voice-over approaches. Five use real humans that record themselves performing the content with the videos frequently cutting to news clips while they narrate videos. Others use obvious AI voice-overs and a few use AI-generated body avatars that read the scripts. We suspect the introduction of human voice actors is a response to YouTube content inauthentic guideline changes on July 15th, 2025. Figure 5 shows 4 human video narrators giving near identical channel intro videos suggesting a high degree of coordination between these channels.

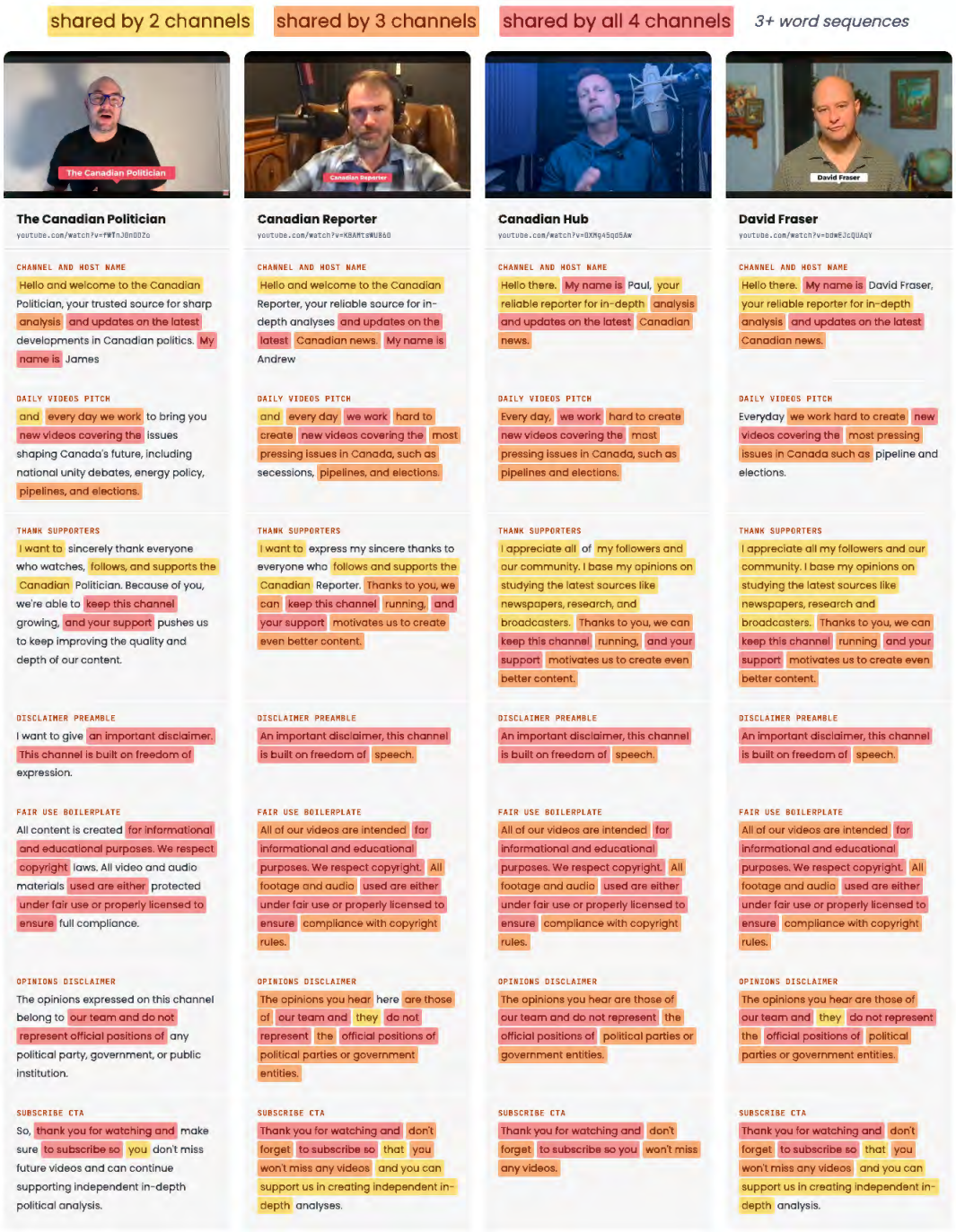


Figure 5. Coordinated channel introductions
Templated introduction videos on channels with human voice actors.

Production consistency and lexical variety

In Figure 6, we position all channels along two dimensions: vocabulary variety that measures how diverse the vocabulary is across a channel's videos and production consistency that measures how uniform each channel's videos are in length and speech rate. Channels with high production consistency produce videos that are nearly identical in duration and pacing, as though generated from the same template.

The contrast is clear. The channels we identify as inauthentic group closely together in the part of the chart associated with low vocabulary variety and highly uniform production patterns. In practice, this means their videos tend to use repetitive language and follow very similar lengths and speaking pace from upload to upload. By comparison, authentic channels are more spread out and show greater variation in both language and production style. That kind of diversity is more typical of real channels responding organically to events, opinions, and changing audiences. When combined with the other evidence in this report, it adds to the broader picture of a templated and highly systematized content operation.

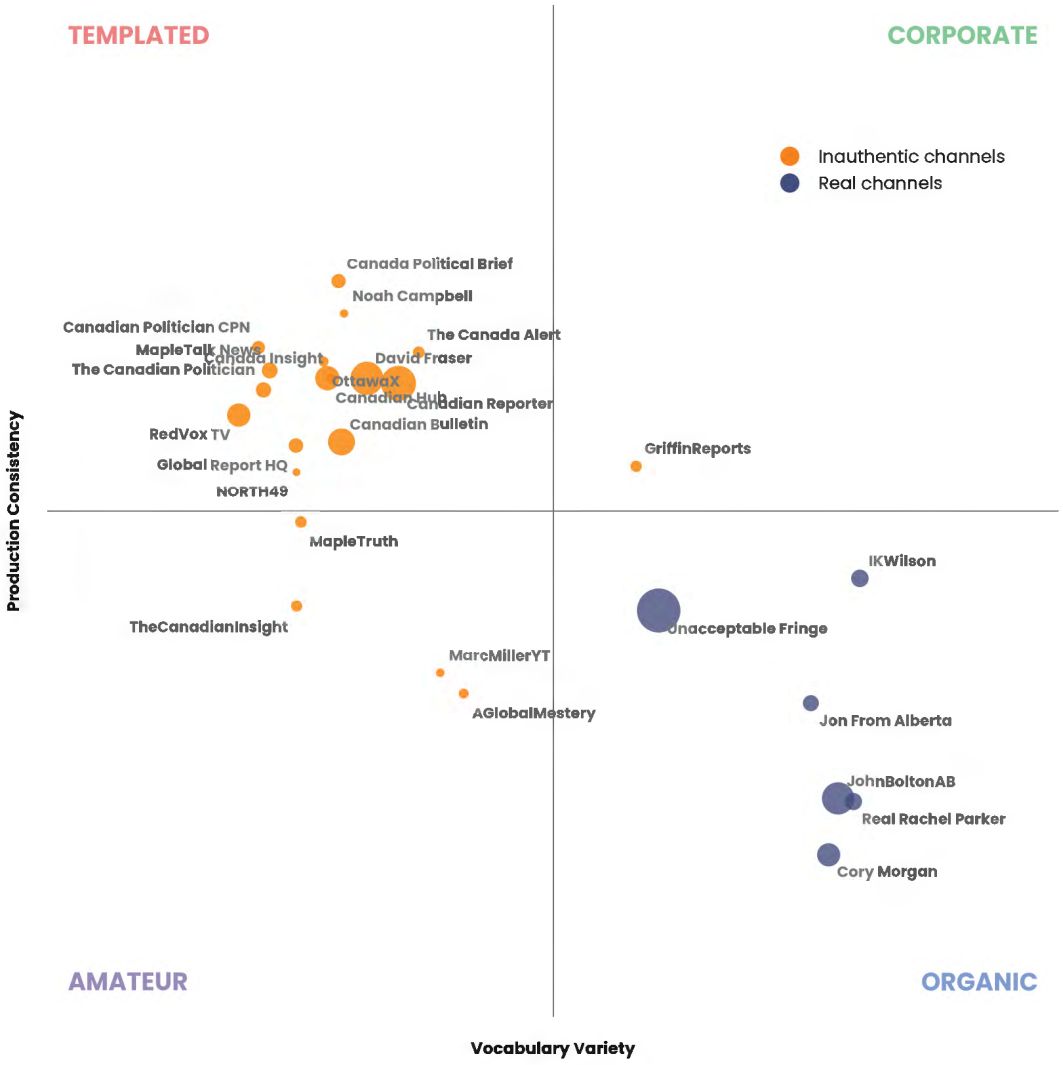


Figure 6. Channel typology by vocabulary and production consistency
The 20 inauthentic channels we analyzed are featured in orange and real Albertan secessionist channels are used as a comparison, featured in blue. Bubble size proportional to total channel views.

Additional indicators of inauthentic behaviour

The production patterns documented above are not the only signal of coordination. Across these channels, we identified 11,463 accounts commenting on multiple channels (≥3 comments). 43% of these accounts are active on three or more channels. When we measure cross-channel audience overlap between any two channels in the network, shared commenters are overwhelmingly these multi-channel accounts, a ratio far exceeding what independent channels with shared audiences typically exhibit. The most coordinated accounts (the top 1% of this pool) appear on up to 13 channels in the network, responding to new videos within minutes of upload and co-occurring on the same content at rates two orders of magnitude higher than activity-matched random groups.

The coordination extends to content itself. Channels share over 25,000 news clip segments that include identical audio or video reused across different uploads and repeat the same substantive claims verbatim across channels and weeks, organized around a consistent set of 20 recurring themes. Near-identical video titles are posted across multiple channels simultaneously (Figure 7). Full interactive exploration of each coordination signal is available on the project website.

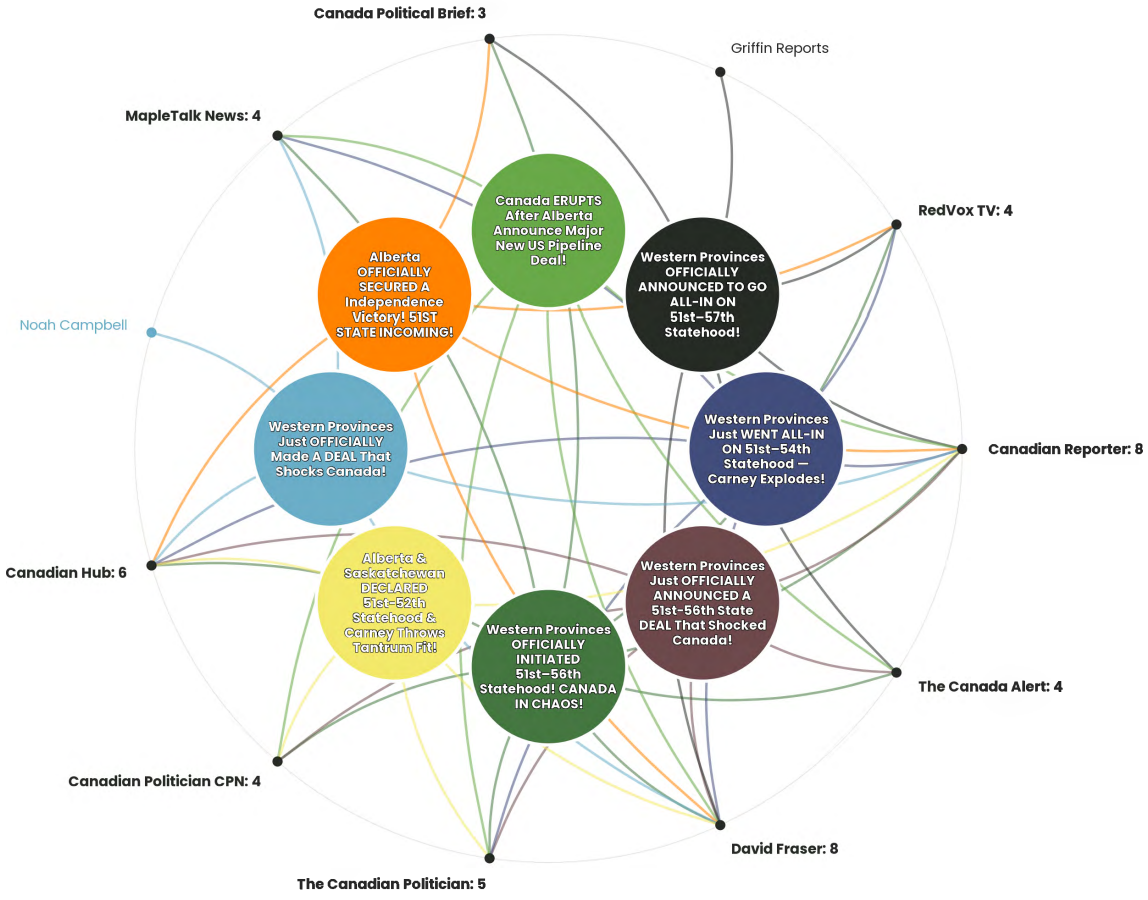


Figure 7. Shared video titles across inauthentic channels
Inner nodes are near-identical title clusters (Levenshtein similarity of at least 0.90) posted by five or more channels; outer nodes are channels; arcs link each channel to each matching title.

What are the channel objectives and who is the target audience?

Determining target audience is difficult from available data. We provide the following pieces of evidence but are not able to resolve the most pressing questions raised by this incident such as origin or intent.

A small subset of commenters (491 unique accounts, under 1% of total) voluntarily referenced a geographic location. Among these, a majority cited U.S. locations, with smaller shares referencing Alberta and the rest of Canada. We note this only as suggestive – self-reported locations in YouTube comments are not audience analytics, the sample is tiny, and such signals are easily gamed. Resolving the actual geographic reach of these channels would require platform-level data that only YouTube can provide.

These channels focusing on Alberta secession are also a part of a larger network of channels following this formulaic template of *slopaganda*. During the course of our analysis, we noticed channels scrub their videos and repurpose their account for completely different topics, such as true crime documentaries. This is a frequent practice among inauthentic content operations as platforms often determine the trustworthiness of accounts based on how long ago they were created. It can be more effective to buy an existing account and completely rebrand than to start a new one. When our team narrowed the channel scope to Alberta secession content, we passed over many other subject matters such as world politics, US politics, Iran politics, etc. Given this context, and past research on this topic, we expect the origins of these channels as broader than Alberta secession.

Alberta secession content may be featured for easy engagement returns on their content. However, the framing of the content and the strong exaggeration of grievances and US annexation content, points to political influence as a plausible objective. Coopting authentically held grievances by real Albertans through covert methods is antithetical to transparent, democratic processes.

Concluding remarks

Our goal is to equip Canadians with the knowledge to navigate the online news ecosystem and ensure technology serves democracy. We think Albertans, and all Canadians, deserve high quality, authentic, and fact-based news journalism. This incident presents a real concern to the integrity of the Canadian media ecosystem. The channels analyzed have accumulated nearly 40 million views in the past 12 months. For context, the Tenet Media YouTube channel, a Russian-funded covert influence operation exposed in 2024, also accumulated 15 million views over the course of a year, though the origin of the present network remains unknown.

Alberta secession is a major political issue in 2026, with a potential referendum being held in October. We hope this research sheds light on the incident and equips civil society, governments, and platforms with the tools to respond accordingly. We call on YouTube, and social media platforms more broadly, to take seriously this abuse of the public sphere and strengthen their responses to inauthentic networks. Specifically, we call on YouTube to: (1) disclose geographic audience analytics for flagged channel networks so that researchers can determine who is actually watching this content; (2) provide transparency into whether paid promotion or ad targeting was used to direct content toward specific regions; (3) share information about the account creation and ownership history of channels identified as part of coordinated inauthentic networks; (4) extend community notes to YouTube so that viewers can flag misleading content directly (a feature that could immediately surface the fact that channels like Canadian Reporter are operated by paid voice actors rather than Canadian journalists); and (5) give accredited researchers API access to comment-level timestamps, account ages, and cross-channel posting patterns sufficient to distinguish organic engagement from coordinated activity. Important questions are raised by our research and we are limited in our ability to understand the origins, scope, or purposes of this inauthentic network without platform cooperation.

A note on AI in this research. *AI tools were embedded at each stage of this project, from data collection and transcript classification to network analysis and prose drafting, to test what an AI-assisted research methodology could produce in a compressed timeline. Claude (Anthropic) was the primary AI tool used throughout. All code and content was reviewed, tested, and verified by the research team.*

The work of the Media Ecosystem Observatory and the Canadian Digital Media Research Network is funded in part by Heritage Canada's Digital Citizen Initiative.

Canada

Annex: methodology

Survey

Figure 1 reports results from the Media Ecosystem Observatory (MEO) tracking survey. The survey was conducted online in February 2026 using Qualtrics with a Leger online panel. The final analytical sample consists of 1,479 Canadian adults aged 18 and older (Alberta: 186; Rest of Canada: 1,293) after excluding incomplete responses, quota overflows, screened-out respondents, attention-check failures, and duplicate panellists.

Respondents were recruited from a non-probability online panel. Because this is not a random probability sample, a margin of error cannot be calculated and results cannot be described as statistically representative of the Canadian population. Results were weighted by region, age group, and gender to match Canadian population benchmarks using iterative proportional fitting (raking), with weights trimmed to the range [0.3, 3.0].

Respondents were asked: "How important is it to consider the views of the following groups when discussing Alberta secession?" Separate items were presented for (1) Albertans, (2) Canadians outside of Alberta, and (3) Americans, each on a four-point scale: Not important at all, A little important, Somewhat important, Very important, with a Don't know option.

The survey was approved by the University of Toronto Research Ethics Board (Protocol #49009).

YouTube data

All digital trace data analyzed in this report was publicly available as of early April 2026. Transcripts of all videos are available to any journalist or researcher wishing to better understand this YouTube campaign.

Channel identification. We seeded our search with the Canadian Reporter channel, previously documented by the Canadian Press. We extracted all of its video titles and searched YouTube, surfacing over 1,000 channels. We computed pairwise title-level text similarity (Levenshtein) between each candidate channel and the seed, applying a high threshold to identify 35 channels with near-identical phrasing. Manual review excluded authentic accounts and channels without a dedicated focus on Albertan secession, yielding the final set of 20 inauthentic channels. Six authentic Albertan secessionist channels and one non-secessionist control channel were included for comparison. Our analysis window runs from May 1, 2025 to April 2026; no channel exhibited the pattern of concern before that date.

Corpus. We downloaded and transcribed 4,474 videos across the 20 inauthentic channels, producing 72,942 one-minute transcript chunks. For the six authentic comparison channels and one control channel, we applied the same pipeline.

Classification. Each one-minute chunk was classified using Qwen 3.5-27B-FP8 (run via vLLM on Alliance Canada GPU infrastructure) for (1) grievance framing — whether the segment portrays Alberta as treated unfairly, sub-classified as political, economic, or cultural — and (2) pro-U.S. annexation sentiment — whether the segment explicitly advocates Alberta joining the United States. The classification schema was designed by the research team and validated through spot-checking against manual readings of transcripts. For the content analysis in Figure 4, we restricted the denominator to segments from videos where at least one chunk mentions Alberta, ensuring the rates reflect Alberta-focused content rather than unrelated material on the same channels.

Coordination signals. Five independent signals were computed across channels: (1) linguistic similarity via TF-IDF transcript cosine distance; (2) shared news clip segments identified through audio fingerprinting; (3) title similarity via pairwise Levenshtein distance; (4) coordinated introduction videos identified through manual review; and (5) shared claims identified through HDBSCAN clustering of semantic embeddings (Harrier 270M) over approximately 300,000 extracted claims. Each signal was normalized to [0, 1] and combined into a weighted edge graph.

Production metrics. Vocabulary variety was measured as type-token ratio across each channel's transcripts. Production consistency was computed from the coefficient of variation in video duration and speech rate within each channel — channels with low variance produce videos that are nearly identical in length and pacing.

Annex: incident checklist

The following table records, against CDMRN's standard criteria, whether this case meets the threshold of an information incident warranting public reporting.

Criterion	Met	Rationale
Information Manipulation	✓	A network of 20 YouTube channels is producing news-formatted content about Alberta without disclosing authorship, funding, or location. Channels mix AI voiceovers, AI avatars, and paid actors, present as authentic Albertans, and recycle shared news-clip segments, near-identical titles, templated intros, and repeated claims across channels. Accounts scrub content and rebrand mid-study (one flipped to true-crime). These are classic markers of covert, coordinated, inauthentic behaviour.
Severity	✓	Across 4,474 videos and 72,942 transcript chunks (May 2025–April 2026), inauthentic channels frame 65% of segments in Alberta-mentioning videos as grievance (vs. 40% for authentic Albertan secessionists) and devote around 12× more segments to favourable U.S.-annexation framing (7% of segments vs. 0.6% for authentic channels). The largest channel in the set has >15M views; the network's combined reach is in the tens of millions. Content advocates the dissolution of Canadian sovereignty over Alberta.
Public Interest	✓	Alberta is running an active petition campaign toward a 2026 provincial referendum on secession. Covert amplification of grievance and annexation framing directly intersects a live democratic process of the highest political salience, and Canadians (especially Albertans) have a clear interest in knowing which voices in that debate are authentic.
Expertise	✓	MEO has the computational pipeline (transcript ingestion, LLM-based grievance and annexation coding, five independent coordination signals, network analysis) and domain expertise in Canadian political communication and platform integrity to characterize the network rigorously and at scale.

This case combines strong, multi-signal evidence of coordinated inauthentic behaviour with direct intersection of a a provincial referendum on secession. The measured asymmetry between inauthentic and authentic channels (65% vs. 40% grievance framing in Alberta-mentioning videos; around 12× more pro-annexation framing) shows that the network is not merely echoing Albertan voices but systematically skewing the discourse towards grievance and U.S. annexation. Because origin and intent remain unknown, we do not attribute the campaign; we report what is observable and call on YouTube to disclose data about the network.

Alberta separatist group ordered to pull down list with millions of voters' personal information

www.cbc.ca/news/canada/edmonton/livestory/elections-alberta-electors-list-9.7182971





Alberta separatist group ordered to remove electoral list with voters' personal data

A separatist group in Alberta posted an electors database online, containing the personal information of millions of people registered and eligible to vote in the province. Elections Alberta sought a court order to have the list removed and has been granted a temporary injunction.

The Latest

- Elections Alberta won a court order on Thursday to force an Alberta separatist group to pull down a public, searchable database detailing the personal information of millions of Alberta voters.
- Court heard an Elections Alberta investigation determined the electoral list was legitimately provided to the Republican Party of Alberta, a provincial party supporting Alberta independence.
- Centurion Project, a pro-sovereignty group registered as a third-party advertiser in Alberta, posted the database containing the information.
- The group said it has shut down the app and will fully comply with Elections Alberta’s investigation.

Pinned

Alberta privacy commissioner calls posting of voter information online 'very serious'

Late Thursday afternoon, the Office of the Information and Privacy Commissioner of Alberta issued a statement about the developments.

"My office is still working to determine the facts of this case," said Commissioner Diane McLeod, who noted her office was informed by Elections Alberta earlier in the day about a potential breach. "However, it appears this matter may fall outside my jurisdiction."

"My office does not have jurisdiction over personal information contained in the List of Electors that may have been disclosed by a political party. This is because the Personal Information Protection Act (PIPA) does not apply to political parties."

McLeod said her office will continue to look to figure out if it has jurisdiction over the Centurion Project and, if it does, it will investigate to determine whether any violations of PIPA occurred.

"What happened here is very serious," she said. "More than 2.9 million Albertans have had their personal information breached. For some of these individuals there is likely a real risk of significant harm given that their home address and phone numbers have been made public.”

McLeod added that she believes there is "a concerning gap in Alberta's privacy laws as it relates to the collection, use and disclosure of personal information by political parties."

"This incident demonstrates that it is high time for political parties to be made subject to PIPA."

- **May 1**

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  "This incident demonstrates that it is high time for political parties to be made subject to PIPA."

- ## April 30

Elections Alberta confirms the database has been removed

Wallis Snowdon

Voters leave a polling station after casting ballots in an Alberta byelection in Cremona, Alta., on June 23, 2025. (Jeff McIntosh/The Canadian Press)

In a statement issued this afternoon, Elections Alberta officials said the portion of the Centurion Project website providing access to the electors list is no longer available.

The agency said it's working with other agencies, including law enforcement and the Office of the Information and Privacy Commissioner of Alberta, and is "taking every possible action to protect and recover the information."

The agency also shared this timeline of its response since Monday.

- **Monday, April 27:** Elections Alberta received information suggesting Centurion was in possession of the List of Electors provided to a registered political party. It launched an investigation.
- **Tuesday, April 28:** The chief electoral officer sent an email to individuals associated with the Centurion Project advising that if they were accessing a List of Electors, they must immediately "cease and desist."
- **Wednesday, April 29:** Elections Alberta representatives, accompanied by police, attended a Centurion Project meeting in Edmonton to personally deliver the cease-and-desist letter.
- **Thursday, April 30:** Elections Alberta and its lawyers successfully applied for a temporary injunction at Court of Kings Bench in Edmonton.

That’s a wrap on our live coverage today, but this is not the end of our reporting on the issue.

We'll continue to provide updates in our story here. We'll also have ongoing coverage at CBC.ca/Edmonton.

- **The separatist group that posted the database has responded**

  Trevor Howlett

  We've just received a statement from The Centurion Project Ltd. about the alleged misuse of voter information:

  "The Centurion Project Ltd is a company that was established to help train volunteers on how to be better citizens and to impact the political process. To be clear, the Centurion App is strictly used by volunteers to find people they personally know in a database. They are not given access to any phone numbers or emails and are encouraged only to contact and claim people they already know. We have relied on a third party to provide us with datasets for this tool. We are aware of recent allegations regarding the app's data. We have taken action to shut down the app until we can ensure that the dataset is compliant with Alberta and federal privacy laws. We plan to fully comply with Elections Alberta's investigation."

- **The premier is in U.K. on a trade trip**

  Janet French

  Alberta Premier Danielle Smith in Edmonton on March 16. (Jason Franson/The Canadian Press)

  As details emerge about the alleged misuse of voter information, we have yet to hear an official response from the Alberta government.

  Premier Danielle Smith is on a 10-day tour of Europe to promote trade and investment. This morning, she participated in a fireside discussion at Chatham House in London about energy, critical minerals, defence and technology, according to a government news release.

  In response to questions about the potential misuse of voter information and privacy implications for vulnerable people, the press secretary for Alberta's justice minister referred questions to the United Conservative Party (UCP).

  UCP spokesperson Dave Prisco said the party did not provide the list of electors to any unauthorized outside group or individual, and referred additional questions to Elections Alberta.

- **Some Albertans are angered by the database**

  Josh McLean

  I'm in Calgary's University District getting reaction from people on the street about this story. There's been a common thread among their responses — shock and anger that voter information was shared without permission.

  People are confused as to how this information was accessed and they're not happy that the information was available so easily.

  The people I spoke to want to see consequences for those involved in accessing the list of electors.

- **What the database was going to be used for**

  Wallis Snowdon

  A screenshot from an instructional guide posted by the Centurion Project on how to use the database to canvass for supporters of the Alberta independence movement. (The Centurion Project)

  In addition to publishing the database, the Centurion Project also posted a set of instructions guiding people in how to use it.

  The step-by-step, nine-point guide, posted on the Centurion website, showed users how to search for names and "claim" electors whom they would then survey about their support for Alberta's independence movement.

  According to the guide, the responses of each elector would then be tracked through the digital dashboard.

  Its stated purpose was to build lists of electors who could be contacted as supporters.

- **What's a phone book?**

  Wallis Snowdon

  The Centurion Project is led by longtime political organizer David Parker.

  Parker has not yet responded to a CBC News request for comment. However, he was posting on X on Thursday.

  One post showed a picture of a “white pages” phone book with the caption: "Look everyone! I found names and addresses in a nefarious document called a phone book! Call the cops!"

  In 2010, the Yellow Pages Group said residential phone directories — often referred to as the white pages — would only be available upon request in many major Canadian cities, including Edmonton and Calgary.

  According to Centurion’s social media accounts, the party’s goal is to “recruit, equip and mobilize a team of community leaders across the province of Alberta to take on the task of winning Alberta's sovereignty.”

  The group, which has offices in Calgary, has upcoming “Operation Secure Independence” events throughout the province.

  Centurion registered with Elections Alberta as a third-party advertiser on April 24. It is among a number of pro-separatist groups that want Alberta to gain independence from the rest of Canada.

- **Albertans should be ‘deeply alarmed,’ says NDP leader**

  Michelle Bellefontaine
  I’m a provincial affairs reporter based in Edmonton.

  Provincial NDP Leader Naheed Nenshi said Albertans should be angry and “deeply alarmed” by how easy people could access their private information while the database was online.

  “There are very, very serious implications for this kind of behaviour,” Nenshi said in response to reporters’ questions at an unrelated news conference in Calgary.

  “It's dangerous. It puts people's lives at risk and it puts our democracy at risk.”

  Nenshi also pushed back at suggestions from Centurion Project leader David Parker, posted today on X, that the electoral list contains the same information seen in a public phone book. That sentiment was also in posts from other Albertans who support separatism.

  Nenshi said the voters’ list includes additional information.

  He called on the provincial government to ensure Elections Alberta has enough funding to properly conduct an investigation.

  “Every single Albertan who votes has had their personal data breached by these people,” he said. “This is not a joking matter.”

- **Republican Party leader says it's ‘fully complying’**

  Wallis Snowdon

  Cameron Davies, the leader of the Republican Party of Alberta, is pictured with his truck in Red Deer, Alta., in May 2025. (Jeff McIntosh/The Canadian Press)

  In an interview with The Canadian Press, the leader of the Republican Party said it hadn't received official communication from Elections Alberta.

  Cameron Davies said the party has issued a notice to the Centurion Project that any information the group may have allegedly received — if it came from the party — is not to be used.

  "We were proactive on that before the injunction today, and we'll be fully complying with Elections Alberta," Davies told The Canadian Press.

- **Independence petition underway**

  Trevor Howlett

  Alberta independence has been a hot topic in recent years, with efforts underway to force a referendum on the topic.

  A group called Stay Free Alberta has a petition underway that aims to trigger a referendum on the province separating from Canada, using provincial legislation. The group says it has already collected more than the required 178,000 signatures.

  The petition has a deadline of May 2 and has not been certified. A judge has ordered a month-long stay preventing Alberta's chief electoral officer from certifying the results.

  Another petition, called Forever Canadian, seeks to make it an official policy for Alberta to stay in Canada. That petition was deemed successful in the fall. Alberta law requires the legislature to refer such successful policy petitions to an all-party legislative committee.

  Neither petition has made it onto a referendum ballot.

  The province is set to hold a referendum in the fall on several other topics proposed by the government.

Name	Title	Physical Addres	Email
Cabinet			
Smith, Danielle, Honorable	Premier, President of the Executive Council, Minister of Intergovernmental and International Relations	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	premier@gov.ab.ca
Ellis, Mike, Honourable	Deputy Premier and Minister of Public Safety and Emergency Services	404 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	PSES.minister@gov.ab.ca
Horner, Nate, Honourable	President of Treasury Board and Minister of Finance	208 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	tbf.minister@gov.ab.ca
McDougall, Myles, Honourable	Minister of Advanced Education	107 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ae.minister@gov.ab.ca
Neudorf, Nathan, Honourable	Minister of Affordability and Utilities and Vice-Chair of Treasury Board	204 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	au.minister@gov.ab.ca
Sigurdson, RJ, Honourable	Minister of Agriculture and Irrigation	131 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	agric.minister@gov.ab.ca
Fir, Tanya, Honourable	Minister of Arts, Culture and Status of Women	132 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	acsw.minister@gov.ab.ca

Nixon, Jason, Honourable	Minister of Assisted Living and Social Services	227 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	alss.minister@gov.ab.ca
Turton, Searle, Honourable	Minister of Children and Family Services	130 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	cfs.minister@gov.ab.ca
Nicolaides, Demetrios, Honourable	Minister of Education and Childcare	228 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	education.minister@gov.ab.ca
Jean, Brian, Honourable	Minister of Energy and Minerals	324 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	minister.energy@gov.ab.ca
Schulz, Rebecca, Honourable	Minister of Environment and Protected Areas	204 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	epa.minister@gov.ab.ca
Loewen, Todd, Honourable	Minister of Forestry and Parks	323 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	fp.minister@gov.ab.ca
LaGrange, Adriana, Honourable	Minister of Primary and Preventative Health Services	224 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	pphs.minister@gov.ab.ca
Jones, Matt, Honourable	Minister of Hospital and Surgical Health Services	227 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	hshs.minister@gov.ab.ca

Yaseen, Muhammad, Honourable	Associate Minister of Multiculturalism	420 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	associateminister-mc@gov.ab.ca
Sawhney, Rajan, Honourable	Minister of Indigenous Relations	104 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ir.minister@gov.ab.ca
Long, Martin, Honourable	Minister of Infrastructure	419 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	infrastructure.minister@gov.ab.ca
Schow, Joseph, Honourable	House Leader and Minister of Jobs, Economy, Trade and Immigration	425 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	jet.minister@gov.ab.ca
Amery, Mickey, Honourable	Minister of Justice/ Legislative Review Cabinet Committee Chair	424 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ministryofjustice@gov.ab.ca
Wilson, Rick, Honourable	Minister of Mental Health and Addiction	403 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	mha.minister@gov.ab.ca
Williams, Dan, Honourable	Minister of Municipal Affairs	320 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	minister.municipalaffairs@gov.ab.ca
Nally, Dale, Honourable	Minister of Service Alberta and Red Tape Reduction	103 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ministersa@gov.ab.ca

Glubish, Nate, Honourable	Minister of Technology and Innovation	229 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ti.minister@gov.ab.ca
Boitchenko, Andrew, Honourable	Minister of Tourism and Sport	402 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	ts.minister@gov.ab.ca
Dreeshen, Devin, Honourable	Minister of Transportation and Economic Corridors	127 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	transportation.minister@gov.ab.ca
Cabinet Support and Alternate Contacts			
Anderson, Rob	Chief of Staff and Executive Director of Premier's Office	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	robert.anderson@gov.ab.ca
Gray, Mitchel	Deputy Chief of Staff - Policy and Legislation	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	mitchel.gray@gov.ab.ca
Maxwell, Alison	Executive Assistant to the Chief of Staff and Deputy Chief - Policy and Legislation	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	alison.maxwell@gov.ab.ca
Malkin, Patrick	Deputy Chief of Staff - Operations	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	patrick.malkin@gov.ab.ca

Shephard, Shawna	Executive Assistant to the Deputy Chief of Staff - Operations	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	shawna.shepard@gov.ab.ca
Polak, Rebecca	Principal Secretary to the Premier	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	rebecca.polak@gov.ab.ca
Black, Jill	Executive Assistant to the Principal Secretary to the Premier	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	jill.black@gov.ab.ca
Keil, T.J.	Special Advisor	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	tj.keil@gov.ab.ca
Selzler, Bryce	Senior Policy Advisor	307 Legislature Building 10800 - 97 Avenue Edmonton, AB T5K 2B6	bryce.selzler@gov.ab.ca